IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-1237 of 2026

Present:
Yousuf Ali Sayeed, and
Abdul Mobeen Lakho, JJ

Pak Suzuki Motor Company Limited.....Petitioner

Versus

Federation of Pakistan & others.....Respondents

Ovais Ali Shah, Advocate for the Petitioner.
Mehreen Ibrahim, DAG.
Mukesh Kumar Khatri, Advocate for the Federal Board of Revenue.

Date of hearing : 15.10.2026.

JUDGMENT

YOUSUF ALI SAYEED, J. - The Petitioner, a public limited company engaged in the manufacture, assembly and marketing of automobiles and motorcycles, has assailed the recovery of a sum of Rs.745,475,048/- effected by the Respondent No.3 (i.e. the Assistant/Deputy Commissioner, Inland Revenue, Zone-II-Range A Unit 01, Zone II, LTO, Karachi) pursuant to a Notice under Section 140 of the Income Tax Ordinance, 2001 (the "**Ordinance**"), issued in the wake of a Recovery Notice under Section 138(1) thereof, all whilst an appeal and application for stay in respect of the underlying Order dated 31.12.2025 made under Sections 161 and 205 remained pending before the Commissioner Inland Revenue (Appeals) Karachi.

2. Succinctly stated, the backdrop to the matter is that vide the Order dated 31.12.2025, the Respondent No.3 treated the Petitioner as being in default of its withholding obligations for the Tax Year 2020 and raised a demand in the aforementioned sum. The Petitioner preferred an appeal on 29.01.2026, which remains pending. On 17.02.2026, the Respondent No.3 issued a Recovery Notice under Section 138(1) of the Ordinance, calling upon the Petitioner to make payment on or before 19.02.2026, with the Petitioner applying that very day to the appellate forum for a stay of recovery, and the application being fixed for hearing on 25.02.2026. However, prior thereto, a Notice dated 20.02.2026 came to be addressed under Section 140 of the Ordinance to the banks where the Petitioner maintained its accounts, requiring that the amount in question be remitted "immediately, if available". On the strength of that Notice, a Pay Order for Rs.745,475,048/-, bearing No.12958669, was obtained on 23.02.2026 from the Respondent No.5, debiting the Petitioner's account, and was then encashed. In that backdrop, the Petitioner seeks that the recovery proceedings be declared illegal and restitution be ordered. Proceeding in that vein, learned counsel for the Petitioner contended that recovery had been enforced in undue haste whilst the appeal and the stay application were pending, rendering the statutory remedy illusory in violation of Article 10-A of the Constitution. It was submitted that a period of 48 hours for payment of a disputed demand exceeding Rs.745 million was, on its face, arbitrary, and that the notice under Section 140 had been issued a day after the date specified in the earlier Section 138 Notice, in derogation of the principles laid down by the Islamabad High Court in the case reported as *Messrs Pakistan LNG Limited v. Federation of Pakistan* 2022 PTD 1763, as upheld by the Supreme Court in *Commissioner Inland Revenue (Legal), Islamabad v. Pakistan LNG Limited* 2026 PTD 192. Reliance was also placed on *Messrs Huawei Technologies Pakistan (Pvt.) Ltd. v. Commissioner Inland Revenue* 2016 PTD 1799 and *China Machinery Engineering Corporation v. Federation of Pakistan* 2024 PTD 242.

3. Conversely, learned counsel for the Department and the learned Deputy Attorney General supported the impugned action, and, while adverting to the para-wise comments, submitted that the mere filing of an appeal did not operate as a stay; that Sections 137, 138 and 140 empowered the department to recover the tax due unless recovery was stayed by the appellate authority, which was not the case; and that, should the Petitioner ultimately succeed in its appeal, the remedy of adjustment or refund remained available under the Ordinance.

4. We have heard and considered the arguments advanced in light of the material placed on record and the case law cited.

5. It merits consideration that Sections 137, 138 and 140 of the Ordinance constitute machinery provisions for recovery of tax, once assessed. Under Section 137(2), tax payable under an assessment order is to be paid within thirty days of service of the notice of demand. Section 138(1) empowers the Commissioner Inland Revenue to require the taxpayer to pay the amount due "within such time as may be specified in the notice", whereas Section 140 empowers the Commissioner to recover outstanding tax dues by issuing a written notice to third parties who hold, owe, or are authorized to pay money on behalf of a taxpayer, while providing a timeframe for compliance.

6. As the matter turns substantially on consideration of those Sections in light of the *Pak LNG* judgments, it would be appropriate to trace that litigation from its inception in the Islamabad High Court through to its culmination before the Supreme Court, and to distil the principles laid down therein.

