

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Shahid Waheed  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Aqeel Ahmed Abbasi

**CIVIL APPEALS NO.350 TO 698 OF 2016, 424, 511, 512, 673, 1183 AND 1184 OF 2020, CIVIL PETITION NO.1066 OF 2018, CRIMINAL APPEAL NO.177 OF 2019 AND C.M.A. NO.12231 OF 2021 IN CIVIL APPEAL NO.673 OF 2020.**

*(Against the judgments/order dated 19.09.2013, 20.03.2014, 02.04.2015, 07.04.2015, 16.03.2015, 26.07.2016, 18.10.2017 and 11.12.2018 of the Lahore High Court, Lahore, High Court of Sindh, Karachi, Peshawar High Court, Peshawar and Islamabad High Court, Islamabad passed in Writ Petitions No.5047/2012, 17743/2012, 11294/2012, 27865/2011, 21612/2012, 873/2011, 28231/2012, 10852/2012, 11297/2012, 10698/2012, 2726/2011, 18221/2012, 10456/2012, 9652/2012, 11519/2012, 22738/2011, 11455/2012, 7918/2012, 6743/2012, 20298/2011, 18058/2011, 27422/2011, 26489/2011, 9020/2011, 12384/2012, 10908/2011, 7029/2011, 18029/2012, 10330/2012, 8256/2011, 9654/2012, 11268/2012, 27863/2011, 21725/2011, 15927/2011, 417/2012, 9736/2012, 5634/2012, 6794/2012, 25182/2011, 11746/2012, 12568/2011, 27864/2011, 9048/2012, 20261/2012, 10838/2012, 14436/2011, 9324/2012, 11555/2012, 418/2012, 11030/2012, 20160/2012, 9616/2012, 11745/2012, 5048/2012, 21611/2012, 15791/2012, 10688/2012, 7188/2012, 8695/2011, 17106/2012, 9936/2012, 26855/2011, 5381/2012, 25622/2012, 9017/2012, 9017/2012, 8402/2012, 10246/2012, 26857/2011, 25623/2012, 9655/2011, 9107/2012, 10499/2012, 9653/2012, 15281/2012, 17286/2012, 11921/2012, 9570/2012, 8257/2011, 15660/2012, 15470/2012, 9104/2012, 14136/2012, 11922/2012, 9354/2011, 13991/2012, 29671/2011, 15179/2012, 6391/2012, 18098/2012, 10330/2012, 9019/2011, 6848/2011, 10331/2012, 10331/2012, 16754/2012, 16997/2012, 887/2012, 6878/2013, 5300/2012, 9086/2012, 5334/2014, 7802/2011, 7895/2011, 8190/2012, 21449/2013, 9742/2012, 9742/2012, 11665/2012, 11021/2012, 21884/2013, 7686/2011, 21671/2012, 8568/2012, 10674/2011, 13721/2011, 9047/2012, 9087/2012, 13721/2011, 9651/2012, 11298/2012, 12159/2011, 18521/2011, 5885/2012, 22737/2011, 6572/2013, 15471/2012, 22075/2012, 10598/2012, 19218/2012, 8926/2011, 7670/2012, 20657/2012, 17332/2012, 26554/2010, 3173/2012, 3173/2012, 19219/2012, 7877/2012, 20297/2011, 10341/2012, 6001/2012, 8740/2012, 13969/2012, 7917/2012, 24736/2012, 24736/2012, 11923/2012, 17447/2012, 9614/2012, 19673/2012, 20658/2012, 8271/2012, 6547/2013, 5246/2013, 5139/2013, 9041/2011, 19862/2011, 31741/2012, 8359/2011, 9157/2012, 9355/2013, 8226/2012, 9500/2012, 14205/2012, 20657/2012, 22447/2012, 8786/2012, 17447/2012, 8191/2012, 20657/2012, 11268/2012, 7648/2012, 19674/2012, 11300/2012, 11744/2012, 8848/2012, 11027/2012, 15251/2012, 8494/2012, 20922/2012, 8492/2012, 20674/2012, 9506/2012, 8943/2012, 9047/2012, 7658/2012, 9872/2012, 9512/2012, 8270/2012, 9504/2012, 7514/2012, 9503/2012, 9505/2012, 9505/2012, 12631/2012, 9113/2012, 9616/2012, 9615/2012, 9876/2012, 17918/2012, 26440/2012, 11137/2012, 14874/2012, 13838/2012, 11138/2012, 9166/2012, 6572/2013, 11544/2012, 888/2013, 888/2013, 13426/2012, 367/2013, 14784/2012, 14784/2012, 13805/2013, 368/2013, 5450/2013, 9255/2012, 16622/2011, 9486/2012, 16328/2012, 13577/2012, 27742/2012, 9158/2012, 11020/2012, 16810/12, 16811/12, 16812/12, 16813/12, 7657/2012, 10926/2012, 14784/2012, 17815/2012, 18758/2012, 25801/2012, 5109/2013, 5138/2013, 6412/2013, 8994/2012, 12461/2012, 22571/2012, 6572/2013, 20452/2013, 17589/2012, 5450/2013, 132/2013, 7074/2013, 22231/2013, Const.P.D-2273/2011, C.P.D-814/2012, 21438/2013, 21440/2013, 21440/2013, 26815/2012, 9920/2012, 22594/2012, 29753/2012, 21439/2013, 9873/2012, 12160/2011, 29411/2012, 18015/2011, 27352/2012, 11296/2012, 8154/2011, 1082/2012, 29563/2012, 11666/2012, 7406/2011, 20004/2012, 16607/2011, 9656/2011, 58/2013, 26568/2010, 109/2013, 22908/2013, 9045/2012, 11359/2011, 15800/2012, 2941/2012, 1110/2013, 9219/2011, 12493/2012, 20092/2012, 7056/2013, 29603/2012, 28912/2012, 8647/2011, 27866/2011, 110/2013,*

23251/2010, 5333/2012, 9018/2011, 28142/2012, 26856/2011, 57/2013, 11256/2011, 12153/2011, 4580/2011, 9118/2011, 711/2013, 2145/2013, 5049/2012, 4478/2010, 2379/2012, 1985/2012, 19644/2011, 1043/2012, 11343/2011, 61/2013, 21441/2013, 4439/2010, 29751/2012, 11972/2012, 23402/2012, 29582/2011, 19107/2011, 59/2013, 27266/2011, 27803/2012, 10498/2012, 13031/2012, 1686/2012, 60/2013, 9423/2012, 7695/2012, 13657/2011, 8015/2012, 12670/2012, 4440/2010, 4440/2010, 26814/2012, 21770/2013, 17671/2013, 10935/2012, 26555/2010, 27578/2012, 24686/2011, 29653/2012, 6795/2012, 26769/2010, 12104/2012, 1879/2013, 6230/2012, 1076/2012, 1400/2011, 7315/2013, 34364/2015, 33510/2015, 45696/2017 and Cr.A.134/2017).

