

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE IJAZ UL AHSAN

**CIVIL APPEALS NO.1171, 1179 TO 1187, 1190 TO 1192, 1198 TO 1236, 1242, 1255, 1274 TO 1276, 1502 TO 1515 OF 2017 AND 114 OF 2013**

(Against the judgments dated 3.8.2017 and 30.4.2012 of the High Court on Sindh, Karachi and Peshawar High Court, Peshawar passed in H.C.As.No.83/2015, 263, 268, 271, 264, 266, 274, 276, I.C.A.No.281/2016, H.C.As.No.306, 265, 278, 275, 269, 270, 272, 273, 277, 283, 285, 321, 322, 338, 288/2016, 85, 84/2015 and C.R.No.215/2008)

**AND**

**CIVIL MISC. APPLICATIONS NO.6517, 6204, 6207, 6936 TO 6940, 8195, 8196, 6723, 6725, 6727, 6729, 6731, 6735, 6747, 6721, 6733, 6737, 6741, 6743, 6745, 8394, 8395, 6739 OF 2017**

(Applications for impleadment)

M/s Searle IV Solution (Pvt) Ltd.	In C.A.1171/2017
M/s Naveena Industries Ltd.	In C.A.1179/2017
M/s Artistic Denim Mills (Pvt) Ltd.	In C.A.1180/2017
M/s Monnoowal Textile Mills, Ltd.	In C.A.1181/2017
M/s Artistic Fabric Mills (Pvt.) Ltd.	In C.A.1182/2017
M/s Rizwan enterprises	In C.A.1183/2017
M/s Maksons Textile Ltd	In C.A.1184/2017
M/s Naveena Industries Ltd	In C.A.1185/2017
M/s Sapphire Textile Mills Ltd	In C.A.1186/2017
M/s Umair Spinning Mills (PVT) Ltd.	In C.A.1187/2017
M/s Kassim Textile Mills (PVT) Ltd.	In C.A.1190/2017
M/s Kassim Textile Mills (PVT) Ltd.	In C.A.1191/2017
M/s Khas Textile Mills (PVT) Ltd.	In C.A.1192/2017
Unilever Pakistan Ltd.	In C.A.1198/2017
K- Electric Ltd.	In C.A.1199/2017
I.G.I. Insurance Ltd., Karachi	In C.A.1200/2017
E.N.I. Pakistan Limited etc.	In C.A.1201/2017
Standard Chartered Bank (Pakistan) Ltd.	In C.A.1202/2017
National Foods Ltd.	In C.A.1203/2017
Schlumberger Seaco Inc. etc.	In C.A.1204/2017
Tapal Tea (Pvt.) Ltd.	In C.A.1205/2017
Pakistan Petroleum Ltd. & another	In C.A.1206/2017
Reckitt Benckiser Pakistan Ltd.	In C.A.1207/2017
Vision Holdings Middle East Ltd. & another	In C.A.1208/2017
Engro Corporation Ltd. Karachi etc.	In C.A.1209/2017
Atlas Honda Ltd.	In C.A.1210/2017
Abbott Laboratories (Pakistan) Ltd.	In C.A.1211/2017
Engro Foods Ltd.	In C.A.1212/2017
J.S. Bank Ltd. & another	In C.A.1213/2017
Habib Metro Pakistan (Pvt.) Ltd. etc.	In C.A.1214/2017
Liberty Power Tech Ltd.	In C.A.1215/2017

I.B.M. Italia S.P.A. Pakistan	In C.A.1216/2017
United Energy Pakistan Limited & another	In C.A.1217/2017
Sabre Travel Network Pakistan (Pvt) Ltd.	In C.A.1218/2017
M/s Zaman Textile Mills, Ltd.	In C.A.1219/2017
M/s Al-Karam Towel Industries(Pvt) Ltd.	In C.A.1220/2017
M/s Mekotex (Pvt) Ltd.	In C.A.1221/2017
M/s Artistic Fabric Mills (Pvt) Ltd.	In C.A.1222/2017
M/s Khas Textile Mills (Pvt) Ltd.	In C.A.1223/2017
M/s Sapphire Textile Mills Ltd.	In C.A.1224/2017
M/s Hantax Karachi	In C.A.1225/2017
M/s Umer Spinning Mill Ltd. etc.	In C.A.1226/2017
M/s Latif Textile Mills (Pvt) Ltd. & another	In C.A.1227/2017
M/s N.P. Cotton Mills Ltd.	In C.A.1228/2017
M/s Diamond International Corporation Ltd.	In C.A.1229/2017
M/s Kidney Centre Postgraduate Training Institute	In C.A.1230/2017
M/s Gul Ahmed Textile Mills Ltd.	In C.A.1231/2017
M/s Proctor & Gamble Pakistan (Pvt) Ltd.	In C.A.1232/2017
M/s Ismail Industries, Karachi	In C.A.1233/2017
M/s Akram Cotton Mills Ltd.	In C.A.1234/2017
M/s Sapphire Textile Mills Ltd.	In C.A.1235/2017
BGP (Pakistan) International	In C.A.1236/2017
Qasim International Container Terminal Pakistan Limited & another	In C.A.1242/2017
Amreli Steels Ltd.	In C.A.1255/2017
M/s Shazeb Pharmaceutical Industries Ltd.	In C.A.1274/2017
M/s A - Z Pharmaceutical Ltd.	In C.A.1275/2017
M/s Unisa Pharmaceutical Ltd.	In C.A.1276/2017
Al Baraka Bank (Pakistan) Limited etc.	In C.A.1502/2017
Independent Media Corporation Pvt. Ltd.	In C.A.1503/2017
Lucky Cement Ltd. & another	In C.A.1504/2017
M/s Fatima Fertilizer Co. Ltd.	In C.A.1505/2017
Pakistan State Oil Company Ltd.	In C.A.1506/2017
Byco Petroleum Pakistan Ltd.	In C.A.1507/2017
Dawood Hercules Corporation Ltd.	In C.A.1508/2017
M/s Ericsson Pakistan Pvt. Ltd.	In C.A.1509/2017
M/s A.F. Ferguson & Co etc.	In C.A.1510/2017
Shamoon Sultan through Authorized Representative	In C.A.1511/2017
M/s Matiari Sugar Mills Ltd.	In C.A.1512/2017
M/s Mekotex Pvt. Ltd. etc.	In C.A.1513/2017
Team A-Venture Pvt. Ltd.	In C.A.1514/2017
Pakistan International bulk Terminal Ltd.	In C.A.1515/2017
Collector of Customs Model Customs Collectorate Peshawar etc.	In C.A.114/2013

...Appellant(s)

