

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 608-2020

D-Watson Chemist & Super Store

Versus

Federation of Pakistan and others.

W.P No. 2583-2021

D-Watson, G-13 Markaz, Islamabad

Versus

Federation of Pakistan and others.

W.P No. 646-2021

M/s Chai o Cock

Versus

Deputy Commissioner Inland Revenue, Islamabad and others.

W.P No. 3124-2020

M/s Mini Goods

Versus

Federation of Pakistan and others.

W.P No. 699-2020

M/s S&K Chikachino

Versus

Federation of Pakistan and others.

W.P No. 650-2020

M/s Howdy, Goal Market

Versus

Federation of Pakistan and others.

W.P No. 610-2020

D-Watson

Versus

Federation of Pakistan and others.

W.P No. 609-2020

D. Watson Chemist & Super Store

Versus

Federation of Pakistan and others.

W.P No. 576-2020

M/s Food for Thoughts (Tuscany Courtyard)

Versus

Federation of Pakistan and others.

W.P No. 446-2020

M/s Rahat Bakers, (AOP)

Versus

Federation of Pakistan and others.

W.P No. 321-2020

Savour Foods

Versus

Federation of Pakistan and others.

W.P No. 313-2020
Fresco Sweets
Versus
Federation of Pakistan and others.

Petitioners by: Hafiz Muhammad Idrees,
Mr. Muhammad Mohsin Nazir, Syed
Farid Bukhari, Ch. Naeem-ul-Haq,
Mr. Muhammad Musawar Gill, Abdul
Hameed Khan Kundi, Advocates for
the petitioners in their respective
petitions.

Respondents by: Syed Ishfaq Hussain Naqvi, Sheikh
Anwar-ul-Haq, Mr. Arshad Mehmood,
Advocates for respondents.
Raja Muhammad Aftab Ahmed, AAG.

Date of decision: 18.10.2021.

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MOHSIN AKHTAR KAYANI J. By way of this single judgment I
intend to decide all the writ petitions as common questions of law
and facts are involved.

2. Through these writ petitions, the petitioners have raised a
common controversy that S.R.Os i.e. S.RO No.470(I)/2007 dated
June 9, 2007, S.R.O No. 494(I)/2015 dated June 30, 2015, S.R.O
No.1360(I)/2018, dated November 12, 2018, S.R.O No. 1203(I)/2019,
dated October 10, 2019 are illegal, without lawful jurisdiction,
arbitrary, without backing of law, discriminatory and against the
ratio settled by the Hon'ble Supreme Court of Pakistan in reported
case as **PLD 2016 SC 808 (Messrs Mustafa Impex, Karachi and
others Vs. The Government of Pakistan through Secretary
Finance, Islamabad and others Mustafa Impex)** and the actions
initiated by the respondent FBR for mandatory installation of PoS
(Point of Sale) as well as rules made for real time of declaration of
sales are against the law and facts.

3. Brief fact referred in all the writ petitions are similar to the
extent of individual businesses of petitioners and they are mainly

aggrieved after issuance of notices by the respondent FBR, in which petitioners were directed to install prescribed software of Point of Sale (POS) for monitoring of sales under the SROs referred above. Counsel for the petitioners have highlighted the definitions of Tier-1 Retailer in terms of Section 2(43A) of the Sales Tax Act, 1990 and objected to the classification of different retailers referred in the said provisions primarily on the ground that the entire insertions of these concepts are against the fundamental rights envisaged under Articles 4, 8, 10-A, 18, 23, 25 & 77 of the Constitution of Islamic Republic of Pakistan, 1973. Even, it is in violation of the provision of Sales Tax Act, 1990 and Sales Tax Rules, 2006; that the definition provided under Section 2(43A) of the Sales Tax Act, 1990 is discriminatory in nature, against the fundamental rights, irrational and not enforceable in the light of ground reality of different businesses carried in Pakistan; that insertion of Chapter XIV-AA in the Sales Tax Rules, 2006 by the respondent is without lawful jurisdiction and backing of parent Act of Sales Tax Act, 1990; that the framing of Rules without making the amendment in the main statute is illegal and without lawful jurisdiction, subsequently all kinds of notices issued in this regard, are also not within the four corners of law; that issuance of S.RO No. 470(I)/2007 dated June 9, 2007, S.R.O No.494(I)/2015 dated June 30, 2015, S.R.O No. 1360(I)/2018, dated November 12, 2018, S.R.O No. 1203(I)/2019, dated October 10, 2019 through Chapter XIV-A and XIV-AA were inserted, are illegal, without lawful jurisdiction and are against the ratio settled by the Hon'ble Supreme Court of Pakistan in *Mustafa Impex case*.