**C.A.350/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. Taj International (Pvt) Ltd & others

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Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Matchless Engineering (Pvt) Ltd & another

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**C.A.353/2016**

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**C.A.355/2016**

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**C.A.358/2016**

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**C.A.359/2016**

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**C.A.360/2016**

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**C.A.361/2016**

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**C.A.362/2016**

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**C.A.363/2016**

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**C.A.364/2016**

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**C.A.430/2016**

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**C.A.438/2016**

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**C.A.439/2016**

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Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Matchless Engineering (Pvt) Ltd

**C.A.448/2016**

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others v. M/s Panther Sports & Rubber Industries (Pvt) Ltd & others

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**C.A.466/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Shaheen Gatta Factory & another

**C.A.467/2016**

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**C.A.468/2016**

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Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Super Oil Traders & others

**C.A.487/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Metal Craft through its

Partner

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**C.A.489/2016**

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**C.A.490/2016**

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**C.A.494/2016**

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**C.A.504/2016**

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**C.A.505/2016**

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**C.A.506/2016**

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**C.A.507/2016**

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**C.A.508/2016**

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**C.A.509/2016**

Directorate of Intelligence & Investigation-Inland Revenue, through its Director & others v. M/s Boxworks & others

**C.A.510/2016**

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**C.A.511/2016**

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**C.A.513/2016**

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**C.A.514/2016**

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**C.A.515/2016**

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**C.A.516/2016**

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**C.A.517/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Ch. Aamir Ghafoor Brothers & another

**C.A.518/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Idrees & Co. & another

**C.A.519/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s A.M. Enterprises & others

**C.A.520/2016**

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**C.A.521/2016**

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**C.A.522/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s A.S. Packages & others

**C.A.523/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Zahid Packages & another

**C.A.524/2016**

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**C.A.525/2016**

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**C.A.526/2016**

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**C.A.527/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Trilogy Trading Corporation & another

**C.A.528/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Ali Packages & another

**C.A.529/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Universal Tobacco Company (Pvt) Ltd & another

**C.A.530/2016**

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**C.A.532/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Shifa Board (Pvt) Ltd & another

**C.A.533/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Maaher Food Industries & another

**C.A.534/2016**

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**C.A.535/2016**

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**C.A.536/2016**

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**C.A.537/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Pilot Computer System

**C.A.538/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Prime Cartons Company Ltd & another

**C.A.539/2016**

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**C.A.540/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Malik Board & Paper Industries

**C.A.541/2016**

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**C.A.542/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Siraj Paper Board Mills & another

**C.A.543/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Shabbir Packages & another

**C.A.544/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Best Paper Board Mills

**C.A.545/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Excellent Packers (Pvt) Ltd & another

**C.A.546/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Salman Ali Packages & others

**C.A.547/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Al-Makka Press (Pvt) Ltd & another

**C.A.548/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Trust Traders & another

**C.A.549/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s New Falcon Packages & another

**C.A.550/2016**

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Investigation-IR, through its Director & others v. M/s Crest Pack & another

**C.A.551/2016**

Directorate of Intelligence & Investigation-IR, through its Director & others v. M/s Al-Badar Engineering Company (Pvt) Ltd & others

**C.A.552/2016**

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**C.A.553/2016**

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**C.A.554/2016**

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**C.A.555/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Diamond Paper & Board Mills (Pvt) Ltd & another

**C.A.556/2016**

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**C.A.557/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Vital Engineering & Services & others

**C.A.558/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Chaudhry Enterprises & others

**C.A.559/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Adnan Traders & another

**C.A.560/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Gujranwala Paper & Board Mills & others

**C.A.561/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Gujranwala Paper & Board Mills & others

**C.A.562/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Fame Exports & Inam Papers Mills & others

**C.A.563/2016**

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**C.A.564/2016**

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**C.A.569/2016**

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**C.A.570/2016**

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**C.A.571/2016**

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**C.A.572/2016**

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**C.A.573/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. Tariq Jamal ud Din Awan & others

**C.A.574/2016**

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**C.A.575/2016**

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**C.A.576/2016**

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**C.A.579/2016**

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**C.A.586/2016**

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**C.A.587/2016**

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**C.A.588/2016**

Directorate General of Intelligence & Investigation-IR through Director Intelligence & Investigation-IR, Lahore, etc v. M/s. Lahore Textile & General Mills Ltd., Lahore etc

**C.A.589/2016**

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**C.A.591/2016**

Directorate General of Intelligence & Investigation-IR through Director Intelligence & Investigation-IR, Lahore, etc v. M/s Salman Ali Packages, Farrukh Abad Baradari Road, Shahdara, Lahore , etc

**C.A.592/2016**

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**C.A.593/2016**

Deputy Director, Directorate of Intelligence \* Investigation-IR, through Director Intelligence & Investigation-IR, etc v. M/s Chaudhry Enterprises, Faisalabad , etc

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**C.A.595/2016**

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**C.A.596/2016**

Directorate General of Intelligence & Investigation-IR through Director Intelligence & Investigation-IR, Lahore, etc v. M/s. Al-Karim Industry (Pvt.), etc

