

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 1818 of 2023  
CP D 1819 of 2023

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| Date | Order with signature of Judge(s) |
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**CP D 1818 of 2023**

1. For orders on CMA No.8958/2023.
2. For orders on CMA No.8959/2023.
3. For orders on CMA No.8960/2023.
4. For hearing of main case.

**CP D 1819 of 2023**

1. For orders on CMA No.8961/2023.
2. For orders on CMA No.8962/2023.
3. For orders on CMA No.8963/2023.
4. For hearing of main case.

**05.05.2023**

Mr. Rashid Mureed, advocate for the petitioners.

The petitioners have impugned an amendment to section 3 read with the Sixth Schedule of the Sales Tax Act 1990, whereby *inter alia* an exemption with regard to sales tax has been withdrawn. At the very onset, learned counsel was confronted as to what provision of the Constitution was allegedly infringed by mere withdrawal of an exemption, however, he remained unable to satisfy the Court in such regard.

The House of Lords<sup>1</sup> observed back in 1925 that charge, assessment and recovery are distinct facets of a levy. *Whitney* was cited with approval by the august Supreme Court in *H M Extraction*<sup>2</sup>. *Munib Akhtar J* observed that an exemption inserts itself between the first two stages, i.e., between what is leviable and what is payable. It is the prerogative of the Parliament to confer and withdraw fiscal benefits, in the interests of the public at large. Learned counsel remained unable to demonstrate any lawful impediment to the withdrawal of the benefit under consideration before us.

There is ample authority<sup>3</sup> interpreting the remit of rights, vested rights and past & closed transactions, however, a collative edict in such

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<sup>1</sup> Per Lord Dunedin in *Whitney vs. Inland Revenue Commissioners* reported as [1926] A.C. 37 (1925) – “Now, there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

<sup>2</sup> Per *Munib Akhtar J* in *H. M. Extraction Ghee & Oil Industries vs. FBR* reported as 2019 SCMR 1081.

<sup>3</sup> *Nagina Silk Mills vs. ITO* reported as PLD 1963 SC 322; *East Pakistan vs. Sharafatullah* reported as 1970 PLD SC 514; *CIT vs. EFU Insurance* reported as 1982 PLD SC 247; *G H Shah vs. Chief Land Commissioner* reported as 1983 CLC 1585; *Al Samrez Enterprises vs. Pakistan* reported as 1986 SCMR 1917; *WAPDA vs. Capt. Nazir* reported as 1986 SCMR 96; *Chief Land Commissioner vs. G H Shah* reported as 1988 SCMR 715; *Molasses Trading & Export vs. Pakistan* reported as 1993 SCMR 1905; *Muhammad Hussain vs. Muhammad* reported as 2000 SCMR 367; *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558; *Zila Council Jhelum vs. PTC* reported as PLD 2016 SC 398; *Al Tech Engineers vs. Pakistan* reported as 2017 SCMR 673; *Super Engineering vs. CIR* reported as 2019 SCMR 1111; *H M Extraction vs. FBR* reported as 2019 SCMR 1081; *Anwar Yahya vs. Pakistan* reported as 2017 PTD 1069.

regard is the Division Bench judgment of this Court in *Shahnawaz*<sup>4</sup>. Learned counsel remained unable to articulate any vested right of the petitioners to remain entitled to a benefit, consciously withdrawn from the statute book.

The Supreme Court has consistently maintained that the superior courts retain the jurisdiction to declare a legislative enactment as void or unconstitutional and the parameters in such regard were comprehensively summated in the *Imrana Tiwana*<sup>5</sup>, wherein the following principles were required to be applied when considering the vires of a legislative enactment<sup>6</sup>: there was a presumption in favor of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two; where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favored validity; a statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. a reasonable doubt must be resolved in favor of the statute being valid; a Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds; a Court should not decide a larger Constitutional question than was necessary for the determination of the case; a Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution; a Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality; a Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and mala fides should not be attributed to the Legislature. In summation, it is the duty of the Court to make every effort to save legislation.

In the facts and circumstances articulated before us, no Constitutional infirmity could be identified in the withdrawal of the exemption, therefore, while granting the urgent applications, the petitions and listed applications are hereby dismissed in *limine*.

JUDGE

JUDGE

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<sup>4</sup> Per *Munib Akhtar J* in *Shahnawaz vs. Pakistan* reported as 2011 PTD 1558 (“*Shahnawaz*”).

<sup>5</sup> Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as 2015 SCMR 1739.

<sup>6</sup> Reliance was placed upon *Province of East Pakistan vs. Sirajul Haq Patwari* reported as PLD 1966 SC 854; *Mehreen Zaibun Nisa vs. Land Commissioner* reported as PLD 1975 SC 397; *Kaneez Fatima vs. Wali Muhammad* reported as PLD 1993 SC 901; *Multiline Associates vs. Ardeshir Cowasjee* reported as 1995 SCMR 362; *Ellahi Cotton Mills Limited vs. Federation of Pakistan* reported as PLD 1997 SC 582; *Dr. Tariq Nawaz vs. Government of Pakistan* reported as 2000 SCMR 1956; *Mian Asif Aslam vs. Mian Muhammad Asif* reported as PLD 2001 SC 499; *Pakistan Muslim League (Q) vs. Chief Executive of Pakistan* reported as PLD 2002 SC 994; *Pakistan Lawyers Forum vs. Federation of Pakistan* reported as PLD 2005 SC 719; *Messrs Master Foam (Pvt.) Ltd. vs. Government of Pakistan* reported as 2005 PTD 1537; *Watan Party vs. Federation of Pakistan* reported as PLD 2006 SC 697; *Federation of Pakistan vs. Haji Muhammad Sadiq* reported as PLD 2007 SC 133; *Dr. Mobashir Hassan and others vs. Federation of Pakistan & Others* reported as PLD 2010 SC 265 & *Iqbal Zafar Jhagra vs. Federation of Pakistan* reported as 2013 SCMR 1337.