4. Conversely, learned counsel for the respondent department has opposed all these writ petitions and raised the question of maintainability of these writ petitions on the ground that petitioners are not aggrieved in any manner from the impugned SROs as they

have to collect the sales tax as collecting/withholding agents. Even otherwise, the concept of Point of Sale (POS) is a policy matter, which could not be assailed in constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; that S.ROs impugned in all the writ petitions have already been declared ultra vires in the reported judgment of Lahore High Court in reported case as **2020 PTD 752 [Lahore High Court (Rawalpindi) (Jameel Sweets Vs. Federation of Pakistan and others), 2020 PTD 2095 [Lahore High Court (Rawalpindi Bench)] (D. Watson Chemist Vs. Federation of Pakistan and others)** and all these questions have been adjudicated by the learned Single Bench as well as by Hon'ble Division Bench of the Lahore High Court, Rawalpindi Bench, even same learned counsel have appeared in the Lahore jurisdiction and argued all these grounds, which have been answered, as such instant writ petitions have been filed simultaneously in Rawalpindi Bench as well as before this Court in order to get favourable chance from both the Courts, which is against very spirit of propriety; that fact, margin of profits will be different and petitioners cannot render SRO discriminatory or arbitrary or violative of articles 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973; that the presumption leans in favour of the constitutionality of statute, and the petitioners have not pointed out the particulars of discrimination or any constitutional violation; that the averments of the petitioners were not correct for electronic invoice without amending section 23 of the Sales Tax Act, 1990, are without lawful authority; that Chapter XIV-AA does not require Tier-1 Retailers to issue an electronic invoice; that electronic invoice is non-paper invoice which is transmitted electronically or digitally from the supplier to the buyer; that the SRO No. 1203(I)/2019 did not bring any change in the existing structure envisaged by the Act or the Rules for integration of

certain taxpayers with the Board's Computerized system, rather retailers, whose amount of electricity bill touched a certain threshold were included in the definition of Tier-1 retailer.

5. Arguments heard and record perused.

6. Perusal of record reveals that petitioners are aggrieved mainly from installation of software of Point of Sale (PoS) relating to monitoring of sales tax, direct dealing with the system of FBR, this aspect has initially been introduced through the electronic data, electronic invoices, E-declaration administrator and computerized risk based Evaluation of sales tax through S.R.O No.470(I)/2007, dated 9th June, 2007, in which unique user identifier concept has been raised.

7. From bare perusal of the notification, it reveals that Federal Board of Revenue in exercise of powers conferred by sub-section (1) of section 4 and section 40 of the Federal Excise Act, 2005, section 219 of the Customs Act, 1969, Section 50 of the Sales Tax Act, 1990 read with sub-section (2) of section 8, 9, 10, 14, 21 and 28, clause (c) of sub-section (1) of section 22, 26, sub-section (6) of section 47A, 48, 50A, 52, 52A and 66 thereof was directed to make amendment in the sale tax rules. However, in the subsequent S.R.O No. 494(I)/2015, further amendments have been introduced, in which concept of registration, whether temporary or compulsory, the cancellation of multiple registration, de-registration have been introduced, including the concept of blacklisting and similarly the concept of monitoring or tracking of registered person by electronic or other means referred in Section XIV-A has been highlighted, whereby electronic invoices system, electronic invoices data as well as installation of system have been introduced.

8. With the changing times, the FBR in order to tag the real figures of the sales tax, further issued S.R.O No. 1360(I)/2018, dated

12th November, 2018, S.R.O No. 1203(I)2019 dated 10th October, 2019, in order to provide online integration of Tier-1 Retailers, which have been assailed by the petitioners.

