

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.48782 of 2024

Faisalabad Electric Supply Company Ltd.

Versus

The Chairman Punjab Revenue Authority, etc.

J U D G M E N T

Date of Hearing	23.09.2023
For the petitioner	Mr. Mumtaz-ul-Hassan, Advocate
For the Respondents/PRA	Mr. Abdul Muqtadir Khan, Advocate.

Raheel Kamran J:- The sole cause which has been made basis to invoke jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (‘Constitution’) is the condition imposed by the Appellate Tribunal, Punjab Revenue Authority, Lahore (Bench-II) vide order dated 07.08.2024 to deposit one third (1/3rd) of the disputed amount of withholding tax within 30 days from the date of that order.

2. While referring to the provisions of section 67 of the Punjab Sales Tax on Services Act, 2012 (‘the Act’), learned counsel for the petitioner contends that the power to grant stay is unhindered and the same cannot be circumvented by imposing the impugned condition.
3. Conversely, learned counsel for the respondents/Punjab Revenue Authority (PRA) has objected to maintainability of the petition on the ground that alternate remedy of Tax Reference before this Court is available under section 67A of the Act against the impugned conditional order, therefore, the titled petition is not maintainable. He maintains that the impugned order, being interlocutory in nature, is not amenable to jurisdiction under Article

199 of the Constitution. In support of said contention, reliance has been placed in the case of *President, All Pakistan Women Association*¹. He finally contends that the titled petition must fail even on merit for the reason that the Appellate Tribunal is possessed of discretionary power to stay recovery of any tax due by virtue of any order being assailed, subject to restrictions or limitations and that the impugned condition in the instant case depicts only reasonable exercise of judicial discretion.

4. In rebuttal to the above, learned counsel for the petitioner contends that petition in hand is clearly maintainable and remedy of Tax Reference under section 67A of the Act is available only when question of law is involved in a case arising from the decision or final order passed by the Appellate Tribunal in the appeal preferred.

5. Heard.

6. In order to properly appreciate respective contentions of learned counsel for the parties, the relevant provisions i.e. sections 67, 67A & 68 of the Act are reproduced herein below: -

67. Disposal of appeals by the Appellate Tribunal.—(1) *The Appellate Tribunal may, before disposing of an appeal, call for such particulars, documents, records or information as it may require in respect of the matters arising from the appeal or cause further inquiry to be made by the officer of the Authority.*

(2) *The Appellate Tribunal shall afford an opportunity of being heard to the parties to the appeal and, in case of default by any of the parties on the date of hearing, the Tribunal may, if it deems fit, dismiss the appeal in default, or may proceed ex-parte to decide the appeal on the basis of the available record but the Appellate Tribunal shall decide the appeal within six months from the date of filing of the appeal.*

(3) *The Appellate Tribunal may stay the recovery of any tax due by virtue of the decision or order being appealed against and any such order made by the Appellate Tribunal shall remain operative for no more than thirty days during which period a notice shall be issued to the respondent and after hearing the parties, the order staying recovery may be confirmed, varied or vacated as the Appellate Tribunal deems fit but the stay order so confirmed or varied shall remain operative for not more than ninety days including any period for which the recovery may*

¹ *President, All Pakistan Women Association, Peshawar Cantt. vs. Muhammad Akbar Awan and others (2020 SCMR 260)*

have been stayed prior to the confirmation or variation of the stay order.

(4) In deciding the appeal, the Appellate Tribunal may, without prejudice to the powers specified in sub-section (2), make an order to—

- (a) affirm, modify or annul the order being appealed against; or*
- (b) remand the case to the officer or the Commissioner (Appeals) for making such inquiry or taking such action as the Tribunal may direct.*

(5) The Appellate Tribunal shall not increase the amount of any tax payable, penalty or default surcharge unless the taxpayer has been given a reasonable opportunity of showing cause against such increase.

(6) The Appellate Tribunal shall communicate its order to the taxpayer and the Commissioner.

(7) Save as provided in any other law, the decision of the Appellate Tribunal on an appeal shall be final.

67A. Reference to the High Court.— *(1) A reference to the High Court shall lie only if a question of law is involved in a case.*

(2) Notwithstanding anything contained in section 67, a taxpayer or the officer not below the rank of Additional Commissioner, aggrieved by any decision or order of the Appellate Tribunal may, within sixty days of communication of such decision or order, prefer a reference, in the prescribed form, along with a statement of the facts of the case and the question of law involved in that case to the Lahore High Court Lahore.

(3) The reference under this section shall be heard by a Bench of at least two Judges of the High Court and the provisions of section 98 of the Code of Civil Procedure 1908 (V of 1908) shall apply mutatis mutandis to such reference.

(4) The High Court shall send a copy of its judgment under the seal of the Court to the Appellate Tribunal.

(5) Notwithstanding a reference preferred in the High Court under this section, the tax shall be paid in accordance with the order of the Appellate Tribunal.

(6) If the tax liability is reduced by the High Court and the Authority decides to seek leave to appeal to the Supreme Court, the Authority may, within thirty days of the receipt of the judgment in the reference, apply to the High Court to postpone the refund of tax until the decision by the Supreme Court.

(7) Section 5 of the Limitation Act 1908 (IX of 1908) shall apply to a reference under this section.

(8) A court fee of rupees one thousand shall be paid for a reference under this section except when it is filed by the Authority.

68. Deposit of the tax demand while appeal is pending.— *Where in any appeal, the decision or order appealed against relates to any tax demanded under this Act, the person who has filed the appeal shall, pending the appeal, deposit the admitted amount of*

the tax based on the return filed under section 35 or as may be determined by the Commissioner (Appeals) or the Appellate Tribunal where such return has not been filed.

7. The remedy of Tax Reference to the High Court is envisaged in section 67A of the Act. From perusal of sub-section (2) of section 67A of the Act, it is abundantly clear that a taxpayer or the officer not below the rank of an Additional Commissioner, who is aggrieved by any decision or order of the Appellate Tribunal which has been communicated to him or her, may prefer a Tax Reference before this Court within sixty days of the date of such communication. Obligation of the Appellate Tribunal to communicate its order is specified in sub-section (6) of section 67 of the Act which is confined to decision of an appeal by the Appellate Tribunal and makes no reference to any interlocutory order passed therein. In other words, no Tax Reference under section 67A of the Act is maintainable against an order which is not required by law to be communicated by the Appellate Tribunal. Therefore, plea of the petitioner that the impugned order, which is essentially of interim nature, was not assailable in jurisdiction of this Court reserved for Tax Reference, carries weight².

8. As regards the other objection qua maintainability of the writ petition against an interlocutory order, suffice it to observe that there is no absolute bar on entertaining a petition under Article 199 of the Constitution against an order which is interlocutory in nature, if the same is *coram non judice* or without jurisdiction. Indeed, such constitutional jurisdiction is equitable and discretionary in nature which should sparingly be exercised to interfere whenever an interim order is challenged. Such judicial policy is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. However, in exceptional circumstances, such as cases involving a flagrant violation of law, a clear wrongful exercise of jurisdiction or a manifest and grave injustice, intervention of this Court in

² Commissioner Inland Revenue, Zone-V vs. Messrs T.N.W. Engineering Works (2019 PTD 46)

interlocutory orders may be warranted on application of an aggrieved person where the law applicable provides no other remedy³. In the instant case, the impugned condition has been assailed on the grounds of having been imposed illegally and without lawful authority while curtailing the petitioner's right of access to justice, therefore, the same warrants consideration.

Reliance of learned counsel for the respondents/PRA on the case of *President, All Pakistan Women Association* (supra) is misconceived inasmuch as there was an ouster of jurisdiction clause under section 24(4) of the Cantonment Rent Restrictions Act, 1963 qua remedy of appeal against interlocutory orders. The Supreme Court of Pakistan, while refusing to grant leave to appeal in that case, observed that where a legislature has expressly barred a remedy which is not available to a party under the statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. In the instant case, however, there is no ouster clause in the Act. Undisputedly, there is no remedy of appeal provided in the Act against an interlocutory order passed by the Appellate Tribunal. If any order is passed by the Appellate Tribunal in flagrant violation of law, in the absence of an alternate remedy, the same may be assailed by an aggrieved party in constitutional jurisdiction under Article 199.

9. Appellate Tribunal is the first extra-departmental/independent forum for adjudication of disputes qua tax liability under the Act. Historically, in recognition of the principle of unhindered access to justice, this Court as well as other High Courts have been staying recovery of any tax demanded by the concerned revenue authorities till decision of appeal before at least one extra-departmental forum⁴. The provincial legislature has by and large manifestly adhered to the

³ Khawaja Adnan Zafar vs. Hina Bashir and others (2024 SCMR 1295) and Rashid Baig and others vs. Muhammad Mansha and others (2024 SCMR 1385)

⁴ Messrs Pak Saudi Fertilizers vs. Federation of Pakistan and others (2002 PTD 679), Z. N. Exporters (Pvt.) Ltd. vs. Collector of Sales Tax (2003 PTD 1746), Brothers Engineering (Pvt.) Ltd vs. Appellate Tribunal Sales Tax (2003 PTD 1836), Messrs Fauji Oil Terminal and Distribution Company Ltd vs. Pakistan through Secretary Revenue Division and 2 others (2012 PTD 1762) and Messrs Islamabad Electric Supply Company Limited vs. Additional Commissioner Inland Revenue and others (2024 PTD 30)

same principle while enacting section 67 of the Act for disposal of appeals by the Appellate Tribunal. Sub-section (3) of section 67 of the Act empowers the Appellate Tribunal to stay recovery of tax due by virtue of the decision appealed against. Subject to section 68 of the Act, there is no clog on the power of the Appellate Tribunal under section 67(3) of the Act to stay recovery of the total amount of tax demanded pursuant to the order appealed against. There are, however, other limitations specified in the said provision such as period of 30 days within which *ex-parte* order qua stay of recovery can remain operative and during the said period a notice has to be issued to the respondent and after hearing the parties, the order staying recovery may be confirmed, varied or vacated as the Tribunal deems fit but the stay order so confirmed or varied can remain operative for not more than ninety days including any period for which the recovery may have been stayed prior to confirmation or variation of the stay order.

10. Section 68 of the Act governs deposit of the tax determined while appeal is pending. That provision postulates that the person who has filed appeal is required, pending the appeal, to deposit the admitted amount of tax based on the return filed under section 35 or as may be determined by the Commissioner (Appeals) or the Appellate Tribunal where such return has not been filed. In other words, authority of the Appellate Tribunal to grant stay against recovery of the total amount of tax is curtailed or restricted by the requirements to deposit, during pendency of the appeal, the admitted amount of tax or the amount determined by the Commissioner (Appeals) and the Appellate Tribunal. The above restrictions or limitations specified in section 68 *ibid* are not similar to sub-sections (5) & (6) of section 67A of the Act that mandate the tax to be paid in accordance with the order of the Appellate Tribunal assailed therein during pendency of the Tax Reference and apply for refund if the tax liability is ultimately reduced by the High Court or until the decision by the Supreme Court. However, while an appeal is pending before

it under section 67 of the Act, an Appellate Tribunal is empowered under section 68 *ibid* to compel deposit of only such amount of tax demanded under the Act which falls within the following three categories:

- i) the admitted amount of the tax based on the return filed under section 35 of the Act
- ii) the amount of tax determined by the Commissioner (Appeals)
- iii) the amount of tax determined by the Appellate Tribunal

11. No legal exception can possibly be taken to the requirement under section 68 *ibid* qua deposit of any admitted amount of tax based on the return filed under section 35 of the Act or the amount of tax so determined by Appellate Tribunal. To that extent, the mandate of recovery imposed by section 68 of the Act casts only reasonable restriction on authority of the Appellate Tribunal to stay recovery of such amount of tax and such restriction or limitation does not undermine the rights of access to justice and the fair trial right enshrined in Article 10A of the Constitution. However, on literal construction of section 68 *ibid*, the requirement to compel deposit of the amount of tax determined by the Commissioner (Appeals) pose a number of problems: firstly, such construction would render redundant the authority of Appellate Tribunal under section 67(3) of the Act to stay recovery of the tax pursuant to the order being appealed against; secondly, if such amount of tax is compelled to be deposited at the stage of pendency of appeal before the Appellate Tribunal, it may also render the provision of sub-section (5) of section 67A of the Act superfluous; thirdly, the requirement of deposit of tax in such manner before determination of liability by the first extra- departmental/independent forum i.e. the Appellate Tribunal may be treated as unreasonable restriction on the right of access to justice and fair trial right embodied in Article 10A of the Constitution; and finally, determination of the tax amount by the Commissioner (Appeals) cannot ordinarily be equated with the determination made by the Appellate Tribunal, therefore, to that

extent literal construction of section 68 of the Act would render it *ex facie* discriminatory as the discrimination in such a case ensues from the lack of classification and similar treatment extended to dissimilarly or differently placed appellants⁵. At the same time, redundancy cannot be attributed to the legislative expression in section 68 *ibid* qua deposit tax pursuant to determination made by the Commissioner (Appeals).

12. It is trite law that any construction which renders the statute or any of its sections or components redundant or superfluous should be avoided and must be so construed as to make it effective or operative.⁶ It is equally well settled that all efforts should be made to apply and adhere to the rules of harmonious construction so that allegedly conflicting provisions should be reconciled and saved rather than rendered redundant.⁷ Theory of reading down is another rule of interpretation resorted to whenever a statutory provision, when read literally, leads to any violation of a fundamental right, or renders it without legislative competence and Court reads such provision narrowly to save it from invalidity⁸. These principles are squarely applicable in the instant case. Therefore, to avoid redundancy, foster harmony and circumvent repugnancy to constitutional guarantees, as explained herein above, section 68 of the Act is construed narrowly and read down to the extent of condition qua deposit of the amount of tax determined by the

⁵ Muhammad Arif Ice Factory, etc. vs. Federation of Pakistan, etc. (2021 PTD 1608), Kunnathat Thathunni Moopil Nair vs. State of Kerala and another (A.I.R. 1961 SC 552), State of Andhra Pradesh vs. Nalla Raja Reddy (A.I.R. 1967 SC 1458) and State Kerala vs. Haji K. Kutty Naha & others (A.I.R. 1969 SC 378)

⁶ Haji Tooti vs. Federal Board of Revenue (2023 PTD 1617), Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal) LTU Islamabad (2017 PTD 1372) and

Kh. Muhammad Fazil vs. Mumtaz Munawar Khan Niazi and another (2024 SCMR 1059)

⁷ Mirza Shaukat Baig vs. Shahid Jamil (PLD 2005 DSC 530), Lucky Cement vs. Commission Income Tax (2015 SCMR 1494), Combined Investment (Pvt.) Ltd vs. Wali Bhai (PLD 2016 SC 730), and Waqar Zafar Bakhtawari and 6 others vs. Haji Mazhar Hussain Shah and others (PLD 2018 Supreme Court 81)

⁸ Elahi Cotton Mills Ltd. vs. Federation of Pakistan (PLD 1997 SC 582), Syed Mushahid Shah and others vs. Federal Investigating Agency (2017 SCMR 1218) and Al-Karam CNG and others vs. Federation of Pakistan and others (2011 PTD 01)

Commissioner (Appeals) in the manner that recovery of only such amount of tax shall be compelled as has been determined on the basis of judicial precedent(s) of this Court or the Supreme Court of Pakistan settling the controversy raised.

13. From perusal of the impugned order, it is manifest that while imposing condition of deposit of 1/3rd amount of tax for stay against recovery of the remaining amount, no reason has been advanced by the Appellate Tribunal. There is nothing in the order explaining if such condition has been inflicted on the basis of any admission or determination qua tax liability of the petitioner. The impugned condition has been evidently imposed in a slipshod manner that hardly shows any application of mind and fulfilment of the requirements prescribed in section 68 of the Act. It can, therefore, be safely concluded that the impugned condition qua deposit of 1/3rd amount of tax has been foisted arbitrarily, without lawful authority and the same is of no legal effect.

14. For the foregoing reasons, this constitutional petition is *allowed*, the impugned condition qua deposit of 1/3rd amount of tax is set aside. The Appellate Tribunal is directed to decide appeal of the petitioner within the period of ninety days specified in section 67(3) of the Act. There shall be no order as to costs.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on 09.10.2024

JUDGE

APPROVED FOR REPORTING

JUDGE