

**Messrs TELENOR PAKISTAN (PVT.) LTD.**

**Versus**

**FEDERATION OF PAKISTAN through Ministry of Finance and 4 others**

Writ Petition No.1768 of 2021

**JUDGMENT**

**ATHAR MINALLAH, CJ.**---- Messrs Telenor Pakistan (Pvt.) Limited, (hereinafter referred to as the 'petitioner Company'), has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the 'Constitution') assailing recovery notice, dated 07-05-2021 issued under section 138 of the Income Tax Ordinance, 2001 (hereinafter referred to as the 'Ordinance of 2001').

2. The petitioner Company is an incorporated juridical person engaged in rendering telecommunication services. The competent authority, i.e. the Pakistan Telecommunication Authority, has granted a licence to enable the petitioner Company to render its services. The impugned notice was issued under section 138 of the Ordinance of 2001 in relation to recovery of the tax due pursuant to two orders passed by the competent authority. The liability for tax had arisen out of two distinct proceedings. It is noted that the petitioner Company had voluntarily requested that its case be referred under section 134-A of the Ordinance of 2001 for resolution of the dispute through the mechanism of 'alternate dispute resolution'. The committee constituted for resolving the controversy was chaired by a former Judge of the august Supreme Court. After extensive deliberations, the committee forwarded its recommendations and they were accepted by the Federal Board of Revenue. The petitioner Company had also accepted recommendations which had been formulated by the committee. The alternate dispute resolution proceedings were initiated after the appeal effect proceedings under section 124 of the Ordinance of 2001 had been finalized vide order, dated 11-05-2018. The Federal Board of Revenue, vide Order No. 05 of 2018, dated 22-06-2018, accepted the recommendations of the committee in exercise of powers vested under section 134-A(4) of the Ordinance of 2001 read with the Income Tax Rules, 2002. This was followed by the passing of an order under section 124 of the Ordinance of 2001. The total tax due, pursuant to completion of the proceedings under section 134A of the Ordinance of 2001, was Rs. 3.8 billion. The impugned notice was for the recovery of the tax liability adjudged and given effect to under section 124 of the Ordinance of 2001.

3. The learned counsel for the petitioner Company has argued that; the appeal effect order, dated 25-09-2018, had been superseded pursuant to the passing of order, dated 15-02-2021, by the learned Tribunal; the respondents were required to calculate and determine the tax due keeping in view section 57 of the Ordinance of 2001; all orders passed by various forums have to be taken into account before initiating recovery proceedings; the respondents could not have issued the impugned recovery notice without giving appeal effect to the order, dated 15-02-2021, passed by the learned Tribunal; recovery proceedings could not have been initiated unless appeal effect orders under section 124 were issued in each case; sections 57 and 124 are to be read together; reliance was placed on the judgment of the learned Sindh High Court reported as "China Harbour Engineering Company Ltd. through Liu Ce v. Pakistan through Secretary Revenue Division and 3 others" [2017 PTD 1852].

4. The learned counsel for the respondent Department has argued that; recovery proceedings were initiated after appeal effect orders were passed under section 124 of the Ordinance of 2001; section 57 has no relevance with the recovery proceedings; the order under section 134A was passed after the petitioner Company had explicitly requested and consented to alternate dispute resolution; the judgment relied upon by the learned counsel for the petitioner Company was distinguishable.

5. The learned counsel have been heard and the record perused with their able assistance.

6. It is not disputed that the impugned notice, dated 7-5-2021, was issued for the recovery of the tax liability adjudged by the competent forums, pursuant to the conclusion of

proceedings in two distinct matters. In both the proceedings, the respective assessment orders were followed by passing of separate orders under section 124 of the Ordinance of 2001. In a nutshell, it is the stance of the petitioner Company that recovery proceedings could not have been resorted to unless a consolidated determination regarding all the adjudged matters had been concluded. The argument in essence is that recovery proceedings in the case of each adjudged tax liability cannot be initiated unless the total tax liability of a taxpayer has been determined. This argument is supported on the ground that if the tax liability related to all the adjudicated matters are determined then it may reduce the liability or could even end up in refund of tax. As a corollary, according to the stance of the petitioner Company, the order passed under section 134A of the Ordinance of 2001 was not recoverable because appeal effect orders relating to some other adjudicated matters had not been passed. The learned counsel for the petitioner Company has strenuously argued that unless orders are passed in all other adjudicated cases, recovery proceedings under section 138 could not be initiated. The learned counsel has emphasized that this was necessary because of the likelihood of reduction of the tax liability. The question that has to be answered by the Court, therefore, is whether the initiation of recovery proceedings contemplated under section 138 of the Ordinance of 2001 are subject to the passing of orders under section 124 in all the cases adjudicated by the competent forums or whether the recovery proceedings and issuance of a notice under section 138 was relatable to a particular determination of tax liability notwithstanding that other adjudicated liabilities against the tax payer have also been determined.

7. In order to answer the question, it would be beneficial to examine the scheme of the Ordinance of 2001. The Ordinance of 2001 has been divided into separate chapters. Different categories such as levy, charge of tax, different kinds of income for the purposes of assessment, mode and procedure for assessment and amendment or revision, remedies against amendment of assessment or revision have been dealt with under separate chapters.

8. The expressions "Commissioner" and "Commissioner (Appeals)" have been defined under clauses (13) and (13A) respectively of section 2. "Tax" has been defined under section 2(63) as meaning 'any tax imposed under Chapter II and includes any penalty, fee or other charge or any sum or amount leviable or payable under the Ordinance of 2001'. The mode of assessment under the Ordinance of 2001 is based on the principle of self-assessment. A taxpayer is required, under section 120, to furnish a complete return of income and if it is so furnished within the prescribed, time, then the Commissioner is taken to have made an assessment of taxable income for the relevant year. Clause (a) of section 120(1) explicitly provides that the tax due is required to be specified in the return. The return is taken for all purposes of the Ordinance of 2001 to be an assessment order issued to the taxpayer by the Commissioner on the day the return has been furnished. It is noted that payment of the tax due is mandatory. Section 122 empowers the taxation officers to amend the assessment orders in the manner and subject to the fulfillment of the requirements described therein. A statutory right of appeal has been provided under section 127 to the Commissioner (Appeals), which has been confined to orders passed under sections 121, 122, 143, 144, 162, 170, 182 and 205. It is significant to note that no right of appeal has been provided against an order passed under section 124 and the reason will be discussed latter. Section 137 describes the due date for payment of the tax. Subsection (1) provides that the tax payable on the taxable income of the taxpayer, including tax payable under section 113, 113A for a tax year, shall be due on the due date for furnishing the taxpayer's return of income for that year. Subsection (2) of section 137 provides that where any tax is payable under an assessment order or an amended assessment order, or any other order issued by the Commissioner under the Ordinance of 2001, a notice shall be served upon the taxpayer in the prescribed form specifying the amount payable and, thereupon, the sum so specified shall be paid within thirty days from the date of service of the notice. Sub section (4) has empowered the Commissioner to grant the taxpayer an extension of time for the payment of tax due or to allow the taxpayer to pay such tax in installments of equal or varying amounts, as the Commissioner may determine, having regard to the circumstances of the case. Subsection (5) of section 137 provides that in case of default in payment of any installment, the whole balance of tax outstanding will become immediately payable. Subsection (2) of section 127 starts with a negative expression and unambiguously provides that no appeal shall be made to the Commissioner (Appeals) against an order of

assessment unless the amount of tax due under subsection (1) of section 137 has been paid. The limitation period for preferring an appeal has been provided under section 127(5). Subsections (1) and (1A) empowers the Commissioner (Appeals) to stay the recovery of tax due or to grant an extension. An order passed by the Commissioner (Appeals) is appealable under section 131 before the Appellate Tribunal. Subsection (5) of section 131 provides another statutory remedy to an aggrieved person against an order passed by the Appellate Tribunal. This remedy is by way of filing of a reference before a High Court in respect of any question of law arising out of an order passed by the Appellate Tribunal. Subsection (7) of section 133 provides that where the recovery of tax has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it was made unless the reference is decided or such order is withdrawn by the High Court earlier. Section 124 does not supersede nor overrides the aforementioned statutory provisions. Subsection (1) applies when in consequence to or to give effect to any finding or direction in any order made under Part III of Chapter-X by the Commissioner (Appeals), Appellate Tribunal, High Court or the Supreme Court an assessment order or amended assessment order is to be issued to any person, then in such an eventuality the Commissioner is required to issue the order within two years from the end of the financial year. Subsection (2) of section 124 provides that in case an order passed by the Appellate Tribunal, High Court or the Supreme Court, the assessment order has been set aside wholly or partly and the Commissioner or Commissioner (Appeals), as the case may be, is directed to pass a new assessment order, then the Commissioner or Commissioner (Appeals), as the case may be, shall pass the order within one year from the end of the financial year.

9. The Ordinance of 2001 is a complete and self-contained statute relating to income tax and all matters ancillary or connected therewith. A cumulative reading of the above provisions unambiguously shows that liability to pay the tax is relatable to the assessment order or an order passed under any other provision. The liability of tax due, once created, has to be discharged immediately unless it has been stayed or allowed to be paid in a particular manner e.g in installments. The provision of section 124 does not have an overriding effect nor contemplates that all the orders passed by the competent forums have to be dealt with together so that a consolidated order is passed to determine the total tax profile liability of the taxpayer. If this argument of the petitioner Company is accepted, then no recovery pursuant to passing of any order would be effected unless a consolidated order under section 124 has been passed. It would also give an overriding effect to section 124 over the other provisions which explicitly declares a tax liability becoming immediately payable unless stayed by the competent forum. The reliance of the learned counsel for the petitioner Company on section 57 of the Ordinance of 2001 is also misplaced because its purpose and object has no relevance with the recovery of a tax that has become due. Section 57 falls under Chapter III of the Ordinance of 2001 which deals with and describes the categories of incomes and the fundamental principles and methodologies on the basis whereof the accounting and assessment is to take place. Section 57, therefore, has no nexus whatsoever with the scheme of collection and recovery of the adjudged/determined tax described under Part IV of Chapter X of the Ordinance of 2001. Accepting the arguments advanced by the learned counsel for the petitioner Company would amount to reading in the Ordinance of 2001 something not provided therein. The Ordinance of 2001 is a fiscal statute. The settled principles of interpretation of a fiscal statute are that the provisions are required to be interpreted literally and equity or presumption are alien thereto; if a provision of a taxing statute can have two reasonable explanations then one which is favourable to the taxpayer has to be accepted; any ambiguity is required to be resolved in favour of the tax payer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. The statute has to be read as a whole and the intention of the legislature has to be discovered by paying attention to what has been said. It is settled law that while interpreting fiscal statutes the Court looks at what is clearly said; there is no room for any intendment; nor is there any equity about a tax; there is no presumption as to tax; nothing was to be read in or implied and one could only look fairly at the language use. Reliance is placed on the cases of 'Federation of Pakistan through Secretary Ministry of Finance and others v. Haji Muhammad Sadiq and others' [PLD 2007 SC

133], 'Aslam Industries Ltd., Khanpur v. Pakistan Edible Corporation of Pakistan and others' [1993 SCMR 683], 'Collector of Customs (Appraisement), Karachi and others v. Messrs Abdul Majeed Khan and others' [1977 SCMR 371] and 'Messrs Hirjina & Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax Central Karachi' (1971 SCMR 128).

10. For the above reasons, this petition is without merit and, therefore, accordingly dismissed. The respondent/tax authorities shall, therefore, be at liberty to proceed strictly in accordance with the law pursuant to the issuance of the impugned notice, dated 07-05-2021. Likewise, the petitioner Company would also be entitled to apply to the competent authority, if so advised, to allow payment of the outstanding amount in installments.

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