

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

T.A. NOS. 13/2003, 85 & 91/2002

**COLLECTOR OF SALES TAX & CENTRAL EXCISE,
RAWALPINDI.**
(IN ALL CASES)

APPELLANT(S)
PETITIONER(S)

VERSUS

M/S DANDOT CEMENT COMPANY LTD., LAHORE AND ANOTHER.

(IN T.A.NO. 13/2003)

M/S CHAKWAL FEEDS (PVT) LTD., ANOTHER.

(IN T.A.NO. 85/2002)

M/S GHARIBWAL CEMENT LTD., LAHORE AND ANOTHER.

(IN T.A.NO. 91/2002)

RESPONDENT(S)
DEFENDANT(S)

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OF ORDER/ PROCEEDING	ORDER WITH SIGNATURES OF JUDGE, AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY.
1	2	3

14.01.2020

Dr. Farhat Zafar, Advocate for Appellant.
(In all Cases)

Ms. Shaista Altaf, Advocates for Respondents.
(In T.A.No. 13/2003)

M/s Farhat Nawaz Lodhi and Sajid Ijaz Hotiana,
Advocates for Respondents.
(In T.A.No. 85/2002)

Mr. Tariq Rashid, Advocate for Respondents.
(In T.A.No. 91/2002)

This consolidated order shall decide the above mentioned appeals as common questions of law and facts are involved.

At the very outset, learned Counsel for the Respondents raised certain objection regarding maintainability of the present appeals. As the preliminary objection raised relates to the maintainability of the present appeals and since, it is a jurisdictional defect thus same required to be decided before hearing the appeals on merits, hence, learned Counsel were asked to advance arguments on the maintainability of the appeals.



2. Learned Counsel for the Respondents submitted that present appeals are not maintainable due to the reason that same have been signed, verified and filed by a Law Officer of the Collectorate of Sales Tax who was not the competent authority in this regard under section 47(2) of the Sales Tax Act, 1990 (**hereinafter referred to as the Act, 1990**).

Learned Counsel in support of their contention relied on the judgment of the Hon'ble Sindh High Court re: **Director Directorate General of Intelligence and Investigation, Customs and Excise, Karachi versus Al-Falz Industries (Pvt) Ltd,** **reported at (2004 PTD 2967 KHI HC),** and submitted that said judgment was upheld by the Hon'ble Supreme Court vide order dated 17.10.2005, reported as **2006 SCMR 129.**

Learned Counsel for the Appellant was unable to rebut the arguments, however, urged to hear the cases on merits.

3. We have heard the learned Counsel for the parties on the point of maintainability of these appeals and have also gone through the case law referred by the learned Counsel for Respondents.

4. Perusal of the memo as well as the supporting affidavits of all the present appeals transpires that these appeals have been signed, verified and filed by a Law Officer of the Collectorate of Sales Tax and not by the Collector, who was legally authorized in this regard under section 47(2) of the Act 1990. We have also carefully read the judgments relied upon by the Learned Counsel for the Respondents and are in agreement with the contention of Learned Counsel that the issue of filing of appeal before High Court by

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the competent authority has been decided by the Hon'ble High Court, vide judgment reported as **2004 PTD 2967**, whereby, appeal filed by Director, Directorate General Intelligence and Investigation, under Section 196 of Customs Act, 1969, before the High Court was held to be not maintainable and dismissed *in limine*. The Hon'ble High Court held that:-

"..... The right of appeal is not an inherent right but a statutory right. The legislation has been confined the right of appeal on the Collector and has not left the right of filing appeal at the discretion of the Central Board of Revenue. Therefore, to contend that an Officer of Customs can file an appeal, in our view is not correct."

This judgment was subject of appeal before the Hon'ble Supreme Court by the Customs Department, and their Lordships were pleased to dismiss the appeal, vide order reported as **2006 SCMR 129**, thereby confirming the judgment of Hon'ble High Court by holding as under:

".....Similarly when section 196 of the Act requires filing of an appeal by the Collector then it can be filed only by the Collector and non-else. The appeals filed by the Director would be deemed to be absolutely illegal, incompetent and not maintainable. Even appeals purported to have been filed by the Collector as the nomenclature of the Petitioner appears to be Collector of Customs but not signed and verified by him and instead were signed and verified either by a Deputy Collector or Assistant Collector of Customs would also be deemed not have been filed in accordance with law in view of the pronouncement made by this Court in the case of Haji Abdullah Jan and others v. The State 2003 SCMR 1063 and State through Advocate General, Sindh v. Hanif Ahmed and others (supra)."

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The preliminary objection raised in present appeals is similar, however, the earlier was governed by Section 196 of the Customs Act, 1969, and the present appeals are under section 47 of the Act 1990 which is *paramateria* to section 196 of the Customs Act 1969. The appeal before the High Court against the order of the Appellate Tribunal have been filed under section 47(1) of the Act 1990. Subsection (2) of section 47 provides for limitation as well as person competent to file appeal and termed them as "aggrieved person or Collector". Section 47(2) is also reproduced below for reference:

"47. Appeal to the High Court. - (1)

.....
 (2) *The appeal under this section shall be filed within sixty days of the date upon which the **aggrieved person** or the **Collector** is served with notice of an order under section 46."*

Language of Section 47(2) is clear and can be interpreted to mean that the taxpayer is the aggrieved person for filing the appeal u/s 47 of the Act 1990 in case the Appellate Tribunal decides appeal against him and if it is decided against the Sales Tax Department, it is the "Collector" who is legally competent to file appeal under section 47(2). The legislature for the purposes of instituting appeal on behalf of the Sales Tax Department, has specifically assigned responsibility to the Collector, and made him the competent authority thus neither he can delegate his authority nor any other person/Officer could substitute him without having legislative approval to sign, verify and file appeal before High Court under subsection (2) of section 47.

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We have also perused section 30 of the Act 1990, which provides for appointment of authorities and it shows that no authority as law officer has been listed therein. Thus on this point also instant appeals are illegally filed.

5. In view of the discussion made, hereinabove, we are of the considered view that the judgments relied upon by the learned Counsel for the Respondents/Taxpayers are squarely applicable to the issue under consideration and titled appeals have been filed incompetently which are hereby dismissed, accordingly.



(AAMER FAROOQ)
JUDGE



(LUBNA SALEEM PERVEZ)
JUDGE

Admn/

Approved For Reporting