**C.A.597/2016**

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**C.A.605/2016**

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**C.A.606/2016**

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**C.A.611/2016**

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**C.A.612/2016**

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**C.A.613/2016**

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**C.A.614/2016**

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**C.A.615/2016**

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**C.A.616/2016**

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**C.A.617/2016**

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**C.A.618/2016**

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**C.A.620/2016**

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**C.A.625/2016**

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**C.A.626/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Sadaqat Ltd & others

**C.A.627/2016**

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**C.A.628/2016**

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**C.A.632/2016**

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**C.A.633/2016**

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**C.A.634/2016**

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**C.A.635/2016**

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**C.A.636/2016**

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Investigation-FBR, through its Director & others v. M/s Siemex Traders & others

**C.A.637/2016**

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**C.A.638/2016**

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**C.A.641/2016**

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**C.A.642/2016**

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**C.A.645/2016**

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**C.A.646/2016**

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**C.A.651/2016**

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**C.A.653/2016**

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**C.A.654/2016**

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**C.A.655/2016**

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others v. M/s H.S Auto Motive

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**C.A.660/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s International Automotive Engineers (Pvt) Ltd & another

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**C.A.663/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Innovative Technologies & others

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**C.A.665/2016**

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**C.A.666/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Gaias Butt & others

**C.A.667/2016**

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**C.A.669/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Khalid Brothers & others

**C.A.670/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s M.J. Brothers & others

**C.A.671/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Taj International (Pvt) Ltd & another

**C.A.672/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. Mrs. Aneeqa Amir & others

**C.A.673/2016**

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**C.A.674/2016**

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**C.A.676/2016**

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**C.A.681/2016**

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**C.A.682/2016**

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**C.A.684/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Harmain Engineering Company & others

**C.A.685/2016**

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**C.A.688/2016**

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**C.A.690/2016**

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**C.A.691/2016**

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**C.A.692/2016**

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**C.A.693/2016**

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**C.A.694/2016**

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**C.A.695/2016**

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**C.A.696/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. Muhammad Abbas & another

**C.A.697/2016**

Directorate of Intelligence & Investigation-FBR, through its Director & others v. M/s Saleem Butt Shopping Bags & others

**C.A.698/2016**

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**C.A.511/2020**

Additional Director Intelligence and Investigation FBR, Peshawar v. M/s Pakistan Accumulators Pvt. Ltd & others

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Additional Director Intelligence and Investigation FBR, Peshawar v. M/s Pakistan Accumulators Pvt. Ltd & others

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Directorate General of Intelligence & Investigation-IR , Regional Tax Office Building, Faisalabad, etc v. M/s. Al-Madina Plastic Works, Faisalabad

**C.M.A.12231/2021**

Directorate General of Intelligence & Investigation-IR , Regional Tax Office Building, Faisalabad, etc v. M/s. Al-Madina Plastic Works, Faisalabad

**C.A.1183/2020**

Federation of Pakistan through its Secretary, Revenue Division, Islamabad, etc v. Kashif Zia

**C.A.1184/2020**

Federation of Pakistan through its Secretary, Revenue Division, Islamabad, etc v. Saif-ur-Rehman

For the Appellant(s)/  
Petitioner(s)/  
Applicant(s)

: Mr. Salman Akram Raja, ASC  
alongwith Dr. Ishtiaq Ahmed Khan,  
DG (Law) FBR  
Mr. Aqeel A. Sidduqui, DG I&I-IR  
Ch. Muhammad Zafar Iqbal, ASC  
Mr. Muhammad Umer Riaz, ASC  
(via video link from Lahore)  
Mr. Izhar ul Haq, ASC  
(via video link from Lahore)  
Dr. Farhat Zafar, ASC  
(in CA No.600/16)

For the Respondent(s)

: Syed Ali Zafar, ASC  
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High Court

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For the Respondent(s) : Mr. Imtiaz Rashid Siddiqui, ASC  
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 Mr. Hassan Kamran Bashir, ASC

Assisted by: Ms. Zainab Bashir, Judicial Law Clerk,  
 Supreme Court of Pakistan

Date of Hearing : 04.12.2024.

### **JUDGEMENT**

**AQEEL AHMED ABBASI, J.-** Through this consolidated judgment, we intend to decide all the listed matters as they involve common questions of law.

2. In the above bunch of cases, the judgment dated 19.09.2013, passed by the Divisional Bench of Lahore High Court, is the first judgment, wherein, after detailed scrutiny of the facts and the examination of the relevant legal provisions, particularly, the scope and the application of Section 37A of the Sales Tax Act, 1990 (the "**Act**"), as well as legality of pre-trial steps including arrest and detention of a person pursuant to registration of FIR on the charges of tax fraud, has been decided. Whereas, in nutshell, it has been held by the Lahore High Court that unless the sales tax

liability of the taxpayers is determined in accordance with Section 11 of the Act, above penal provisions, cannot be invoked, therefore, the criminal proceedings initiated by the sales tax department, the registration of FIRs and arrest made pursuant to FIRs, is illegal and without lawful authority. Accordingly, the same were quashed for being unconstitutional, violative of fundamental right, *ultra vires* to the Sales Tax Act, 1990. The reasoning of the above conclusion by the Division Bench of the Lahore High Court will be discussed in detail in later part of the judgment for being more elaborate and exhaustive on the legal issue to be decided by us. In Civil Appeal No.511/2020 arising out of judgment dated 07.04.2015 passed by the Peshawar High Court in Writ Petition No.1076-P/2012 titled Pakistan Accumulator (Pvt) Ltd. Vs. Federation of Pakistan, under similar facts and circumstances, registration of FIR was declared to be, without jurisdiction and of no legal effect, consequently, the same was quashed while placing reliance in the judgment of the Lahore High Court in the case of Taj International (Pvt) Ltd. vs. F.B.R. (2014 PTD 1807) as referred to hereinabove. Whereas, in Criminal Appeal No.177/2019 titled as Directorate of Intelligence & Investigation, F.B.R. Vs. Naeem Ahmed Siddiqui filed against the order dated 11.12.2018 passed by the learned Single Judge of Islamabad High Court in Criminal Appeal No.134/2017, similar FIR has been quashed and the SRO 116/2015 has been declared to be *ultra vires* vide judgment dated 06.07.2018 in the case of M/s. F. M. Textile and others vs. F.B.R (2017 PTD 1875 Lahore), whereas, reliance has also been placed in the case of Taj International (Pvt) Ltd. vs. F.B.R. etc. (2014 PTD 1807). In the aforesaid judgment, in addition to determination of scope, and application and initiation of proceedings under the provisions of Section 37A of the Act before assessment or determination of sales tax liability, the provisions of Section 74A incorporated through amendment dated 31.10.2018 made in the Sales Tax Act, 1990, have also been examined, and it has been held that validation provision does not cover Section 30 (E), rather it only provides protection to the extent of appointment in terms of Section 30(A), whereas, since the Notification SRO 116(1)/2015 was issued by the FBR and not by the Director General (Intelligence & Investigation) as referred in Section 30(A), therefore, powers conferred under aforesaid SRO were not available to the