VERSUS

Federation of Pakistan and others	In C.A.1171/2017
Federal Board of Revenue thr. its Chairman etc.	In C.As.1179, 1181, 1185, 1187, 1180 to 1192 and 1219 to 1235/2017
The Collector, Model Customs Collectorate Port M. Bin Qasim, Karachi etc.	In C.As.1180, 1182 to 1184, 1186, , 1198 to 1218, 1236, 1242, 1255, 1274 to 1276 and 1502 to

1515/2017

M. S. Khyber Spinning Mills Gadoon Ltd. though In C.A.1182/2017  
its Chief Executive and another

...Respondent(s)

**For the Appellant(s)/  
Applicant(s):**

In C.A.1171/2017 Mr. Abdul Sattar Pirzada, ASC

In C.As.1179 to 1187, Mr. Khalid Anwar, Sr. ASC  
1190, 1192, 1219 to Mr. Rashid Anwar, ASC  
1235/2017

In C.As.1198 to 1218, Mr. Makhdoom Ali Khan, Sr. ASC  
1236, 1242, 1255/2017 Mr. M. Kassim Mirjat, AOR  
and C.M.As.6204, 6207,  
6936 to 6940, 8195 &  
8196/2017

In CAs 1274 to Mr. Zaheer-ul-Hassan Minhas, ASC  
1276/2017

In C.A.114/2013 Dr. Farhat Zafar, ASC  
Mr. M. S. Khattak, AOR

In C.As.1502 to Dr. Farough Naseem, ASC  
1515/2017 Mr. Mehmood A. Sheikh, AOR

In C.M.As.6517, 6723, Dr. Farough Naseem, ASC  
6725, 6727, 6729, 6731, Mr. Mehmood A. Sheikh, AOR  
6735, 6747, 6721, 6733,  
6737, 6741, 6743, 6745,  
6735, 6739/2017

**For the Respondent(s):**

For Collector of Customs Mr. Kafil Ahmed Abbasi, ASC  
Karachi (in all cases)

For Collector of Customs Raja Muhammad Iqbal, ASC  
Port Qasim Karachi (in Raja Abdul Ghafoor, AOR  
all cases)

In C.As.1182, 1186, 1187, Mr. Khalid Mehmood Siddiqui, ASC  
1192 & 1220/2017

In C.A.1274 to Ms. Misbah Gulnar Sharif, ASC  
1276/2017

For FBR Mr. M. Sarfraz Metlo, ASC

In C.A.1198/2017 Mr. Salman Akram Raja, ASC  
Assisted by Mr. M. Asad Lada, Adv.

In C.A.1504/2017 Mr. Rehmanullah, ASC

In C.A.1192/2017) Dr. Raana Khan, AOR

In C.A.114/2013

Mr. Abdul Latif Afridi, ASC

Commission IR  
(Corporate) MultanMr. Salman Bhatti, ASC  
Syed Rifaqat Hussain Shah, AOR

Date of Hearing:

21.2.2018

**JUDGMENT**

**MIAN SAQIB NISAR, CJ.-** The questions of law and fact involved in all the civil appeals in the instant matter are similar thus the same are being disposed of through this single judgment. Appellants, being importers of different raw materials, had earlier claimed exemption of sales tax/customs duties under certain SRO(s) issued in terms of the Customs Act 1969 (*Customs Act*) and the Sales Act, 1990 (*Sales Act*), or in some cases under certain Schedules in the Sales Tax Act which the relevant authorities/Assessment Officer(s) under the relevant taxing statutes denied them, thereby passing adverse orders to this extent/effect. Amongst other things, in some of these appeals the parties are also in dispute as to the legal provision under which these orders were passed; whether they were passed under Section 32 or Section 80 of the Customs Act. Although Section 9 of the Civil Procedure Code, 1908 (*CPC*) places a limitation on the pecuniary jurisdiction of the civil courts in terms whereof the cognizance to try a suit of civil nature is expressly or even impliedly barred by the governing law or Statute in the matter concerned, and there being an express bar of this nature in Section 217(2) of the Customs Act, yet the appellants proceeded to approach the Single Bench of the Sindh High Court at Karachi in exercise of its civil jurisdiction for the redressal of their grievance against these adverse orders, despite the fact that other forums for redressal of their grievances (and subsequent appeals) were available with regards to such orders within the mechanism/scheme of the Statute (*the Customs Act*). In doing so the appellants mainly claimed that they fell under the exemption(s) laid out in a plethora of judgments of this

Court whereby *inter alia* an order tainted with *mala fide* or one made beyond jurisdiction conferred could be challenged through a civil suit despite there being an express bar to the cognizance of the same by a civil court. These suits were decreed in favor of the respondents by the learned Single Bench of the High Court at Karachi in exercise of its civil jurisdiction, on merits, holding that the same were maintainable on account of falling within the exemptions carved out by the law laid down by this Court on the matter, whereas the Division Bench, without going into the merits, held that the said suits of the appellants were not maintainable and in the same breath held that no suit lay against any order, notification etc. relating to a taxing statute, including the Sales Tax Act, the Income Tax Ordinance 2001, the Federal Excise Act 2005 and the Sindh Sales Tax on Services Act 2011, unless all the grievance redressal remedies provided therein had been exhausted. An ancillary observation made by the learned High Court in the judgment impugned is that the bar of jurisdiction under the taxing statutes including Section 217(2) of the Customs Act is only to the extent of the exercise of the original civil jurisdiction by "civil courts", which it held, includes the Single Bench of the High Court in its exercise of the same, however, *the Division Bench of the High Court can exercise jurisdiction in respect of disputes arising or relatable to special laws of taxation under its **reference jurisdiction** as conferred by law under Section 217 of the Customs Act, 1969, Section 51 of the Sales Act, Section 227 of the Income tax Ordinance, 2001, and Section 41 of the Federal Excise Act 2005 under lawful instituted proceedings, and also in appropriate cases, under its **extra ordinary constitutional jurisdiction** under Article 199 of the Constitution.* The appellants now include those in appeal against the impugned judgment as well as those affected thereby under the blanket bar of civil suits from orders/notifications etc. of all taxing statutes. Amongst other contentions,

the counsels for the appellants in unanimity submit that the Division Bench, through this blanket bar to civil jurisdiction against actions of authorities under all taxing statutes, has gone beyond the scope of the relief sought by considering laws other than the issue under consideration before it, thus in consonance with the principle laid down in **H.M. Saya & Co. Karachi Vs. Wazir Ali Industries Ltd. Karachi and another** (PLD 1969 SC 65), their applications for permission to file the appeals are allowed.

The following questions of law arose which shall be considered in this judgment:

- I. Whether the appellants fall within the exceptions created by the case law to a bar to jurisdiction of civil courts in light of the ouster clause in Section 217(2) of the Customs Act, read with the limitation to the jurisdiction of civil courts in Section 9 of the CPC? Whether the suits of the appellants in the civil jurisdiction were maintainable?
- II. Whether the exercise of the original civil jurisdiction by the Single Bench of the Sindh High Court is *ultra vires* of the Constitution of the Islamic Republic of Pakistan (*Constitution*) in light of Article 25 thereof? And further, whether the exercise of this civil jurisdiction by the Single Bench of the Sindh High Court will render it a 'civil court' for the purposes of the ouster clause in Section 217(2) of the Customs Act?
- III. Whether the appellants are entitled to the relief sought?

The questions of law formulated hereinabove are individually addressed below and for purposes of convenience and comprehension the arguments of the learned counsel of the parties as well as the issues chalked out by them have been incorporated therein:

**I. Whether the appellants fall within the exceptions created by a plethora of case law to a bar to jurisdiction of civil courts in light of the ouster clause in Section 217(2) of the Customs Act, read with the limitation to the jurisdiction of civil courts in Section 9 of the CPC? Whether the suits of the appellants in the civil jurisdiction were maintainable?**

2. Mr. Khalid Anwar Sr. ASC, appearing on behalf of the appellants, at the outset submits that even though, undoubtedly, there is a bar against the civil courts taking cognizance of the issue concerned in light of Section 217(2) of the Customs Act read with Section 9 of the CPC, however, certain exceptions have been carved out against a bar of such nature. The settled law in the judgments reported as Punjab Province v. The Federation of Pakistan (PLD 1956 FC 72), The Burmah Oil Company (Pakistan Trading) Ltd. Chitagong v. The Trustees of the Port of Chitagong (PLD 1962 SC 113), Abdul Rauf and others v. Abdul Hamid Khan and others (PLD 1965 SC 671), Muhammad Jamil Asghar v. The Improvement Trust, Rawalpindi (PLD 1965 SC 698), Mian Muhammad Latif v. Province of West Pakistan (PLD 1970 SC 180), and particularly in Abbassia Cooperative Bank v. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 SC 3) is that where the jurisdiction of the Civil court is challenged on the ground of ouster of jurisdiction it must be shown that, (a) the authority or tribunal in the Statute creating such a bar is validly constituted (b) where the order passed or action taken by the authority is not tainted with *mala fide*; (c) where the order or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or tribunal; or (d) where in passing the order or taking the action, the principles of natural justice were not violated. If one or more of these four conditions are violated an exception is carved out for the Civil Court to assume jurisdiction. According to him, in the present appeals ground (b) and (c) have been attracted, as in passing the adverse order(s) the authority/Assessment Officer acted beyond the jurisdiction conferred

upon it and the same was tainted with *mala fide* since the corruption prevalent in the Customs House/departments leads its officers to discriminate against those not willing to pay over and above what is due under the law.

3. Mr. Makhdoom Ali Khan, Sr. ASC, while concurring with the above submission further relied upon the judgments of this Court in Chalna Fibre Company Limited, Khulna and others v. Abdul Jabbar and others (PLD 1968 SC 381) at page 387(B), Samiullah v. Fazle Malik (PLD 1996 SC 827) at page 830(A), Azra Masood v. Noshaba Moeen (2007 SCMR 914) at page 918(A) and particularly Hamid Hussain v. Government of West Pakistan (1974 SCMR 356) at page 359(B) which fortifies the exceptions created where special laws entail ouster clauses to jurisdiction of civil courts, providing in its concluding paragraph that "*It is a well settled principle that even where the jurisdiction of civil (courts is) barred and conferred upon special tribunals, Civil courts being courts of ultimate jurisdiction will have the jurisdiction to examine acts of such forums to see whether their acts are in accordance with law or are illegal and even mala fide*". Furthermore, he stated that the learned Division Bench in impugned judgment with regard to the finding that such an exemption from bar to jurisdiction has only so far been granted in non-tax law related judgments, has failed to take notice of the fact that the judgments of Mian Mohammad Latif v. Province of West Pakistan (*supra*) and The Province of Punjab v. Federation of Pakistan (*supra*) are in fact tax cases wherein it was specifically held that where an act of an income tax officer is extraneous to what was mandated under the statute, a suit shall lie despite an ouster clause. Thus, there being no cavil with the interpretation of this ouster clause, the contentions of the learned counsel for the appellants in unanimity dilated upon the illegality of the adverse orders on account of not having being made in consonance with



the provisions of the Custom Act and on account of the *mala fide* of the authorized officials (*Collector Customs and Additional Collector Customs, respondents No. 3 and 4 respectively*), and thus they claimed that the suits filed by them were maintainable since the appellate forum provided within the Customs Act is only the forum for appeal where the orders made are not tainted with mala fide or illegality. Although these judgments have been referred to in the impugned judgment, learned counsel submitted that this has only been done in passing and without explaining as to why the present cases do not fall under the exceptions carved out in the precedents above which clearly provided that in certain circumstances a suit in the Civil Court is maintainable, notwithstanding the existence of an ouster clause in this regard. On the other hand, Mr. Khalid Anwar took strong exception to the fact that the impugned judgment outrightly does away with the idea of even entertaining the possibility of an exemption to be granted where an ouster clause exists, instead stating that even if an issue of *mala fide* etc is to be raised, the same should be done after the hierarchy provided in the statute itself is exhausted and even then the learned Division Bench can take cognizance of the same. This approach, he submitted, renders the entire purpose of raising a claim of *mala fide* in the decisions of the authorized officials, redundant. It is only upon an examination of the merits of the present case that the Court below could have determined whether it fell under any of the exemptions carved out by the judgments of the Supreme Court and the Division Bench of the same court, but not only did the said Court refrain from going into the merits of the case, at the very outset in paragraph 5 of the impugned judgment, the Court had limited the very scope of the case to merely the questions of maintainability of the suits. This in effect, deprived the appellants of the exceptions provided by the precedents cited hereinabove. Another plea raised by the counsel for the appellants was that if the SRO's and/or

Schedules of the Sales tax Act relied on by the appellants were to be interpreted correctly, the appellants would have been found to be entitled to the same. According to the learned counsel, it is perhaps only the inability or rather the lack of willingness of the authority passing the adverse orders denying such exemption, that the benefit of the same was not extended to the appellants. Fortifying this argument, the learned counsel emphasized that it was customary in the past decade or so that such exemptions were extended to the products imported by the appellants.

4. Mr. Farogh Naseem, learned ASC, strenuously argued that in light of the judgments cited above, there can be no two opinions that where an impugned order or notice of a statutory authority is in breach of natural justice, premised upon *mala fides* or is extraneous to the statute, be it in a tax statute or otherwise, a suit would be maintainable. He emphasized that even under taxing statutes, what is protected by an ouster clause is an action "under the statute". Obviously then, when an action is beyond the parameters of the statute or is *mala fide* or without jurisdiction or in breach of natural justice, the action cannot be reckoned to be one "under the statute" and thus cannot be saved under the garb of the ouster clause. He also relied on the judgment of **Muhammad Jamil Asghar's case** (*supra*) although the facts of the same are not similar to the present appeals. Mr. Farogh Naseem, concurred with the above submissions, additionally submitting that the Division Bench also missed the elementary principle that there are two types of *mala fide*, i.e. *mala fide* in law and *mala fide* in fact, and it is the former that the appellants rely on since the act of the authorities in not extending the benefit of an exemption to the appellants, which is clearly provided under the law is an action extraneous to the law and thus a *mala fide* in law, for which a civil suit should be maintainable and relied on the principle of '*Boni Judicis est*

*Ampliare Jurisdictionem* which means that it is the duty of a good Judge to extend his jurisdiction, in which regard he cited **River Steam Navigation Co v. The Commissioners for the Port of Chittagong** (PLD 1961 Dacca 412). Concluding his arguments he stated that the Division Bench further erred in law in holding that in light of the clarification by the Federal Board of Revenue (*FBR*) to the effect that the appellants were not entitled to the claimed exemptions, resort to departmental proceedings would not be an exercise in futility despite the fact that departmental proceedings could not possibly go against such clarification from a forum much higher in the hierarchy.

5. Mr. Salman Akram Raja, learned ASC appearing on behalf of the Respondent-FBR, focused his arguments mainly on the contention of the appellants' counsel that the adverse orders of the Respondent Collectorate were without jurisdiction. In this context he strenuously relied on Justice Kaikaus' words in **Badrul Haque Khan v. The Election Tribunal, Dacca and others** (PLD 1963 SC 704) that *where there is jurisdiction to decide a particular matter then there is jurisdiction to decide it rightly or wrongly and the fact that the decision is incorrect, does in no manner render it without jurisdiction*. The customs officials therefore, in passing the concerned adverse orders/decisions, cannot be held to have acted without jurisdiction merely because they may have committed an error in interpretation of the law. In this regard he relied on the judgment in **Badrul Haque Khan's case** (*supra*), wherein at page 736 it was held that *"Unless a case of mala fides or a mere colorable exercise of jurisdiction could be made out, the decision cannot be without lawful authority"* and a mere error in law or fact alone cannot render a decision without jurisdiction. In **Muhammad Hussain Munir and others v. Sikandar and others** (PLD 1974 SC 139) at page 142, in consonance with the judgment in **Badrul Haque Khan's case** (*supra*), and quoting it with approval it was

held that *"it will be going too far to say that every little breach of a rule by allowing, evidence to coming, which in strict law might not be thought admissible, would constitute an act without jurisdiction"*. The same was this Court's view in **Zulfikar Khan Awan v. Secretary, Industries and Mineral Development, Gov. of Punjab & others** (1974 SCMR 530) as well as **Raunaq Ali etc. v. Chief Settlement Commissioner and others** (PLD 1973 SC 236), **Abdul Rehman Bajwa v. Sultan and others** (PLD 1981 SC 522). However, he further clarified in this context that where a decision made is held to be made without the proper application of the law in place, the remedy for such a defect can only be sought by taking such decision to the prescribed grievance redressal forum, which in the present case is to be found in the appeal to the Collector under Section 193 or the Appellate Tribunal under Section 194 (*as the case may be*) since any determination under a special law such as the Customs Act, requires a certain level of knowledge and expertise which must be taken advantage of by approaching the abovesaid forums first and only after exhausting these remedies can the High Court be approached under Section 196 of the Customs Act. In support of this argument he relied on the judgements of **Ms. Binaco Traders v. Federation of Pakistan** (2006 PTD 1491), as well as **Ms. Rohi Ghee Industries (Pvt.) Ltd. v. Collector of Customs** (2007 PTD 878). To jump the gun by filing a civil suit directly would render such forums redundant. On the other hand he submitted that the decision with regards to the entitlement of exemption from duty and taxes or reduction in tax liability in respect of a person or establishment, otherwise, includes scrutiny and determination of disputed facts by the specialized forums and the authorities provided under the taxing statutes, including Customs Act, hence, it does not fall within the domain of original civil jurisdiction of the Civil Court particularly, in view of the specific bar in terms of Section 217 of the Customs Act.

6. Barrister Sarfaraz Ali Metlo, ASC, learned counsel for the FBR submitted a list of judgments specific to tax law wherein in the presence of a statutory remedy, a suit on the civil side was held to be barred which include; Raleigh Investment v. Governor General (PLD 1947 Privy Council 19) at page 25(G), CIT v. The Tribune Trust (PLD 1947 Privy Council 247) at para 3 on page 255, The Batala Eng. V. I.T.O. (1973 SCMR 282) page 283(A), Tahir A. Khan v. CBR Sindh (2003 YLR 196) at page 199 (C, D, E & G), Chemitex Ind. V. Sup. S.T. (1999 PTD 1184) at page 1187(A), Aluminum Processing v. FOP (2003 PTD 1411) at page 1428(G), Binaco Traders' case (*supra*) at page 1499(E & H), Rohi Ghee Industries' case (*supra*) at page 885(C), Malik A Qayyum v. DG Int. (SBLR 2015 Sindh 969), Collector v. Universal Gateway (2005 SCMR 37) at page 44(A&B) Amin Textile Mills v. CIT (2000 SCMR 201) at page 203 para 3, Federation of Pakistan v. M/s Millennium Pharma (2011 PTD 690) etc. However, learned counsel largely adopted the arguments of Mr. Salman Akram Raja, ASC.

7. In order to appreciate the minutiae of the issue of maintainability of the civil suits filed by the appellants against the decisions of the taxing authorities/Assessing Officer under the special law of the Customs Act, it would be advantageous to reproduce the pivotal provisions viz. Section 217(2) of the Customs Act which bars the cognizance of the same by the civil courts under Section 9 of the CPC as well as Section 9 (*ibid.*) itself:

***“Section 9 of the CPC:***

*9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

***Section 217(2) of the Customs Act:***

*S.217. (2) No suit shall be brought in any civil court to set aside or modify any order passed, any assessment made, any*

*tax levied, any penalty imposed or collection of any tax made under this Act.”*

There is not an iota of doubt that Section 9 of the CPC provides that the civil courts shall have jurisdiction to entertain any suit in relation to any civil matter except when the same is expressly or impliedly barred by the law. A plain reading of Section 217(2) reflects that the jurisdiction of the “civil courts” has in fact been barred for any assessment made, any tax levied, any penalty imposed or collection of any tax made “under the Act”. The two operative terms to determine such a bar of jurisdiction, therefore, are “civil court” and “under this Act”. The gist of the contentions of the counsel for the appellants boils down to just one aspect; that the actions of the statutory authorities being challenged are not made “under the Act” and hence the ouster clause does not apply. This is where the exceptions carved out from the bar to jurisdiction of the civil courts under the various judgments of this Court come into play. The judgments in **Punjab Province v. The Federation of Pakistan** (*supra*) **Burmah Oil Company’s case** (*supra*), **Abdul Rauf’s case** (*supra*), **Jamil Asghar v. The Improvement Trust** (*supra*), **Mian Muhammad Latif’s case** (*supra*), **Hakeem Hafiz Muhammad Ghaus’ case** (*supra*) **Chalna Fibre v. Abdul Jabbaru** (*supra*), **Samiullah’s case** (*supra*), **Azra Masood’s case** (*supra*) and **Hamid Hussain’s case** (*supra*) categorically provide exemptions to such a bar to jurisdiction. An articulate illustration of these exceptions can be found in the judgment of **Hakeem Hafiz Muhammad Ghaus’ case** (*supra*) in the following words:

*“It is also well-settled law that where the jurisdiction of the Civil court to examine the validity of an action or an order of executive authority or a special tribunal is challenged on the ground of ouster of jurisdiction of the Civil court, it must be shown (a) that the authority or the tribunal was validly constituted under the Act; (b) that the order passed or action taken by the authority or the tribunal was not mala fide; (c)*

*that the order passed or action taken was such which could be passed or taken under the law which conferred exclusive jurisdiction on the authority or the tribunal; and (d) that in passing the order or taking the action, the principles of natural justice were not violated.*”

8. The impugned judgment incorrectly states that such exemption has not been granted in tax statutes as the judgments of **Mian Muhammad Latif’s case** (*supra*) and **Province of Punjab v. Federation of Pakistan** (*supra*) clearly contradict such an untenable conclusion. However the burden then lies on the appellants to prove that they fall within the above exceptions in order to circumvent this bar to the jurisdiction of the civil courts. Since the appellants’ counsel mainly relied on the exemption from the general bar to jurisdiction on the ground of the orders/actions taken by the authority/Assessment Officer being beyond jurisdiction, first the precise scope of the jurisdiction of the Assessment Officer/authority needs to be determined. The relevant provisions of the Customs Act in this regard are reproduced below:

**“32. False statement, error, etc.-** (1) *If any person, in connection with any matter of customs,-*

- (a) *makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or*
- (b) *makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer, or*
- (c) *submits any false statement or document electronically through automated clearance system regarding any matter of Customs*

*knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty of an offence under this section.*

.....

(3) *Where, by reason of any inadvertence, error or misconstruction, any duty taxes or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within three years of the relevant date*

requiring him to show cause why he should not pay the amount specified in the notice;

**80. Checking of goods declaration by the Customs.-** (1) On the receipt of goods declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.

(2) An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;

(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty, taxes and other charges levied thereon.

.....

**193. Appeals to Collector (Appeals).-** (1) Any person including an officer of Customs aggrieved by any decision or order passed under sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector may prefer appeal to the Collector (Appeals) within thirty days of the date of communication to him of such decision or order:

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Collector (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

.....

**194. Appellate Tribunal.-** (1) The Federal Government shall constitute an Appellate Tribunal to be called the Customs Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

**196. Reference to High Court. –** (1) Within ninety days of the date on which the aggrieved person or Collector or Director of Intelligence and Investigation, or Director of Valuation, as the case may be, was served with order of the Appellate Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector or Additional Director, authorized by the Collector or Director in writing, may prefer an application, in



*the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.”*

The facts of the present appeals do not involve any aggrieved party approaching the Collector (Appeals) under Section 193, or the appellate Tribunal under Section 194. Thus the jurisdiction, to be determined with regards to the exception granted under the **Hakeem Hafiz Muhammad Ghaus’ case** (*supra*) etc. is the jurisdiction of the Assessment Officer/authority either under Section 32 or Section 80 of the Customs Act. The contention of the appellants is that the adverse actions/orders were under Section 32 whereas the respondents insist that in fact the adverse orders were reassessment orders made under Section 80 of the Customs Act. This difference in stance is vital because if the said actions/order were initiated/passed under Section 32 *ibid*, then as per sub-Section (3) thereof, no show cause notice in this regard was ever served upon the appellants. It has been the case of the appellants that the demand cannot be claimed to be a reassessment order since it lacks the basic features/characteristics/attributes of the same as provided for and required under Section 24 of the General Clauses Act 1897. A perusal of the adverse orders reveals the use of the words “assessment” in determining the tax liability of the appellants, therefore, in the absence of any evidence produced on the part of the appellants to prove that the order/actions were made under Section 32 *ibid*, it can be assumed that the said adverse orders were reassessment orders under Section 80 *ibid* and thus in conformity with the law. Even otherwise, the precedent laid down in **Badrul Haque Khan’s case** (*supra*) with regard to an action/order being beyond jurisdiction is that it will be going too far to say that every little breach of a rule would constitute an act “without lawful authority”. So far as the nature of the act/action was such that it can be said to be made within the powers given to it (the authority passing the order or

taking the action) for determination/assessment under the Statute, it cannot be said to be beyond jurisdiction. The nature of the power exercised by the authority/Assessment Officer was within its powers to assess, reassess and determine the tax liability of a person, and since the same is in consonance with the spirit of Section 80 *ibid*, it cannot be said to be beyond jurisdiction. This approach finds further support in the judgment in **Badrul Haque Khan's case** (*supra*) wherein it was held that "*I do not see any difference in a case where the question of law decided is a matter on which two opinions can easily be held and a case where the decision on a question of law appears to be clearly erroneous.*". The same view was held in **Muhammad Hussain Munir's case** (*supra*), **Zulfikar Khan Awan's case** (*supra*) as well as **Raunaq Ali's case** (*supra*), **Abdul Rehman Bajwa's case** (*supra*) as well as in **Ms. Friend Engineering Corporation v. Government of Punjab (1991 SCMR 2324)** wherein this Court held that by "jurisdiction" is meant a power to hear and decide a legal controversy between parties, and *if the order is contrary to the law that would not render it as one without jurisdiction*. We, therefore, hold that the adverse orders/actions by the Assessment Officer/Customs authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed on the civil courts under Section 217(2) of the Customs Act. Although the appellants have also relied on the exception where an action/order is tainted with *mala fide*, no proof or tangible argument in this regard has been raised besides blowing smoke of the allegedly prevalent corruption in the Customs Department. Therefore we conclusively hold that the appellants do not fall within the ambit of the exceptions carved out by the judgments of this court with respect to a bar to the jurisdiction of civil courts. However, this does not mean that a wrong interpretation of the law cannot be corrected thus leaving the aggrieved remedy-less; as correctly

highlighted in the impugned judgment, the grievance redressal mechanism in the Customs Act as well as other taxing statutes and the hierarchy of appellate forums created thereunder are remedies available to the person/entity aggrieved by an adverse order of the Assessment Officer/Customs Officer, and only after the exhaustion of the same should the Division Bench of High Court be approached under Section 196 of the Customs Act. A crisp overview of the assessment of duty on imported goods under the Customs Act and the grievance redressal system provided in the statute for objections to such assessment is as follows: Section 80 *ibid* prescribes the manner in which an officer of Customs shall satisfy himself as to the correctness of the good declaration made by or on behalf of the importer whereas under sub-section (3) thereof the officer of Customs has the power to reassess the duty, taxes or other charges levied under the Customs Act; any person aggrieved of such assessment/reassessment may appeal to the Collector under Section 193 of the Customs Act, and the next forum of appeal from this is the Appellate Tribunal under Section 194 of the Customs Act. Any person aggrieved of the orders of the Appellate Tribunal may then file a reference to the High Court pursuant to Section 196 of the Customs Act, subsection (4) of which stipulates that such reference may be heard by no less than two judges of the High Court.

9. The question as to whether cognizance of a suit against such adverse orders may be taken by the Single Bench of the Sindh High Court at Karachi in exercise of its civil jurisdiction, and whether it also falls within the definition of "civil courts" for the purposes of Section 217(2) of the Customs Act, is addressed in the second formulation below.

**II. Whether the exercise of the original civil jurisdiction by the Single Bench of the Sindh High Court is *ultra vires* of the Constitution of the Islamic Republic of Pakistan (*Constitution*) in light of Article 25 thereof? And further, whether the exercise of this civil jurisdiction by the Single Bench of the Sindh High Court will render it to be a civil court for the purposes of the ouster clause in Section 217(2) of the Customs Act?**

10. An ancillary submission made Mr. Khalid Anwar, learned Sr. ASC is that the suits which were taken up in exercise of the civil jurisdiction by the Single Bench of the Sindh High Court for the District of Karachi, are saved from the ouster clause in Section 217(2) of the Customs Act which only bars the jurisdiction of the Civil courts *to set aside or modify any order passed, any assessment made, any tax levied, any penalty imposed or collection of any tax* made under the said Act. Therefore, the exercise of original civil jurisdiction by the Single Bench of the Sindh High Court remains unaffected by the said ouster clause. Reading out the bar contained in Section 217(2) of the Customs Act, he emphasized on the words "civil court", thus stating that it is only cognizance by the ordinary civil courts which is barred, perhaps on account of the lack of expertise that a Civil Judge may have in the matter; however, cognizance by the Single Bench of the High Court is by no means barred under the said Section.

11. With regards to the constitutionality of the exercise of civil jurisdiction by the Single Bench of the Sindh High Court at Karachi, by way of providing a background of the origin of the same, he read out the language of Section 2 of the Bombay Act No.1 of 1906 which established the Court of the Judicial Commissioner in Sindh, which he submitted was the highest Court of Appeal in civil and criminal matters for the Province of Sindh and it was a District Court and Court of Sessions for Karachi. This Court of the Judicial Commissioner, he stated, continued to function until the enactment of the Sindh Courts Act 1926 (*Act of 1926*) which came into force in 1940, by way of a notification published in the official gazette by the Sindh Government. Section 3 of the Act of 1926 established a Chief Court of Sindh; Section 8 of this Act empowered the Chief Court of Sindh to be the highest civil and criminal court of appeal and revision for Sindh. He then read out Section 8 of the Act of 1926 which he categorically

submitted cannot be read in isolation without reading it with Section 22 of the same Act. The latter Section provides that *there shall be in each civil district other than, that of Karachi a district court and the Provincial Government shall appoint a district judge to each such court*. He specifically highlighted that from the constitutional perspective the most important thing to note is that the Act of 1926 is a provincial statute hence *prima facie* it appears that the status of the Chief Court can only be seen as a provincial Court i.e., civil/criminal Court for the District of Karachi. Relying heavily on the judgment of this Court reported as **Province of Sindh v. Haji Razzaq (PLD 2017 SC 207)** (which he submitted has also been followed by this Court in the judgment of **Mian Akbar Hussain v. Mst. Alishbai (PLD 1991 SC 985)**) he stated that the original conception of the law was that this Court was merely the creation of a Provincial Statute, whereby the Single Bench of the High Court was exercising the power of a District Court therefore it essentially had the same status but has been given an elevated designation. Radical changes followed thereafter; referring to Section 219 of the Government of India Act, 1935 which defines a "High Court" to include the Chief Court in Sindh, stressing on the words "*deemed to be a High Court*". Reading out the proviso to the same, he pointed out that on this date there were already a certain number of High Courts for example in Calcutta, Lahore, Madras, etc., and these Courts in Sindh, etc., could have been converted into High Court(s). He conceded that this proviso was deleted in the year 1955 by the Order of 1955(*supra*). In 1955 it was constituted as the Karachi Bench of the West Pakistan High Court, it is no longer as it was previously, deemed to be a High Court under Section 219(*ibid*), and now it is of the same status as the Lahore High Court. Thus, after perusal of this decisive constitutional change, there remains no doubt about the constitutionality of the Single Bench of the Sindh High Court which pursuant to Section 219 was given the status of a High

Court. Mr. Farogh Naseem, ASC, who also appeared on behalf of the appellants, relying upon the same judgment in **Haji Razzaq's case** (*supra*) presented a completely contrasting contention, stating that the Single Bench of the Sindh High Court in Karachi was in fact exercising a special jurisdiction as opposed to an ordinary civil jurisdiction. Concentrating particularly on the historical background of this exercise of civil jurisdiction by the Single Bench of the High Court, in this regard he relied heavily on the judgment in **Firdos Trading Corporation v. Japan Cotton & General Trading Co. Ltd.** (PLD 1961 Karachi 565) wherein Mr. Waheeduddin J. held that "*it is therefore perfectly clear that this jurisdiction is of special nature and is not the ordinary civil jurisdiction of the West Pakistan High Court....*". He further relied upon page 222 of the judgment in **Haji Razzaq's case** (*supra*) wherein Waheeduddin J.'s view was again concurred with in holding that:

*"The scheme of the Establishment of West Pakistan Act, 1955, clearly shows that as a special measure Karachi Bench was allowed to continue to perform the duties of the principal civil Court of original jurisdiction in Karachi, which is a special jurisdiction and by no stretch of argument can be considered as the ordinary original civil jurisdiction of the West Pakistan High Court as is generally known. The history of the establishment of the High Courts in this sub-continent shows that there were only three Courts which were conferred ordinary original civil jurisdiction within certain limits under their Letters Patent. No other High Court established under the High Courts Act of 1861 or under the Government of India Act, 1915 or under the Government of India Act, 1935 was invested with powers of ordinary civil jurisdiction. The Chief Court of Sindh was no doubt a High Court within the meaning of section 219 of the Government of India Act, but the jurisdiction which it exercised in the civil district of Karachi was not that of an ordinary original civil jurisdiction of the High Court but it was only performing the duties of the principal Civil Court of original jurisdiction within the district of Karachi under a special statute viz. section 8 of Sindh Courts Act, 1926." [Emphasis supplied]*

Thus he concluded stating that cognizance of a civil suit by the Single Bench of the Sindh High Court at Karachi in this special jurisdiction, is not barred under Section 217(2) of the Customs Act.

12. Mr. Salman Akram Raja, ASC supported the view in the impugned judgment in this regard, submitting that there can be no cavil with the assertion that the Learned Single Bench at Karachi in exercising original civil jurisdiction, in effect acts in the capacity of a civil court and therefore, to say that the bar to jurisdiction of civil courts under Section 217(2) does not apply to the Single Bench is absolutely untenable. Fortifying this argument, he read out Section 8 of the Act of 1926, whereby the Chief Court at Sindh was established and under Section 8 thereof the civil and criminal jurisdiction of the Chief Court was outlined in that *"The Chief Court shall be the highest civil Court of appeal and revision ....and the principal civil Court of original jurisdiction for the civil district of Karachi and shall be the Court of Session and shall exercise the powers and perform the duties of a Sessions Judge in the Sessions Division of Karachi"*. Thus there can be no ambiguity in the fact that the principle original jurisdiction of Sindh High Court at Karachi is neither the ordinary nor the extra ordinary civil jurisdiction of the Court, but simply the civil court's jurisdiction. Concurring with the view laid out in the impugned judgment, he submitted that the restrictions and qualification imposed in terms of Section 9 of CPC, are equally applicable in respect of a suit before High Court in exercise of original civil jurisdiction.

13. In light of the above arguments, it is evident that in this context, the only judgment of this Court in the field which carefully examines the exercise of the civil jurisdiction by the Single Bench at Karachi and the implications of the same on its status is found in **Haji Razzaq's case** (*supra*) wherein on page 219 a brief background of the origin of such jurisdiction is comprehensively explained:

*“Accordingly the Governor-General by G.G. Order No.19 of 1955 created the West Pakistan High Court with its seat at Lahore and Benches at Karachi and Peshawar and Circuit Courts at other places within the Province consisting of such Judges as may from time to time be nominated by the Chief Justice. Para 3 of this Order provided that the High Court shall have such original, appellate and other jurisdiction and such powers and authority in respect of the territories included in the Province of West Pakistan as the High Court of Judicature at Lahore had immediately before the commencement of this Order, in respect of the territories in relation to which it exercised appellate jurisdiction. The Letters Patent of the Lahore High Court was also applied to West Pakistan High Court subject to such modification and alteration as the provisions of the Establishment of West Pakistan Act, 1955 or any order made thereunder or any other law for the time being in force may warrant. Under para 5 of the said Order it is laid down that notwithstanding anything in this or in any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original civil jurisdiction for the civil district of Karachi and the same criminal jurisdiction and powers of the Court of Session for the Sessions Division of Karachi, as were exercisable, immediately before the commencement of this Order, by the Chief Court of Sindh under section 8 of the Sindh Courts Act, 1926, subject to the power of the Governor-General to direct that, as from a specified date such jurisdiction and powers shall cease to be exercisable by that Bench and as from that date that Bench shall cease to exercise that jurisdiction and powers.”*

From the above articulate synopsis of the historical background of the Sindh High Court, it transpires that the Governor General through the High Court of West Pakistan (Establishment) Order (*Order No.XIX*) of 1955 (*Order of 1955*) created the High Court of West Pakistan with its seat *inter alia* at Karachi. Under para 5 of the said Order it has been provided that notwithstanding any other law for the time being in force, the Bench of the High Court at Karachi shall have the same original jurisdiction for the civil district of Karachi as was exercised prior to the commencement of this Order under the Act of 1926; the jurisdiction thus is the same but the status has been elevated. Prior to the Order of 1955, the “Chief Court” by virtue of Section 219 of the Government of India Act, 1935, was *deemed to*



be a High Court, whereas after the enactment of this Order of 1955 the same had been given the permanent status of a High Court bringing it at par with other High Courts. The Single Bench of the Sindh High Court is therefore a "High Court" and cannot be equated with any other civil court and hence falls outside of the ambit of the ouster clause. This view finds support in Haji Razzaq's case (*supra*) wherein this Court came to the conclusion that the Chief Court of Sindh was not a District Court within the meaning of section 2(4) of the Civil Procedure Code. The definition of "District Court" has been given at page 223 of the Haji Razzaq's case (*supra*) wherein it was held that:

*"It will be pertinent to refer here to the definition of "district" in section 2(4) of the Civil Procedure Code. In this definition a clear distinction is made between the local limits of the jurisdiction of a principal Civil Court of original jurisdiction and the local limits of the ordinary original civil jurisdiction of the High Court. It reads as under:*

*'District means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court') and includes the local limits of the ordinary original civil jurisdiction of a High Court.'*

*This distinction also appears from the definition of "District Judge" in section 3(17) of the General Clauses Act, which is in the following terms:-*

*District Judge shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction."*

*It appears to me that the expression "Principal Civil Court of original jurisdiction" is not so much a description of any particular class of Courts, as a designation thereof. But there can be no doubt that this jurisdiction is distinct from the ordinary civil jurisdiction of the High Court."*

14. This Court thus agreed with the finding in para No.12 of the judgment of Thadani, J. reported as In the Matter of Muhammad Osman Sumro (AIR 1948 Sindh 89) wherein he observed that '*It is not disputed*

*that this Court is a High Court. But ... as I have pointed out before, if this Court is a district Court, when exercising its original civil jurisdiction, by reason of section 2(4), C.P.C., the right of appeal would also be governed by the Code of Civil Procedure from a decision of a single Judge of this Court. In view of section 14, Sindh Courts Act, 1926, however, I do not think such an interpretation is permissible".* Therefore, even prior to the Order of 1955, this Court, in light of Section 14 of the Act of 1926, was a "High Court" merely exercising the original civil jurisdiction for the District of Karachi. As insisted upon by the learned counsel for the appellants, we are convinced by the argument that in light of the above, the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court, therefore the two cannot be equated by any stretch of imagination.

15. Obviously, a literal interpretation of Section 217(2) would lead to the conclusion that only "civil courts" are barred from taking cognizance of civil suits arising out of disputes regarding the claim of entitlement to exemption from tax duties under the Customs Act. Had it been the intention of the Legislature to bar the cognizance of any court exercising civil jurisdiction, the language of the said provision would have used the words "civil original jurisdiction" and not simply used the term "civil courts". This approach can be grasped better when looked at with the rich history of this exercise of civil jurisdiction by the Single Bench of the High Court, an overview of which has been beautifully encapsulated in the judgement of **Haji Razzaq's case** (*supra*); the Legislature was aware of such exercise of special jurisdiction and thus had its intention been to place a complete bar on cognizance by any court exercising such jurisdiction, it would have used language that clearly reflected its intent. The question of the status of the Single Bench of the Sindh High Court at

Karachi, stands conclusively decided in the judgment of **Province of Sindh v. Haji Razaq judgment**(*supra*) which relies almost entirely on Justice Waheeduddin Ahmed, J's judgment in **Firdous Trading Corporation v. Japan Cotton and General Co. Ltd.** (*supra*) wherein he had in unequivocal words stated that:

*“I have not the slightest doubt on the language of section 3 of Sindh Act, 1926 and the definition of "District" in section 2(4) of the Civil Procedure Code, that it was exercising District Court jurisdiction in contradistinction to the ordinary original civil jurisdiction of the High Court. In my opinion the mere fact that the Sindh Chief Court later on was included within the definition of High Court under section 219 of the Government of India Act, did not change the nature of this jurisdiction”*

This view, being the conclusive view of this Court ever since **Haji Razzaq's case** (*supra*) as the settled law on the matter shall prevail. We therefore hold that the High Court of Sindh, is a 'High Court' and for this reason, the Single Bench of the Sindh High Court was correct in holding the suits of the appellants to be maintainable. A statutory provision must be interpreted within the meaning that is attributed to it by the language and specific words used by the Legislature, and the principles of law dictate that redundancy cannot be attributed to any word used therein. Section 217(2) therefore, only bars the cognizance of suit filed under the civil jurisdiction exercised by the civil courts, and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi. As for the question regarding whether, Article 25 of the Constitution can be said to have been violated by allowing such special jurisdiction to the Sindh High Court while the same is not available to other Provinces is concerned, suffice it to say that such jurisdiction has been exercised by the Sindh High Court at Karachi as far back as the pre-partition era. Striking a careful balance between the fundamental right to be treated in accordance with the law under Article 4

of the Constitution and Article 25 thereof, the principles of justice would require that the litigants in Sindh High Court at Karachi are not deprived of this forum of grievance redressal which is limited to only Karachi, as this right to approach such forum has accrued to them over decades and the law mandates certainty in the judicial administration system.

**III. Whether the appellants are entitled to the relief sought?**

16. In the present appeals, the appellants have successfully been able to obtain interim injunctions some of which date back to as long as ten years ago, thus in the process the Federal Exchequer has been deprived of tax money worth millions of rupees. When this situation was pointed out to the learned counsel for the parties, the appellants' counsel Mr. Khalid Anwar, was quick to respond and stated that in terms of monetary gains, filing of writ petitions and approaching the courts in fiscal matters is in fact more expensive for importers/appellants than it is to pay the required tax applicable under the law. However, he stated that if he were to today take a pebble and throw it at the Custom House/Department at Karachi, there is an 80% probability that it will hit a corrupt official. Corruption has become a plague in the Custom House/Department and no one has any faith in its officials. Secondly he submitted that as opposed to the High Court in Lahore where writ petitions are heard by a Single Bench, in Karachi writ petitions are heard by Division Benches and there are only two Division Benches hearing tax related matters. If a uniform system is introduced and more Division Benches of the High Court at Sindh start hearing tax matters, the civil jurisdiction of Single Bench of the Sindh High Court at Karachi will no longer be invoked by parties. If the same cannot be done, in the alternative those aggrieved by the orders of tax authorities under taxing statutes such as the Customs Act should be allowed to continue to approach the Single Bench at Karachi in its civil jurisdiction with a

guideline given to the same to dispose of tax disputes expeditiously within a period of a year or less. While the real picture may not be as grim as painted by the counsel for the appellant to advance his case, the counsel for the respondents could offer no concrete argument to refute such claims of prevailing corruption. In order to grow economically, it is imperative that even the ugliest truths be acknowledged in order to commence the journey of curbing, correcting and reducing this unfortunate menace that not only our country, but all of South Asia faces.

17. Keeping in view the alarming allegations made above, it is directed, that while the Single Bench of the Sindh High Court at Karachi may still take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised by the Single Bench and the suits must be expeditiously decided within the period of one year or less so that these suits are not used by aggrieved parties as a means to deprive the Public Exchequer of the taxes due for years on the basis of interim injunctions. Furthermore, as a guiding principle, to bring some certainty and uniformity in the treatment of such suits, the suits filed and those that have already been filed must only be entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities as a goodwill gesture, so that on conclusion of the suit, according to the correct determination of the tax due or exempt (*as the case may be*), the same may be refunded or the remaining balance be paid.

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

- (1) the adverse orders/actions by the Assessment Officer/Customs authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed under Section 217(2) of the Customs Act;

- (2) the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court.
- (3) Section 217(2) *ibid* only bars the cognizance of suit(s) filed under the civil jurisdiction exercised by the civil courts, and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi;
- (4) allowing such special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution;
- (5) the suits of the appellants filed before the Single Bench of the Sindh High Court at Karachi are maintainable;
- (6) despite the fact that the Single Bench of the Sindh High Court at Karachi can take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised and the suits must be expeditiously decided within the period of one year or less; and
- (7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities.

19. As the main appeals are allowed, the applications for impleadment are disposed of accordingly.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court

on **27.6.2018** at **Islamabad**

Approved for reporting

Waqas Naseer