9. In order to go through the basic questions raised by the petitioners that all these Tier-1 Retailers concepts introduced are against the fundamental rights of the petitioners and even the subordinate legislation is in conflict of the parent statute. This aspect persuaded this Court to go through the parent statute at the first instance, whereby Section 2(43A) defines the Tier-1 retailer, which has been inserted through the Finance Act, 2017 and the said definition was further enhanced through Finance Act, 2019 after insertion of certain other categories in the same definition. From bare perusal of the said definition, it appears that a retailer operating as a unit of a national or international chain of stores, or air-conditioned shopping mall, plaza or centre excluding kiosks or a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds rupees twelve hundred thousand or a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers or a retailer, whose shop measures one thousand square feet in area or more are the generalize concepts, whereas the petitioners are raising their concerns against this basic definition on the ground of reasonable classification and intelligible differentia with the claim that the legislature has not attended any rational basis as to how they have selected these categories by answering different kinds of retailers under one definition.

10. This Court has been guided by the detailed view rendered by the Hon'ble Lahore High Court in case reported as **2020 PTD 752** **[Lahore High Court (Rawalpindi) (Jameel Sweets Vs. Federation**

of Pakistan and others), in which the proposition has been answered in the following manner:

- i) 8. *The Courts have spelt out a number of grounds for laying a challenge to delegated or subordinate legislation. The following tests have been laid down by the Courts for making a vires determination of the delegated legislation.*
- (1) *Whether the Rules framed are beyond the power granted by the enabling legislation (ultra vires);*
- (2) *Whether the process for formulating the Rules prescribed by the parent statute was followed (procedural ultra vires); and*
- (3) *Are the impugned Rules consistent with the objective of the parent statute.*

These tests are also propounded in judgments reported as Muhammad Amin and others v. Government of Pakistan 2015 SCMR 630, Khawaja Ahmad Hassan v. Province of Punjab 2015 SCMR 186 and Aziz Ahmad v. Provincial Police Officer PLD 2005 Lahore 185.

- ii) 10. *A survey of the judgment would show that the following principles for interpretation of delegated legislation have been laid down. There is a presumption of validity attached to the delegated legislation. The Rules made under a statutory mandate ought to be read and interpreted in a broad manner which makes them consistent to the parent statute. The Court holding the inquiry does not indulge in assessing the policy merits of the Rules or makes assessment as to whether the Rules would meet the objectives set out by the parent statute. The powers delegated to the Authority for framing Rules generally signify broad discretion reserved for it to make assessment as to what will advance the purposes of the parent statute and also the measures required to advance those purposes. It is generally recognized that issues which depend on policy matters involve greater expertise and are thus left to be determined by the delegated agencies. Implicit in this deferential attitude is the acknowledgement that the Courts do not possess*

policy expertise on such legislation absent the lack of resources to engage in policy analysis for lack of capacity.

- iii) 12. *The next determination to be made is whether both the SROs are consistent with the objective of the Act and/or the scope of the statutory mandate under which they were issued by the Board. In considering whether there has been a valid exercise of the rule making power the true nature and purpose of the power must be determined. The scope of the statutory mandate largely depends on the parent statute particularly the enabling provisions that delegate rule making authority which in turn would define the scope of the authority. It is thus imperative to have a close look at section 3(9A) and section 40 of the Act to ascertain the degree to which the legislature has disclosed the intention of dealing with the subjects with which the provisions of Chapter XXIV-AA are concerned. Section 3(9A) mandatorily required all Tier-I retailers to integrate their retail outlets with Board's computerized system for real-time reporting of their sales. Similarly, section 40C empowered the Board to implement the monitoring or tracking of production, sales, clearances, stocks or any other related activity in respect of any registered person or class of registered persons or any good or class of goods through electronic or other means as may be prescribed. This Court after going through the Rules is satisfied that the monitoring system put in place by the Board through the SRO's in question is reasonably proportionate to the pursuit of the purpose sought to be achieved by sections 3(9A) and 40 of the Act. The SROs in question exclusively deal with the class of subjects referred to in sections 3(9A) and 40C of the Act and embrace the policy considerations contained therein. In short, the SROs meet the minimum standard of rational connection to the statutory purpose as contained in sections 3(9A) and 40C of the Act. It is furthermore evident that the framework implemented by the SROs in question was authorized having regard to the purpose and object of sections 3(9A) and 40C of the*

Act which granted a large discretion to the Board to adopt the Rules. In addition thereto, section 50 of the Act also stipulates that the Board may prescribe the use of computerized system for carrying out the purposes of this Act. It is thus manifest that the SROs by their terms accomplish the legislative intent. Be that as it may, the petitioners did not argue at all on this aspect of the matter thereby admitting that the SRO's in question meet both the objectives test as well as the scope of statutory mandate test.