complainant of FIR No.08/2015, hence, registration of criminal cases, which was not validly authorized, is of no legal effect, which otherwise could not be given retrospective effect.

3. In Civil Appeal No.600/2016 filed against the judgment of Sindh High Court in C.P.No.D-2273/2011 and others in the case of Waseem Ahmed and another vs. Federation of Pakistan (2014 PTD 1734), whereby, 485 Constitutional Petitions were filed against registration of FIRs and submission of interim challan by the Directorate of Intelligence & Investigation, FBR, on the allegations of tax fraud, issuance of fake sales tax invoices to claim inadmissible input adjustment/refund of sales tax, however, before determination or assessment of tax liability under the Sales Tax Act, 1990. The Divisional Bench of the High Court of Sindh, after having examined the relevant facts and law applicable here to, decided the same in the following terms:-

*“62. Accordingly, in light of the foregoing discussion and analysis, and subject to the last preceding paragraph, we dispose off these petitions in the following terms:*

A. As to the jurisdictional point:

- a. SRO 48/2008 is declared to have been validly issued and effective accordingly.
- b. SRO 56/2010 is declared to be invalid, but its invalidity merely meant that SRO 48/2008 continued to effectively hold the field.
- c. SRO 775/2011 is declared to be ultra vires the Sales Tax Act.
- d. SRO 776/2011 is declared to be invalid, but its invalidity merely meant that, as before, SRO 48/2008 continued to effectively hold the field.
- e. Notwithstanding the changes in Sections 30 and 30A, SRO 48/2008 continued to remain effective for all purposes and it is declared that for the reasons as stated (i) the reference therein to officers of Sales Tax subsequently became a reference to officers of Inland Revenue, and (ii) the reference to the DG (I&I)-FBR subsequently became a reference to the DG (I&I)- IR.
- f. Notwithstanding sub-paragraph (e), it would be appropriate if FBR, in supersession of previous notifications, issues a fresh notification under Sections 30 and 30E that complies with both the required conditions, i.e., declares the officers of the DG (I&I)-IR “to be” officers of Inland Revenue (Section 30) and establishes their jurisdiction, etc. in relation to specified provisions (Section 30E).

B. As to registration of FIRs, submissions of challans and notices under Section 37 in relation to the criminal cases:

- g. The FIRs, and the challans submitted and notices issued on or before 30.06.2011 and any investigation carried out by or before that date were validly issued and undertaken by the officers of the DG(I&I)-FBR and within jurisdiction.
- h. The challans submitted and notices issued on or after 01.07.2011 by officers of the DG(I&I)-FBR were irregular as this Directorate General had ceased to be

*of relevance for the Sales Tax Act on and after that date, but for reasons stated such irregularity does not vitiate their validity nor invalidate any investigation or inquiry nor render defective or invalid any proceedings taken before the Special Judge by such officers.*

- i. All acts and proceedings with regard to the criminal cases (including by way of any further investigation) can now be done and/or continued only by officers of the DG(I&I)-IR, duly authorized and empowered under SRO 48/2008 or any subsequent validly issued notification. References herein below to “prosecution” shall thus mean and be references to the officers of the DG(I&I)-IR.*
- j. If at any time the Federal Government validly exercises its powers under Section 37B (13), this paragraph 62 shall apply, mutatis mutandis, to the officers so notified.*

.C. As to proceedings before the Special Judge:

- k. The Special Judge has jurisdiction only in relation to those clauses of Section 33 as create criminal offences.*
- l. The proceedings pending before the Special Judge shall be taken and continued only in the manner as herein after stated, except bail applications and proceedings in the nature of Section 265-K, CrPC, which may be taken up at any time in accordance with law. However, the listing and/or hearing of the applications under Section 265-K shall be subject to such case management directions as the Special Judge may deem appropriate.*
- m. The prosecution shall, within eight weeks, or such further time as may be granted by the Special Judge distinguish, identify, isolate and establish the relevant supply chains in respect of the transactions in relation to which challans have been submitted, in the first instance limiting the exercise only to those persons nominated in the challans, clearly showing the various suppliers along each supply chain and identifying the other persons (if any) who are accused of tax fraud as abettors, or connivers or are otherwise alleged to be involved in respect of any transaction along any supply chain amounting to any criminal offence under the clauses of Section 33.*
- n. Once the supply chains have been established as above (or as each supply is so established, as the Special Judge may deem appropriate) the prosecution shall in respect of each such chain satisfy the Special Judge, “link” by “link”, “block” by “block” in the manner as stated herein above, as to the alleged culpability of each person appearing on the supply chain and every other person (if any) alleged to be an abettor, conniver or otherwise involved in the tax fraud or any other criminal offence under the clauses of Section 33.*
- o. The person whose matter is being so considered by the Special Judge shall be entitled to be present or represented at such consideration.*
- p. If the Special Judge is satisfied that, on applying the law, inter alia, in terms as stated and explained in this judgment, there is no probability of the person under consideration being convicted of the criminal offence of tax fraud or any other criminal offence under any clause of Section 33, such person shall be discharged forthwith, whether by way of acquittal or otherwise as appropriate.*
- q. In considering the case of any person, the Special Judge shall, inter alia, take into consideration the*

- acquittal (if any) of any person antecedent or subsequent (as the case may be) on the relevant supply chain for the reasons as explained herein above (see in particular para 50).
- r. Once the supply chains have been considered as above, the Special Judge shall then proceed to consider the challans in respect of the persons not discharged or acquitted in terms as above and shall then (without prejudice to the next succeeding sub-paragraph (s)) if he is satisfied with regard to the challans proceed to try such persons in accordance with law. It is clarified that nothing in this paragraph 62 shall preclude the Special Judge from considering in accordance with law an application moved by an accused under Section 265-K CrPC at or during such trial.
  - s. The prosecution may at any stage, but with the prior permission of the Special Judge to be given in writing, continue investigation in respect of any supply chain identified and established in terms of sub-paragraph (m), but any person nominated on the basis of such further investigation shall, before he is put to trial, be dealt with in the first instance, *mutatis mutandis*, in the manner as herein before stated. It is clarified that the investigation referred to in this sub-paragraph includes proceedings in respect of or under any notice already issued under Section 37.
  - t. Without prejudice to the next succeeding sub-paragraph (u), the accused on each supply chain shall be tried together but separately from the accused of another supply chain unless the Special Judge, for reasons to be recorded in writing, concludes that it would be appropriate to hold one trial in respect of more than one supply chain. Thus, it is expected that there will be more than one trial and it may be that one person, if he is an accused on more than one supply chain, will be tried in like manner. For purposes of proper case management of the trial(s) or for any other direction or guidance consistently with this judgment that may be deemed necessary, the Special Judge (but only he) may apply, either himself or on the request of the prosecution or any accused, for directions from the High Court. Any such application shall be placed before the Hon'ble Chief Justice for such orders, directions or disposal as are deemed appropriate.
  - u. Nothing in sub-paragraph (t) shall prevent the Special Judge, for reasons to be recorded in writing, for ordering the trial of any person or persons in a manner other than that specified in the said sub-paragraph (t) if the offence(s) of which the said person or persons are to be charged do not include the offence of tax fraud. It is however clarified that no such trial shall prevent the subsequent trial, if so warranted in accordance with law, of any such person or persons for the offence of tax fraud.
  - v. Any person who has given (or may at any stage be required to give) post dated cheque(s) or other security may be required by the Special Judge to keep the cheque(s) from going stale in such manner as the latter may deem appropriate, but any such cheque(s) shall not be ordered to be encashed nor any such security forfeited except (i) on account of violation of any bail granted should such person be on bail; or (ii) on the conviction of the said person for any criminal offence and then only in relation to payment of any fine that may be imposed by the Special Judge.

D. As to proceedings in respect of Section 37 notices already issued in relation to the FIRs and further investigations in respect of the FIRs/criminal cases:



- w. *These matters shall be dealt with in terms as stated in subparagraph (s) above. E. As to proceedings in respect of Section 37 notices issued in relation to tax fraud or any other act by way of departmental proceedings (i.e., not for a criminal offence):*
- x. *These proceedings may be continued in accordance with law. However, if such proceedings terminate (either at the show cause or any appellate or subsequent stage) in favor of the person against whom they were initiated, and such person is also nominated in terms as herein before stated and proceedings against him are continuing before the Special Judge, the relevant order may be placed before the latter and he shall, after giving notice to the prosecution, and treating the matter before him as being under Section 265-K, CrPC or of such nature, consider the person's case, mutatis mutandis, in terms of sub-paragraph (p). In the present context, the Special Judge shall, in particular, keep in mind para 59 of this judgment.*

*63. The petitions stand disposed of in the above terms. The office is directed to immediately send a copy of this judgment to the Special Judge for implementation. There will be no order as to costs."*

4. Since the judgment of Lahore High Court being the first judgment on the legal issues involved in the above cases, therefore, we will examine the relevant facts giving rise to filing of large number of Constitutional Petitions before the Lahore High Court. As per the facts recorded by the Lahore High Court, the criminal prosecution was initiated under Sections 37A and 37B of the Act for the alleged offence of tax fraud against 134 persons along with "other beneficiary being sale tax registered persons of the tax fraud" and "other persons due to whose criminal negligence/connivance, the tax fraud occurred/was committed." The Additional Director, Intelligence & Investigation, FBR, Regional Office, Lahore documented the said allegations in the shape of First Information Report (FIR No.4/2011) dated 26.3.2011, which reveals that on receipt of some credible information, a cartel of fraudsters was involved in the issuance of fake sales tax invoices for the purposes of generating illegal/inadmissible input tax adjustments. Accordingly, criminal prosecution was initiated against some persons, which further led to unearthing of a mega scam of sales tax evasion of Rs 7.5 billion involving 144 dummy suppliers who " issued fake sales tax invoices." As per the said FIR, this gang of fraudsters issued fake invoices to various registered persons who claimed input tax on the basis of the same causing a huge loss to the exchequer. It has, therefore, been alleged that respondents have committed the offence of tax fraud, therefore,

liable to arrest and criminal prosecution. Similar allegations have been levelled in other FIRs in the connected matters.

5. Being aggrieved and dissatisfied with the registration of FIR and initiation of criminal proceedings on the allegation of tax fraud, a large number of aggrieved persons approached the Lahore High Court, by filing Writ Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayers:

*"In view of the above, it is most respectfully prayed that this honorable Court may graciously declare and direct that the notification no. SRO 56(1)/2010 dated 02-02-2010 and subsequent SROs Issued by. the respondent Federal Board of Revenue, the constitution of the Directorate of Intelligence and Investigation as well as lodgment of all proceedings/reports under unlawful exercise of powers with reference to Section 2(37) and Sections 37, 37A, 37B, 38, 38A, 38B, 40, 45B, 46 and 47, In absence of a valid notification under Section 30, 30A and 30E of the Sales Tax Act 1990, is without lawful authority and is of no legal effect; the same be struck down accordingly.*

*It is further prayed that during pendency of proceedings before this honorable Court the Impugned SRO be suspended and the proceeding under the impugned actions may graciously be suspended and the respondent's authorities be restrained from proceeding further in any manner with Investigating and or arrest the petitioners/directors / officers till decision of the case herein; the encashment of the furnished cheques be also restrained."*

6. The thrust of the arguments of the learned counsel representing the petitioners (respondents before this Court) before the Divisional Bench of the High Court in the aforesaid cases was that the criminal prosecution including arrest of a person under Section 37A of the Act can only be made after the tax liability of a person has been duly assessed under Section 11 of the Act. While referring to the list of offences under Section 33 of the Act, the learned counsel for the petitioners laid emphasis on, the term ""shall be further liable" appearing in the column of penalties to underline its chronological significance. They submitted that only after determination of the tax liability (i.e, civil liability) through assessment and adjudication, criminal prosecution can be initiated in case of tax fraud. It was further argued that under Section 37A (4), the Commissioner at any stage can compound the offence if the taxpayer pays the amount of tax due alongwith default surcharge and penalty as is determined after the assessment of tax liability under the Act. It was further argued that the fines available under Section 33 of the Act are dependent on the amount of "tax

involved" hence no sentence can be awarded unless the amount of sales tax is first determined, which Authority is not vested in the Special Judge, especially, when civil adjudication system for determination of amount of sales tax is specifically provided for under the Act. In the present case and in many other cases, it has been additionally pointed out that, the learned Appellate Tribunal Inland Revenue under the civil adjudicatory system, has already held that the petitioner has not committed any tax fraud and therefore, is not liable for any additional tax liability or penalties. However, according to learned counsel for appellants/petitioners, the respondents are still pursuing with the criminal prosecution, without any factual or legal justification against the petitioners. Reference in this regard has been made to an Order of the ATIR, Lahore dated 5-6-2012 passed in STA No. 478/LB/2012. It was also argued that the Additional Director, Intelligence and Investigation, FBR does not have the jurisdiction to initiate criminal prosecution, as the said Directorate exercises no jurisdiction under the Act.

7. Conversely, the learned counsel representing the respondents (appellants/petitioners before this Court) in the Writ Petition before the Divisional Bench of Lahore High Court, argued that civil and criminal proceedings are not mutually exclusive, hence, can be initiated and proceed simultaneously, whereas, the department has been given the choice to opt for either of the two enforcement mechanisms. According to learned counsel for respondents, criminal prosecution can be triggered if material evidence is available and the concerned officer has reason to believe that the taxpayer has committed tax fraud or any offence warranting prosecution. According to learned counsel, the term "shall be further liable" appearing in the list of penalties under Section 33 of the Act does not have a chronological significance, but in fact provides for two different sets of penalties; one on the civil side and the other on the criminal side and both of them are, independent of each other.

8. It is also pertinent to note that during course of hearing before the Divisional Bench of Lahore High Court, learned counsel for the respondent department frankly volunteered to submit that recourse to recovery of tax under the civil regime of the Act has not proven effective over the years and, therefore, criminal

prosecution is the preferred choice of the department in cases where there is material evidence attracting Section 37A. It was further argued that compoundability of the offence is on the basis of the amount of tax due according to the calculation of the respondent department, rather than on the basis of the amount determined through adjudicatory process under the Act. According to learned counsel assessment of tax due through civil adjudication under the Act has no bearing on the initiation of criminal proceedings against the person who is involved in tax fraud, whereas, criminal investigation and arrest supports the assessment and adjudication of tax liability of a registered person. Mr. Salman Akram Raja, learned ASC appearing on behalf of the appellants/petitioners in the above matters while re-iterating hereinabove submissions made before the Division Bench of the Lahore High Court has further submitted that as per scheme of the law the Inland Revenue Officer is empowered to proceed against the registered person only for the purposes of assessment of tax liability under Section 11 of the Act whereas, the provisions of Section 37A read with Section 37B can be invoked against the persons who were abettors and connivers in the commission of tax fraud who generate fake invoices in order to enable the registered tax payer to evade the tax. According to learned counsel, in order to ensure tax compliance and to create deterrence against the commission of tax fraud the criminal provisions i.e. Sections 37A and 37B have been provided under the Act which can be invoked independently irrespective of assessment proceedings under Section 11 of the Act.

9. Having taken into consideration the submissions of the parties both on factual as well as legal aspects of the matter, we may examine the relevant provisions of the Sales Tax Act, 1990 with particular reference to charge, scope and application thereof on the facts of the above cases. The Sales Tax Act, 1990 has been introduced through Act (VII) of 1990, while amending the Act No. (III) of 1951 to consolidate and amend the law relating to the levy of a tax on the sale [importation, exportation, production, manufacture or consumption] of goods. Sale tax is species of indirect tax the incidence of which falls on the registered person under the Act, who is engaged in the sales, importation, exportation, production and manufacture of goods, however, its

burden is borne by the end consumer unlike in the case of any direct tax in which the incidence and the burden is upon the same person i.e. Tax Payer. It is also regarded as value addition tax levied at multiple stages i.e. imports, exports, manufacture and sales of goods in respect of any taxable activity by a registered person. The scope of sales tax has been defined in Chapter-II under the heading "SCOPE AND PAYMENT OF TAX" in terms of Section 3 of the Act which reads as follows: -

**3. Scope of Tax.** -- (1) *Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of (eighteen) per cent of the value of –*

(a) *taxable supplies made by a registered person in the course of furtherance of any [taxable activity] carried on by him; and*

(b) *good imported into Pakistan [irrespective of their final destination in territories of Pakistan].*

(1A) *Subject to the provision of sub Section (6) of Section 8 or any notification issued thereunder, where taxable supplies are made to a person who has not obtained registration number 148[or he is not an active taxpayer], there shall be charged, levied and paid a further tax at the rate of 149[four] percent of the value In addition to the rate specified in sub Sections (1), (1B), (2), (5), 150[(6) and Section 4] provided that the Federal Govt. may, by notification in the official Gazette, specify the taxable supplies in respect of which the further tax shall not be charged, levied and paid.*

10. In a taxing statute, the most pivotal provision is the charging provision which creates the charge and defines the scope of the levy as well as the quantum of such charge or levy. Perusal of herein above charging provision reflects that the Sales Tax under the Act is charged, levied and paid on **taxable supplies** made by **registered person** in the course or furtherance of any **taxable activity** carried on by him. It also provides that the Sales Tax shall be charged, levied and paid in respect of goods imported into Pakistan, at the rate of 18% of the value of taxable supplies made by the registered person irrespective of their final destination in territories of Pakistan. It further provides that in case where taxable supply is made to a person who has not obtained registration number or he is not an active taxpayer, there shall be charged, levied and paid a further tax at the rate of (four) percent of the value in addition to the rate specified in sub-Sections (1), (1B), (2), (5) (6) and Section 4.

11. Like in any other tax statute, after the charging provisions in relation to a tax or levy, for the purposes of determination and quantification of the amount of tax liability a complete mechanism of Assessment is provided under a separate chapter of Assessment by the authorized officer under the law. Under the Sales Tax Act 1990, at the relevant point of time applicable to the facts of the above cases Section 11 was the provision whereby, complete mechanism was provided. However, since in none of the aforesaid cases the provisions of Section 11 were invoked, as no determination of tax liability and the amount of loss of sales tax was made, therefore, we need not dilate upon the scope and application of such provisions of Assessment in these matters and would, therefore, examine the penal provisions which have been invoked for the purposes of recovery of the amount of loss of Sales Tax allegedly evaded and/or not paid by the registered persons on account of tax fraud.

12. As per scheme of the law, after determination and quantification of the Sales Tax liability, in Chapter-VII under the heading "OFFENCES AND PENALTIES" penal provisions have been provided to be invoked in appropriate cases for the purposes of imposition of penalties, and default surcharge in terms of Sections 33 and 34 of the Act. Similarly, in terms of Section 37A the **power to arrest and prosecute** any person who has committed tax fraud or any offence warranting prosecution under the Act has been given to an Officer of Inland Revenue not below the rank of Assistant Commissioner of Inland Revenue or any other officer of equal rank authorized by the Board in this behalf, who, on the basis of the material evidence, has reason to believe that such person has committed tax fraud. It will be appropriate to examine the relevant provisions of Sections 33 invoked in the above cases as well as the provisions of Section 37A which read as follows: -

**33. Offences and penalties.** – *Whoever commits any offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof: –*

Offences	Penalties	Section of the Act to which offence has reference.
(1)	(2)	(3)

<p>3. Any person who unauthorizably issues an invoice in which an amount of tax is specified.</p>	<p>Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of the <b>tax involved</b>, whichever is higher.</p>	<p>3, 7 and 23</p>
<p>5. Any person who fails to deposit the amount of <b>tax due</b> or any part thereof in the time or manner laid down under this Act or rules or orders made there under.</p>	<p>Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of the <b>tax involved</b>, whichever is higher:</p> <p>Provided that, if the amount of tax or any part thereof is paid within [ten] days from the due date, the defaulter shall pay a penalty of five hundred rupees for each day of default:</p> <p>Provided further that no penalty shall be imposed when any miscalculation is made for the first time during a year:</p> <p>Provided further that if the amount of <b>tax due</b> is not paid even after the expiry of a period of sixty days of issuance of the notice for such payments by an officer of [Inland Revenue, not below the rank of Assistant Commissioner Inland Revenue], the defaulter shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine which may extend to</p>	<p>3, 6, 7 and 48</p>

	amount equal to the amount of <b>tax involved</b> , or with both.	
7. Any person who is required to apply for registration under this Act fails to make an application for registration before making taxable supplies.	<p>Such person shall pay a penalty of ten thousand rupees or five per cent of the amount of <b>tax involved</b>, whichever is higher:</p> <p>Provided that such person who is required to get himself registered under this Act, fails to get registered within sixty days of the commencement of taxable activity, he shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine which may extend to an amount equal to the amount of <b>tax involved</b>, or with both.</p>	14
11. Any person who, –  (a) submits a false or forged document to any [officer of [Inland revenue]; or  (b) destroys, alters, mutilates or falsifies the records including a sales tax invoice; or  (c) Knowingly or fraudulently makes false statement, false declaration, false representation, false personification, gives any false information or issues or uses a document which is forged or false.	<p>[Such person shall pay a penalty of twenty-five thousand rupees or one hundred per cent of the amount of tax evaded or sought to be evaded, whichever is higher. Without prejudice to the above, he shall also be liable, upon conviction by a Special Judge to imprisonment for a term which may extend to five years if the tax evaded or sought to be evaded is less than one billion, and which may extend to ten years if the tax</p>	2(37) and General



	<i>evaded or sought to be evaded is one billion and above and fine which may extend to an amount equal to the amount of tax evaded or sought to be evaded, or with both.]</i>	
<i>12. Any person who denies or obstructs the access of an authorized officer to the business premises, registered office or to any other place where records are kept, or otherwise refuses access to the stocks, accounts or records or fails to present the same when required under Section 25, 38 <sup>464</sup>[38A or 40B].</i>	<i>Such person shall pay a penalty of twenty-five thousand rupees or one hundred per cent of the amount of <b>tax involved</b>, whichever is higher.</i>  <i>[Without prejudice to above, he shall also be liable,] upon conviction by a Special Judge, to imprisonment for a term which may extend to five years, or with fine [which may extend to an amount equal to the amount of tax evaded or sought to be evaded], or with both.</i>	<i>25, 38, [38A and 40B]</i>
<i>13. Any person who commits, causes to commit or attempts to commit the tax fraud, or abets or connives in commissioning of tax fraud.</i>	<i>[(a) The person who commits, causes to commit or attempts to commit the tax fraud shall pay a penalty of twenty-five thousand rupees or one hundred percent of the amount of tax evaded or sought to be evaded, whichever is higher. Without prejudice to the above, he shall also be liable, upon conviction by a Special Judge to imprisonment for a term which</i>	<i>2(37)</i>

