

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Ijaz ul Ahsan
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petitions No.890-K to 909-K/2023

(Against the Order dated 14.03.2023 passed by High Court of Sindh, Karachi in C.P Nos. 5389, 5245, 5004, 6120, 47, 361, 529, 530, 583, 5069, 5689, 6028, 7470, 7668, 7771/2021 and 241, 242, 474, 966/2023)

Collector of Customs & another
(in all cases)

...Petitioner(s)

VERSUS

M/s. Young Tech Private Limited & another	(in CP 890-K/23)
Club Mobile.(Pvt) Ltd. & another	(in CP 891-K/23)
M/s Bellco Trading Co.(Pvt) Ltd. & another	(in CP 892-K/23)
M/s Young Tech.(Pvt) Ltd. & another	(in CP 893-K/23)
M/s. Young Tech Private Limited & another	(in CP 894-K/23)
M/s. A.S.Telecom (Pvt) Ltd. & another	(in CP 895-K/23)
M/s.G' Five Mobile (Pvt) Ltd. & another	(in CP 896-K/23)
M/s. A.S.Telecom (Pvt) Ltd. & another	(in CP 897-K/23)
M/s Young Tech (Pvt) Ltd. & another	(in CP 898-K/23)
M/s.SSH Telecom SMC (Private) Ltd. & another	(in CP 899-K/23)
M/s. Inovi Teleco (Private) Ltd. & another	(in CP 900-K/23)
M/s. SSH Telecom SMC (Private) Ltd. & another	(in CP 901-K/23)
M/s. A.S.Telecom (Private) Limited & another	(in CP 902-K/23)
M/s. Young Tech (Private) Ltd. & another	(in CP 903-K/23)
M/s. G' Five Mobile (Pvt) Limited & another	(in CP 904-K/23)
M/s. Young Tech (Private) Ltd. & another	(in CP 905-K/23)
M/s. G' Five Mobile (Pvt) Limited & another	(in CP 906-K/23)
M/s. Young Tech (Private) Ltd. & another	(in CP 907-K/23)
M/s. Young Tech (Private) Ltd. & another	(in CP 908-K/23)
M/s. Young Tech (Private) Ltd. & another	(in CP 909-K/23)
M/s. A.S.Telecom (Private) Ltd. & another	...Respondent(s)

For the Petitioner(s):

Dr. Farhat Zafar, ASC
(in all cases)

9/w

Ms. Ume Kalsoom, D.C. Law East
Karachi

Mr.Nabeel Siraj, D.C Custom
(both via video link, Karachi)

For Respondent(s):

N.R.

Date of Hearing:

22.11.2023

ORDER

Ijaz ul Ahsan, J.- Leave to appeal is sought against the order dated 14.03.2023 of the High Court of Sindh, Karachi in C.P. No.D-5389 of 2022 etc. Through the impugned order a number of constitutional petitions filed by the respondents were allowed and it

was held that the demand for mobile handset levy on phones other than smart phones was unlawful and without jurisdiction.

2. Briefly stated the facts of the case are that the respondents had imported mobile phones and were aggrieved by the imposition of mobile handset levy under section 10 of the Finance Act, 2018 (**“Act”**) on mobile phones that were admittedly not smart phones. Section 10 of the Act imposed mobile handset levy on smart phones in the following terms:

“10. Mobile handset levy---(1) There shall be levied a Mobile handset levy, at the rates specified in column (3) of the Table below, on **smart phones** of different categories as specified in column (2) of the said Table, namely:

TABLE

Sr. No.	Category of smart phone	Rate of levy per set in rupees
(1)	(2)	(3)
1.	Where Import value of handset (including duties and taxes) does not exceed Rs.10,000/-	Nil
2.	Where Import value of handset (including duties and taxes) exceeds Rs.10,000 but does not exceed Rs.40,000/-	1000
3.	Where Import value of handset (including duties and taxes) exceeds Rs.40,000 but does not exceed Rs.80,000/-	3000
4.	Where Import value of handset (including duties and taxes) exceeds Rs.40,000 but does not exceed Rs.80,000/-	5000

Section 10 of the Act was supported by a table which gave categories of smart phones and the rates of levy per set. It was also stated that the Federal Board of Revenue shall collect the levy on mobile handsets in the prescribed manner.

3. It appears that subsequently in the Finance Act, 2022, the table of section 10 was amended and the amended table replaced the words “category of smart phone” with the words “Mobile Phones having C&F Value (US Dollars)”. The case of the respondents was that mobile handset levy was imposed only on smart phones and since the imported consignments admittedly did

not fall under that category, recovery of the levy was unlawful. The stance of the department was that by changing the table, it had been conferred the power to recover the said levy not only on the smart phones but also on the ordinary phone which did not fall in the category of smart phones. It was, however, stated before the High Court that the respondents had made a representation which had been referred to the Federal Board of Revenue. However, in the representation sent by the Collector, with which he appears to have agreed, it was clearly stated as follows:

“The collectorate is of view that contention of the importers’ merits consideration as originally in Finance Act, 2018, the handset levy was meant for Smart phones only and now the same is being also charged on low cost feature mobile phones imported in CKD/SKD condition. Accordingly, the above referred representation of the importer may be referred to the Finance Division for clarification as to whether the said levy is applicable on both Smart and Feature phones or Smart phones only.”

4. The High Court came to the conclusion that without amending the charging section, and merely by amending the table, the levy could not be recovered. The reference to the table was to the extent of the rates which were to be specified and in view of the fact that the charging section, namely, section 10 of the Act remained unaltered, by a mere substitution of column in the heading of the table, the charging section itself could not and did not stand altered or amended.

5. The learned counsel for the petitioners has argued that the intention of the legislature was clear that the phones other than smart phones were also subjected to the levy and such intention was reflected in the table. The argument has not appealed to us in view of the fact that the right to recover any levy rests in the

charging section and not in the table that specifies the rates at which such charge is to be recovered. The power to recover a levy is anchored in the charging section and the table is merely meant to prescribe the rates at which such levy is to be recovered on various goods/items. Unless the charging section confers a power to recover a levy on an article or class of goods, mere mention of a different class, types or category of goods clearly goes beyond the scope of the charging section. This, in our opinion, cannot be done. A schedule/table is merely a supplement of the charging section and cannot go beyond it and create a new and altogether different levy on a different class of goods not mentioned or contemplated by the charging section. We have gone through the order of the High Court which has examined the original section as well as the amendments made therein and recorded conclusions which are duly supported by settled law on the subject. We find no error, legal or jurisdictional in the impugned order of the High Court which is in-line with settled principles of law on interpretation of fiscal statutes and tax laws.

6. Consequently, we do not find any merit in these petitions. The same are accordingly dismissed. Leave to appeal is refused.

ISLAMABAD
22.11.2023
Naseer

Not approved for Reporting