- iv) *These powers are commensurate with and compliment the conditions imposed by Chapter XXIV-AA requiring Tier-I retailers to integrate their Point of Sale enabling the Board to monitor and track their production, sales, clearances, stocks. The petitioners are registered with the Board and submit their monthly tax returns reflecting their sales. The Board is duty bound to ensure as are the petitioners to reflect accurate sales in the monthly returns for the purposes of payment of sales tax. The integration of the Point of Sale of the petitioners with the Board's computerized system will enable automated scrutiny, analysis and cross-checking of the data by the Board for which the Act grants extensive powers to it, amongst others, through section 50B. It is difficult to see how the integration of Point of Sale of the petitioners with the computerized system of the Board works to their disadvantage when they are under a lawful duty to faithfully report their sales in the monthly tax returns. The fact that the petitioners already submit monthly tax returns under section 26 of the Act is also not a sufficient reason for avoidance by them of the integration of their Point of Sale with the computerized system of the Board under the statutory duty imposed in terms of sections 3(9A), 40C and 50B. It is also evident from section 3(9A) that the integration of Point of Sale is not a temporary or a one-time operation rather it is to operate in perpetuity. The fact that some competitors of the petitioners are not registered with the Board can hardly furnish any lawful justification to them to challenge the SROs in question.*

11. Even otherwise, it is settled law that statute could not be read in isolation and courts have to protect the constitutionality of the statutes on the principle of interpretation of statutes, harmonious interpretation is required.

12. Now question arises as to whether the integration of Tier-1 Retailer has any negative impact upon the petitioners' right and why they felt aggrieved as they are already paying the sales tax on monthly basis in the existing sales tax regime. The new kind of monitoring evaluation tracking system is not meant to harm the rights of the petitioners in any manner, especially when the sales tax is to be received from the end users / consumers and not from the retailers, who are only withholding agents. The basic provision of the Sales Tax Act, 1990 provide the concept of monitoring and tracking by electronic or by other means and the said provision was introduced in Finance Act, 2013, even the Computerized System in terms of Section 50A of the Sales Tax Act, 1990 has been introduced in the Finance Act, 2006, hence the modern means, monitoring and computerization of sales tax by way of invoices, returns, electronic filing, registration are not new, rather it is the scheme of law to translate the non-documented economy into documentation and further into E-filing computerization system or with the intelligent based concept, which help the Federal Board of Revenue for cross matching of returns, automated scrutiny and make the working more swift and easier.

13. Section 50 extends the powers to the Board by notification in the official Gazette to make rules for carrying out the purposes of this Act, including rules for charging fee for processing of returns, claims and other documents and for preparation of copies thereof, as such this provision is silent qua any role of the Federal Government as claimed by the petitioners in terms of **PLD 2016 SC 808 (Mustafa**

Impex). Even otherwise, in the case of *Mustafa Impex supra* certain classification, withdrawing the exemptions or modifications in the tax rates of goods were called in question, whereby apex Court has held that the Federal Government has been defined under Article 90 of the Constitution of the Islamic Republic of Pakistan, 1973, as the sole repository of the Executive Authority of the Federation, which alone can exercise it, in the name of President to the exclusion of everybody else within the corresponding legislative sphere, but in this case, Sales Tax Act, 1990 has specifically extended the powers to the Federal Board of Revenue in terms of Section 50 of the Sales Tax Act, 1990 for making of the rules for better implementation of the sales tax act.

14. The above referred provision of Sales Tax Act, 1990 falls within the ambit of delegated legislation, whereby the Board has been authorized to exercise such powers. In order to understand the concept of delegation, as referred in the legislation, the principle which has been well established is that the legislation must lay down the guidelines, principles or policy for the authority, to whom power to make subordinate legislation is entrusted. The delegation is not handing over or transference of a power from one person or body of persons to another. The delegation may be defined as entrusting, by a person or body of persons, of the exercise of power residing in that person or body of person, to another person or body of persons, with complete power of revocation or amendment, remaining in the grantor or delegator as held in case reported as **1973 SCR (2) 879 (Gwalior Rayon Silk MFG (WVG) Co. v. Assistant Commissioner of Sales)**.