7. Turning to that series of cases, the Writ Petition that was brought before the Islamabad High Court at first instance assailed the forcible recovery effected from the bank accounts of Pak LNG pursuant to a notice under Section 140 issued and enforced on the same day as the dismissal of its appeal by the Commissioner Appeals, with the learned Single Judge allowing the petition while building on *Huawei Technologies* (Supra) to hold, inter alia, that the obligation to act justly, fairly and reasonably under Section 24A of the General Clauses Act, 1897 was to be read into every statute, including the Ordinance; that where an assessment order is upheld in appeal, the tax authorities are obliged to issue a notice under Section 138(1) specifying a reasonable time for payment before resorting to coercive measures under Section 138(2) or Section 140, failing which the recovery amounts to a fraud on the statute; that such reasonable time could not be a period of less than seven days, so as to afford the taxpayer an opportunity to avail its further statutory remedies; and that public servants exercising the recovery provisions "cannot act like bankers with monthly fund-raising targets". The amount recovered was thus directed to be reimbursed within fifteen days.

8. The intra-court appeal preferred in the matter was dismissed by a learned Division Bench, with the Department then approaching the Supreme Court, contending that immediate recovery was permissible under Section 140, that no further notice or date was required, and placing reliance on Rule 210C(3) of the Income Tax Rules, 2002. The Supreme Court framed a question as to "whether the Commissioner can demand immediate payment on the date the notice is issued under Section 140 of the Ordinance, or whether Section 140 of the Ordinance mandates that the notice must set out a future date for payment", granted leave, converted the petitions into appeals and dismissed them, with paragraphs 5 and 7 of the judgment reading as follows:

"5. The relevant provision of the Ordinance is Section 140 which provides for the recovery of tax from persons holding money on behalf of the taxpayer and notice to such third party. The Section is reproduced hereunder:

"140. Recovery of tax from persons holding money on behalf of a taxpayer.- (1) For the purpose of recovering any tax due by a taxpayer, the Commissioner may, by notice, in writing, require any person-

(a) owing or who may owe money to the taxpayer; or

(b) holding or who may hold money for, or on account of the taxpayer; (c) holding or who may hold money on account of some other person for payment to the taxpayer; or (d) having authority of some other person to pay money to the taxpayer,

to pay to the Commissioner so much of the money as set out in the notice by the date set out in the notice:

Provided that the Commissioner shall not issue notice under this sub-section for recovery of any tax due from a taxpayer if the said taxpayer has filed an appeal under section 127 in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided by the Commissioner (Appeals), subject to the condition that ten per cent of the said amount of tax due has been paid by the taxpayer.

(2) Subject to sub-section (3), the amount set out in a notice under sub-section (1)-

(a) where the amount of the money is equal to or less than the amount of tax due by the taxpayer, shall not exceed the amount of the money; or (b) in any other case, shall be so much of the money as is sufficient to pay the amount of tax due by the taxpayer.

(3) Where a person is liable to make a series of payments (such as salary) to a taxpayer, a notice under sub-section (1) may specify an amount to be paid out of each payment until the amount of tax due by the taxpayer has been paid.

(4) The date for payment specified in a notice under sub-section (1) shall not be a date before the money becomes payable to the taxpayer or held on the taxpayer's behalf.

(5) The provisions of sections 160, 161, 162 and 163, so far as may be, shall apply to an amount due under this section as if the amount were required to be deducted from a payment under Division III of Part V of this Chapter.

(6) Any person who has paid any amount in compliance with a Notice under sub-section (1) shall be treated as having paid such amount under the authority of the taxpayer and the receipt of the Commissioner constitutes a good and sufficient discharge of the liability of such person to the taxpayer to the extent of the amount referred to in such receipt."

(Emphasis added)

The Section provides for recovery of tax from third parties holding money on behalf of the taxpayer. The Commissioner is required to issue notice in writing to such person to pay to the Commissioner the tax due as set out in the notice, by the date set out in the notice. A bare reading of Section 140(1) reveals the express condition to set a date for payment, in the notice on which the stipulated tax has to be paid. The use of the words by the date set out in the notice in Section 140(1) of the Ordinance reflects the very clear requirement to provide for a future date in the notice on which the tax becomes payable, meaning that the Commissioner has to provide for a future date, being a date other than the date of the notice to make payment. In our opinion, the words to set a date mandates the Commissioner to set a date in the notice on which the tax liability has to be discharged by the third party such that the Commissioner, while issuing the notice, is conscious of the fact that the notice must contain a future date for payment. The act of setting a date in the notice is a substantive requirement of the Ordinance which necessitates a legal timeline to come into effect for both the Commissioner as the enforcing authority and the third party as the person from whom recovery has to be effectuated. This legal timeline serves a dual purpose whereby it gives the Commissioner a clear date on which recovery can be effected and it gives the third-party fair notice of the demand and the opportunity to act within the prescribed period. The condition of fixing a future date is in effect a legal safeguard which ensures that the process of recovery is protected from arbitrariness and undue haste. In our opinion, it gives legal certainty to the process of recovery hence ensures that the process is conducted fairly, transparently and in a reasonable manner. This is necessary given that the mode of recovery from a third-party holding money on behalf of the taxpayer is an independent mode of recovery, that too coercive in nature, which measure should be exercised with great caution and due process. The legislative intent therefore is to regulate the discretion given to the Commissioner to recover tax on behalf of the tax payer where the taxpayer has failed to pay the tax. Consequently, the very act of setting a date mandates the Commissioner to plan for a future date and notify the third-party of the date when the recovery will be effected.

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> 7. We are of the opinion that the clear and unambiguous reading of Section 140 of the Ordinance is that the Commissioner shall issue notice in writing to pay the amount stated in the notice by the *date set out in the* notice. The language of Section 140 of the Ordinance does not envisage immediate or mechanical recovery rather the provision contemplates that the Commissioner will issue notice and will give a reasonable timeframe for the purpose of recovery. The question of what is reasonable has been considered by the impugned judgement by way of the suggestion that possibly a seven day notice can be considered reasonable however, we are of the opinion that the reasonableness of the timeframe given can be considered on a case to case basis depending on the circumstances and the facts of the case, given that although the legislative intent is to provide for a date, it has not given a statutory notice period before which recovery can be effected. This requirement of setting a date for payment of the tax due places the burden on the Commissioner for substantive compliance and is not a procedural formality. We find that a notice that seeks recovery on the same date as its issuance would defeat the very objective of setting out a date and would render the legal safeguard meaningless. Yet another aspect that is of significance is the constitutional underpinning of Section 140 of the Ordinance. The requirement of notice before recovery is not merely statutory but reflects the broader guarantees of due process and fair trial under Article 10A of the Constitution, as well as the right to dignity under Article 14. Courts have consistently upheld that even in fiscal matters, recovery must be carried out in a manner that respects the individual's dignity and legal safeguards. Consequently, even where the law allows coercive recovery, it must be carried out in a way that preserves the dignity of the taxpayer."

9. The Supreme Court went on to hold that Rule 210C(3), insofar as it permits immediate recovery, is contrary to Section 140, delegated legislation being subservient to the statute; that in both cases there had been "no meaningful interval between the appellate decision and the initiation of coercive recovery"; that "Tax recovery is not meant to be a 'grab and go' process"; and that, while the first proviso to Section 140 bars the issuance of a notice for recovery until the appeal is decided, Section 140 operates as an independent recovery mechanism which "does not require prior invocation of Section 138(1) of the Ordinance, which governs direct recovery from the taxpayer".

10. The principles emerging from the *Pak LNG* line of cases may thus be summarised as follows:

(i) a notice under Section 140 must set out a future date for payment, and a notice demanding immediate or same-day payment is illegal;

(ii) the setting of a date is a substantive requirement and not a procedural formality, serving as a safeguard against arbitrariness and undue haste;

(iii) the time allowed must be reasonable, to be judged on the facts of each case;

(iv) the requirement is underpinned by Articles 10A and 14 of the Constitution, and even coercive recovery must preserve the dignity of the taxpayer;

(v) Rule 210C(3) of the Income Tax Rules, 2002 yields to Section 140 insofar as it permits immediate recovery;

(vi) Section 140 is an independent mode of recovery not dependent on prior recourse to Section 138(1), though by its first proviso no notice is to issue while an appeal before the Commissioner (Appeals) remains undecided, subject to the payment of ten per cent of the tax due; and

(vii) per the concurring note, upon the decision of an appeal a fresh demand under Section 137(2) is required before an amount becomes "tax due" and recoverable.

