

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Qazi Faez Isa

Mr. Justice Ijaz ul Ahsan

Human Rights Case No. 18877 of 2018

[In the matter regarding deduction of high Tax/other charges by Mobile Companies in Pakistan]

Attendance:

Mr. Anwar Mansoor, Attorney General for Pakistan.
Mr. Sajid Ilyas Bhatti, Addl. Attorney General for Pakistan.
Mr. Tariq Mehmood Jahangiri, Advocate General, Islamabad.
Mr. Abdul Latif Yousafzai, Advocate General, KP.
Barrister Qasim Chohan, Addl. Advocate General, Punjab.
Barrister Shabbir Shah, Addl. Advocate General, Sindh.
Mr. Ayaz Khan Swati, Addl. Advocate General, Balochistan.
Mr. Ali Sibtain Fazli, Sr. ASC (For Telenor)
Mr. Munawar Iqbal Duggal, ASC (For PTA)
Mr. Ali Raza, ASC (For Pak Mobile; Ufone + Jazz + Warid)
Mr. Ali Zafar, ASC (for Punjab Revenue Authority)
Mr. Ayaz Shaukat, ASC (for Zong)
Mr. Mohammad Kassim Mirjat, AOR (S.R.B)
Dr. Jehanzeb Khan, Chairman FBR.
Ghulam Abbas Kazmi, Member Legal, FBR.
Nasir Mehmood, Law Officer, Finance Department, Lahore.
Javed Khan, Dy. Secretary, Finance Department, KP.
Muhammad Khurram Siddiqui, Director Law, PTA.
Adil Umer Khalid, Director (CA), PTA.

Date of Hearing: 27.03.2019.

ORDER

1. This matter pertains to the levy/imposition of advance income tax by the Federation, Federal Excise Duty by the Federation in the Islamabad Capital Territory, sales tax on services by the Provinces and service/maintenance charges by cellular mobile operators.

2. The learned counsel representing cellular mobile operators state that they have stopped levying/imposing and collecting service / maintenance charges and do not intend to do so in the future.

3. The learned Attorney General for Pakistan ("**AGP**") questions whether this matter could have been taken notice of under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan ("**the Constitution**") as, according to him, it does not concern the enforcement of any Fundamental Right enshrined in the Constitution. The learned Advocate Generals of Khyber Pakhtunkhwa and Islamabad and the learned Additional Advocate Generals of Punjab, Sindh and Balochistan ("**AGs**" and "**AAGs**") support the learned AGP in this regard.

4. The learned AGP, the AGs and AAGs also question the order of this Court dated 11th June, 2018 which restrained the collection of the said taxes. They submit that this was done without considering the applicable laws and without striking down the relevant provision of any law which authorized such levy/imposition and collection. Since the said interim order is causing massive revenue loss to the Federation and the provinces the learned law officers request that this matter may be adjudicated upon at an early date.

5. A cursory examination of the matter has raised a number of questions. The preliminary question which requires consideration is:

- (1) Whether this matter could have been taken notice of under Article 184 (3)?

And, if the answer to the aforesaid is in the affirmative, then the following questions would require consideration:

- (2) Whether advance income tax can be levied on all the customers of cellular mobile operators irrespective of whether or not they are taxpayers pursuant to section 236 read with section 147 and section 2 (66) of the Income Tax Ordinance, 2001?
- (3) Whether sales tax on cellular services provided by the cellular mobile operators can be levied / imposed on their customers by the provinces under their respective laws, that is, the Sindh Sales Tax on Services Act, 2011, the Punjab Sales Tax on Services Act 2012, the Khyber

Pakhtunkhwa Finance Act, 2013 and the Balochistan Sales Tax on Services Act, 2015?

- (4) Whether excise duty can be levied / imposed by the Federation on the services provided by cellular mobile operators to their customers under the Federal Excise Act, 2005?

6. The Federation and the Provinces to submit their respective concise statements with regard to the aforesaid questions, which should be accompanied with extracts of the applicable laws. The information about the amount of the said taxes collected by the cellular mobile operators and paid to the respective revenue authorities of the Federation and the provinces for the period from 13th June, 2017 through till 13th June, 2018 shall also be provided in the concise statements. The concise statement submitted on behalf of the Federation should be signed by the Secretaries of Revenue, Law and the learned AGP, the concise statement on behalf of the Islamabad Capital Territory by the Secretaries of Revenue, Law and the learned AG of Islamabad and the concise statement on behalf of the provinces signed by the Secretaries of Finance, Law and the learned AGs; and in case of disagreement amongst any of the said secretaries and law officers separate concise statements may be filed. If the cellular mobile operators want to file concise statements they may also do so under the joint signatures of the concerned officer and their counsel.

7. Since the referred to interim order was passed by a three-member Bench it would be appropriate if this matter is heard by a Bench comprising of at least three members. Therefore, this matter should be referred to the Hon'ble Chief Justice of Pakistan for requisite orders for the constitution of the Bench and for fixing it for hearing at an early date as it pertains to the collection of public revenues.

Judge

Judge