15. On the other hand, where individual can raise his concern in a such manner against the legislative domain, this Court has been guided by the principles set out in **2005 SCMR 186 (Khawaja Ahmad Hassan Vs. Government of Punjab and others)**, in which it

has been held that a Court is required to determine whether a piece of delegated legislation, is bad on the ground of arbitrary and excessive delegation, the Court must bear in mind the following principles:-

- (1) *The essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and this cannot be delegated by the Legislature.*
- (2) *The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act.*
- (3) *Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere.*
- (4) *What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of a particular Act with which the Court has to deal, including its Preamble.*
- (5) *The nature of the body to which delegation is made is also a guidance in the matter of delegation.*
- (6) *What form the guidance should take, will depend upon the circumstances of each statute under consideration, and cannot be stated in general terms. In some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary.*

16. By considering the above principle of delegated legislation, justifications for the same have been highlighted in the manner that firstly, there is pressure on parliamentary time. Second, the technicality of subject matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs as held in **2013 SCMR 642 (Zarai Taraqati Bank Ltd. v. Said Rehman, etc.)**. The concept of delegated legislation has gained momentum with mushroom population growth, the dire need for good governance and the ultimate aim to cater for the essential basic needs of every segment of society to bolster and fulfill the

attribute of Islamic Welfare State as held in **PLD 2011 Peshawar 120 (Khalid Mehmood v. NWFP through its Chief Secretary, Peshawar, etc.)**. It was further held in same judgment that the present day, the Parliament could not possibly legislate on each and every detail of vast legislative need, hence the delegated legislation, whereby the legislature through legislation delegated to the Government or any other specified authority to legislate through rules, regulations, orders, instructions or any other instrument in conformity with the dictates of the parent statute, therefore, this Court is in agreement with the arguments rendered by learned counsel for FBR that the rules amended through different SROs are in conformity with parents statutes having no illegality, which affects the fundamental rights of individuals, even the FBR has rightly exercised the powers of delegated legislation in terms of the Federal Exercise Act, 2005, Customs Act, 1969 and Sales Tax Act, 1990.

17. Now the question arises as to whether the petitioners are aggrieved persons in strict sense, especially when the sales tax, which was imposed by the Government on consumption of goods and services, is to be collected from the end consumers through retailers on taxable supplies in form of goods or services. The retailer collect the sales tax from the end consumer, in this scenario all the petitioners, who are not the end consumers in strict sense, rather they have supplied the goods, collected the sales tax and transmitted to the FBR, whereas the new Point of Sale (PoS) concept has been introduced as a software, in which the retailer has been directly linked with the FBR in the real time concept to save documentation of real time calculation of the sales tax by the FBR, therefore, all the SROs are meant to create a transparency and real time information, whereby all retailers/ present petitioners are only a middle tier persons dealing as a business man in the system and as such they

have not been deprived of their any rights, rather they only provide the data to the FBR through electronic mode, hence they do not fall within the concept of aggrieved person in terms of Article 199 of the Constitutional of Islamic Republic of Pakistan, 1973 in strict sense as held in **2007 PTD 1005 Karachi (Molasses Trading and Export Co. (Pvt.) Limited Vs. Government of Pakistan and others)**.

18. The primary concerns of the classification in Tier-1 has been objected by the petitioners, whereas legislative intent could not be suppressed on the interpretation made by the petitioners as the legislature has adopted a concept of modern progressive public revenues and to generate revenues, which may be used for running of the state and welfare of the people as held in **PLD 1997 SC 582 (Messrs Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others)**. It was further held in the said case that reasonable classification does not imply that every person should be taxed equally. Reasonable classification is permissible provided same is based on an intelligible differentia, which distinct persons or things that are grouped together from those who have been left out and that differentia must have rational nexus to the object sought to be achieved by such classification. In order to understand the classes of classification, certain principles have been laid down in the case of *Elahi Cotton Mills Ltd. supra*, which are as under:

- (i) *That equal to protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated like:*
- (ii) *That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*
- (iii) *That different laws can validly be enacted for different sexes, persons in different age groups,*

- persons having different financial standings, and persons accused of heinous crimes;*
- (iv) That no standard of universal application to test reasonableness of a classification can be laid down as what may be unreasonable in the other set of circumstances;*
 - (v) That a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;*
 - (vi) That equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*
 - (vii) That in order to make a classification reasonable, it should be based---*
 - (a) On an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*
 - (b) That the differentia must have rational nexus to the object sought to be achieved by such classification.*

19. The above mentioned test has been applied in this case, whereby no illegality has been surfaced, rather the argument rendered by the petitioner side against the definition of Tier-1 that the same is unreasonable and not based on intelligible differentia, is misplaced. Learned counsel for FBR highlighted the concept of Tier-1 with its history, which reveals that same was amended from time to time and there is likelihood that it may be amended to the extent that all kinds of sales by the retailers will be included in this concept with emerging future needs or to create a transparency in the entire revenue concepts. The historical perspective further confirms that it is the policy domain of the Government to consider all these aspects while considering the emerging needs through Finance Act promulgated every year, therefore, the question of as to whether the policy domain could be interfered with by the High Court in terms of Article 199 of

the Constitution of the Islamic Republic of Pakistan, 1973, the answer to said question has to be considered in the light of laid down in **2018 SCMR 211 (National Engineering Service Pakistan NESPAK (Pvt.) Ltd. v. Kamil Khan Mumtaz, etc.)**, whereby it was held by the apex Court that it was even otherwise beyond the jurisdictional domain of the High Court in exercise of its powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, to delve into highly technical and purely policy issues, which were better left to be dealt with by the experts having relevant knowledge, training and expertise in their respective fields and the competent authorities authorized and empowered by law to do so. Reference to aforesaid view of the apex Court was made to **Dossani Travels (Pvt.) Ltd. v. Travels Shop (Pvt.) Ltd. (PLD 2014 SC 1)**. The apex Court in series of judgments has held that policy making is the domain of the executive and courts normally do not interfere in such matters, but when a policy is violative of the fundamental rights of individual the Courts are obliged to examine such policy in judicial review as held in **2017 SCMR 206 (Shahid Pervez v. Ejaz Ahmad, etc.)**. This Court is mindful of the fact the Constitution of the Islamic Republic of Pakistan, 1973 is based on principle of trichotomy of power, where legislation is vested with functions of law making, the executive with its enforcement and judiciary with interpreting the law, as such, the Courts could not assume the role of policy maker nor that of the law maker, as held in **PLD 2015 SC 6 (Ghulam Rasool v. Government of Pakistan)**.

20. In view of above guiding principles, this Court is of the view that the rules promulgated through SRO in question have rightly been made within the four corners of its parent statute under the principle of delegated rule making authority and, as such, the Tier-1 retailers have to integrate their retail outlets through computerized

system for real time reporting of their sales. Section 40 of the Federal Excise Act, 2005 empowered the Board to implement the monitoring or tracking of production, sales, clearances, stocks or any other related activity in respect of any registered person or class of registered persons or any good or class of goods through electronic or other means as may be prescribed. Whereas, Section 219 of Customs Act, 1969 empowers the Board to make rules for carrying out the purposes of the Act and Section 50 of the Sales Tax Act, 1990 also stipulates that the Board may prescribe the use of computerized system for carrying out the purposes of the said Act. Hence, this Court is satisfied that power so vested has rightly been used, therefore, the question raised by the petitioner qua non reasonability of classification of individuals, who have been covered in Tier-1, is not legally justified as there is wider scope available to the policy domain of the Government, who can amend the definition while considering the emerging needs and they will not restrict themselves within the same definition subject to their own policy domain. The Point of Sale is not a harmful concept against the petitioners, who are just middle persons who are collecting agents receiving sales tax from the consumers/end users and transmitting the same to the Government treasury, for which a transparent monitoring system with modern concept of technology is required, as such, the same has rightly been applied, even otherwise, there is no violation of fundamental rights of the petitioners nor are they aggrieved in any strict sense.

21. For what has been discussed above, the captioned writ petitions are not maintainable and are liable to be dismissed, hence the same stand **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE