ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

W.P. No. 2444/2012

Nomee Industries Steel & others.

Versus

Government of Pakistan through Secretary Finance & others.

S. No. of order/proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(15)	28.06.2021	Malik Qamar Afzal, Advocate for the petitioners. Mr. Farrukh Shahzad Dall, Assistant Attorney General.
		Mr. Muhammad Asif Khan, Advocate for IESCO. Syed Kazim Hussain Kazmi, Advocate for
		PESCO. Sheikh Anwar Ul Haq, vice counsel for respondents No.2 & 3.

The learned counsel for the petitioners states that sales tax in relation to electric utility was fixed at Rs.6 by notification dated 01.07.2008. That a Finance Bill, 2012 a proposal was generated by the Federal Government that the sales tax chargeable should be enhanced to from Rs.6 to Rs.8. That based on such proposal within the Finance Bill, 2012, the Federal Government issued instructions the and Electric Supply Companies initiated a demand to collect sales tax at the rate of Rs.8, which was in breach of law as no act of parliament imposing such liability had been passed. The learned counsel for the petitioners states that in the case of "Engineer Igbal Zafar Jhagra vs. Federation of Pakistan & others" (2013 SCMR 1337) the august Supreme Court has clarified that no liability can be imposed on any undertaking or citizen which has not been duly approved by Parliament and it is only from the date of entry into force of such law that such demand can be generated. And that in view of the law laid down in Engineer Igbal Zafar Jhagra case, the recovery of Rs.2 under coercive threat of disconnection respondents No.4 and continued to recover Rs.2 from 02.06.2012 to 30.06.2012, even though the liability for payment of sales tax under law at the given time was Rs.6 and thus the collection of an additional Rs.2 for a period of 29-days was in breach of law.

- 2. The learned counsel for respondents No.4 and 6 states that they issued demand and affected recovery in accordance with instructions issued by the Federal Government and FBR and deposited the amount recovered in lieu of sales tax with respondent No.2/ FBR.
- 3. The learned vice counsel for respondents No.2 & 3 states that the principal counsel who is to argue this case is unavailable today and seeks an adjournment. Allowed.

4. Let the office fix this case on 09.07.2021, when the FBR will ensure that a counsel appearing on its behalf is able to argue the matter in view of the law laid down by august Supreme Court in *Engineer Iqbal Zafar Jhagra* case.

(BABAR SATTAR) JUDGE

A. Rahman Abbasi