11. Adverting then to the facts of the present case, it merits consideration at the outset that the matter of Serene Air, which was one of the two decided by the Supreme Court, arose, as does the present case, from a demand raised under Sections 161 and 205 on account of withholding defaults, and the principles enunciated therein apply with full force. That dictum has since been applied in Imtiaz Group (Private) Limited v. Federation of Pakistan (C.P. No.D-2261 of 2026, decided on 25.05.2026), where a notice under Section 140 was set aside, it being observed that recovery under that provision "is an extreme measure, that is to be utilized only in very particular circumstances, i.e. when an undisputedly due payment is not fulfilled", and that the Supreme Court has held "that a date for payment of tax is required to be set-out by the taxing authorities (vide a Notice), before any coercive recovery

measures are adopted." Whilst the notice in that case was found to be premature, having been issued within the thirty-day period of a demand under Section 137(2), whereas in the present case the Respondent No.3 contends that the Recovery Notice was issued after expiry of the statutory period for payment, the underlying principle is the same, namely that coercive recovery must be preceded by notice of a date by which payment is to be made. To our minds, it would make no difference that a notice under Section 137(2) had been served and the thirty-day period thereunder had run its course, for as the Supreme Court explained, "The scheme of law envisions two distinct processes for the purposes of demanding the tax and for the purposes of recovery of tax." The lapse of the period under a demand notice serves only to render the amount "tax due", which is the precondition to recourse to Section 140, as held in Imtiaz Group; it does not dispense with the requirements of Section 140 itself, for "Where recovery is sought from third parties under Section 140 of the Ordinance, the requirement of notice and the setting of a future date are built into the provision itself." Indeed, in both matters before the Supreme Court, notices under Section 137(2) had been issued long before, on 15.03.2021 in the case of Pak LNG and on 31.03.2022 in that of Serene Air, with the period thereunder having long since expired, yet the notices under Section 140 were struck down as they demanded immediate payment. The argument advanced by learned counsel for the Department that Section 140 "expressly authorizes" the attachment of bank accounts does not meet the point, for while the power undoubtedly exists, it can only be exercised in the manner that the Section itself prescribes. As for the Recovery Notice dated 17.02.2026, that too allowed the Petitioner only 48 hours to pay a sum in excess of Rs.745 million, whereas in *Pak LNG* the learned Single Judge held that the reasonable time contemplated by Section 138(1) could not be a period of less than seven days, as followed in *China Machinery* (Supra). Even if that period is not to be regarded as an inflexible minimum, a 48-hour period cannot, on the facts of the present case, be regarded as reasonable.

12. Learned counsel for the Department may also be correct to the extent that the mere filing of an appeal does not of itself suspend recovery, and that no stay was in the field when the impugned measures were taken. However, that is not the Petitioner's case, as its grievance is not that recovery stood stayed, but that it was undertaken in contravention of the safeguards attending the exercise of the power of recovery, as enunciated in the judgments discussed hereinabove. On that score, the absence of a stay is of no avail to the Respondents.

13. Viewed in that light, the notice dated 20.02.2026 cannot be sustained. It sets out no date at all, while calling upon the banks to remit the amount "immediately, if available", and was given effect by the Respondent No.5 at the behest and instigation of the Respondent No.3 on 23.02.2026, with the Pay Order being issued the same day, thus representing precisely the sort of immediate and mechanical recovery that the Supreme Court has held to be impermissible. Indeed, on query posed to learned counsel for the department as to whether the principles laid down in *Pak LNG* had been followed, he could not demonstrate that the recovery effected was in consonance therewith.

14. Before parting, it would be apposite under the given circumstances to recall the observation made by the learned Single Judge in *Pak LNG* that "Public servants acting as tax authorities exercising powers under recovery provisions of the Ordinance cannot act like bankers with monthly fund-raising targets that they must meet as a measure of their performance." The merits of the demand remain before the Respondent No.4, and as in *Huawei Technologies* and *China Machinery* (Supra), the proper course is to restore what was taken under an unlawful notice, while leaving the department free to proceed in accordance with law.

15. Under the circumstances, the Petition is allowed, with the notice dated 20.02.2026 issued under Section 140 of the Ordinance and the consequent recovery being declared to be without lawful authority and of no legal effect, and it being further declared that the Recovery Notice dated 17.02.2026 shall not form the basis of any further coercive measure. The Pay Order having since been encashed, the Respondents No.2 and 3 are directed to refund the amount of Rs.745,475,048/- to the Petitioner, by crediting the sum to the Petitioner's account with the Respondent No.5, within fifteen days of receipt of this judgment. Needless to say, subject to any stay, the Respondents Nos. 2 and 3 remain at liberty to thereafter effect recovery afresh through proper means in accordance with law, upon notice affording a reasonable time and, in the case of Section 140, setting out a future date for payment.

JUDGE

JUDGE

Mubashir