	<p>may extend to five years if the tax evaded or sought to be evaded is less than one billion rupees, and which may extend to ten years if the tax evaded or sought to be evaded is one billion rupees and above, and fine which may extend to an amount equal to the amount of tax evaded or sought to be evaded, or with both; and (b) The person who abets or connives in commissioning of tax fraud shall be liable, upon conviction by a Special Judge to imprisonment for a term which may extend to five years if the tax evaded or sought to be evaded is less than one billion rupees, and which may extend to ten years if the tax evaded or sought to be evaded is one billion rupees and above, and with fine which may extend to an amount equal to the amount of tax evaded or sought to be evaded or with both.]</p>	
<p>14. Where any person violates any embargo placed on removal of goods in connection with recovery of tax.</p>	<p>Such person shall pay a penalty of twenty-five thousand rupees or ten per cent of the amount of the <b>tax involved</b>, whichever is higher. [Without prejudice to above, he shall</p>	<p>48</p>

	<i>also be liable], upon conviction by a Special Judge, to imprisonment for a term which may extend to one year, or with fine [which may extend to an amount equal to the amount of tax evaded or sought to be evaded], or with both.</i>	
18. Where any officer of [Inland Revenue] authorized to act under this Act, acts or omits or attempts to act or omit in a manner causing <b>loss to the sales tax</b> revenue or otherwise abets or connives in any such act.	Such officer of [Inland Revenue] shall be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine <sup>473</sup> <i>[which may extend to an amount equal to the amount of tax evaded or sought to be evaded], or with both.</i>	General
22. Any person who, -  (a) knowingly and without lawful authority gains access to or attempts to gain access to the computerized system; or  (b) unauthorizedly uses or discloses or publishes or otherwise disseminates information obtained from the computerized system; or  (c) falsifies any record or information stored in the computerized system; or  (d) knowingly or dishonestly damages or impairs the computerized system; or  (e) knowingly or dishonestly damages or impairs any duplicate tape or disc or other medium on which any information obtained from the computerized system is kept or stored; or  (f) unauthorizedly uses unique user	Such person shall pay a penalty of twenty-five thousand rupees or one hundred per cent of the amount of <b>tax involved</b> , whichever is higher.  <i>[Without prejudice to above, he shall also be liable], upon conviction by the Special Judge, to imprisonment for a term which may extend to one year, or with fine [which may extend to an amount equal to the amount of tax evaded or sought to be evaded], or with both.</i>	50A.]

identifier of any other registered user to authenticate a transmission of information to the computerized system; or		
(g) fails to comply with or contravenes any of the conditions prescribed for security of unique user identifier.		

**37A. Power to arrest and prosecute.** -- (1) An officer of 517[Inland Revenue not below the rank of an Assistant Commissioner of Inland Revenue] or any other officer of equal rank authorised by the 518[Board] in this behalf, who on the basis of material evidence has reason to believe that any person has committed a tax fraud 519/or any offence warranting prosecution under this Act] 520[...], 521[may cause arrest of such person.]

(2) All arrests made under this Act shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

522[(3) \*\*\*]

(4) Notwithstanding anything contained in sub-Section (1) to subSection (3) or any other provision of this Act, where any person has committed a tax fraud 523/or any offence warranting prosecution under this Act], the 524[Commissioner] may, either before or after the institution of any proceedings for recovery of tax, compound the offence if such person

(5) Where the person suspected of tax fraud 526/or any offence warranting prosecution under this Act] is a company, every director or officer of that company whom the authorised officer has reason to believe is personally responsible for actions of the company contributing the tax fraud 527/or any offence warranting prosecution under this Act] shall be liable to arrest; provided that any arrest under this sub-Section shall not absolve the company from the liabilities of payment of tax, 528[default surcharge] and penalty imposed under this Act.

13. Perusal of the provisions of Section 33 of the Act reveal that criminal penalties are linked with the “**tax loss**” or “**amount of tax involved and tax due**”. Therefore, instead of providing for imprisonment or fine (ordinarily a certain sum of money) or both as punishment, the “fine” under the Act requires the taxpayer to pay the “tax loss” or “amount of tax involved and tax due,” thereby indirectly criminalizing, the recovery of “tax due.” Careful review of the penalties as provided hereinabove, clearly shows that the measure of sentence is linked with the “**amount or loss of tax involved and tax due**”, and *prima facie*, cannot be imposed unless there is some determination or duly assessed tax liability of sales tax due through the processes of assessment for adjudication as

per law. Infact, the above linkage, uses the tool of imposition of penalty as a mode of recovery of tax. Hence, criminalization under the Act goes beyond the pale of retribution and deterrence and appears to be principally focused on recovery of tax. The said linkage between “fine” and the “amount of tax due” is missing. If we may examine the criminal provisions under the other tax laws i.e. Income Tax Ordinance, 2001, in Part XI of Chapter X of the said Ordinance, it provides for criminal prosecution under Sections 191 to 200, which simply provide for imposition of “fine” but does not link it with the “tax loss or amount of tax” (except for compounding the offence under Section 202). In the case of Federal Excise Act, 2005, such a linkage is visible, however, it has been pointed out that no criminal proceedings can be initiated under the said law without prior assessment of tax. It reflects upon the clear intent of the legislature that primarily tax liability is a civil liability to be determined through process of Assessment or adjudication as per law, whereas, in case of willful default, miscalculation, concealment or fraud penal provisions can be invoked to ensure tax compliance, recovery of tax and payment of additional amount of tax and/or penalty. It, therefore, appears that criminalization under the Act while invoking the provisions of Section 37A, without recourse to the assessment proceedings, is being treated differently as compared with other tax laws, which is not only against the scope and application of taxing provisions of the Act but also, violates the settled principles of fairness and fair trial as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Imposition of additional tax, default surcharge, penalty or fine etc. depends upon peculiar facts of each case whereas, such penal provisions are only attracted once the Revenue Authorities can establish that the default in payment of tax was willful and there was element of *mens-rea* on the part of tax payer, while not making payment of such amount of tax due. Reliance in this regard can be placed in the case of *D.G. Khan Cement Company Ltd. and others Vs. Federation of Pakistan and others* (2004 SCMR 456) wherein it has been held as under:

26. In the case reported as PLD 1991 SC 963, this Court held that imposition of penalty was illegal where the evasion of duty was not willful. The Lahore High Court in the case reported as PTCL 1995 CL 415 held that where the petitioner did not act mala fide with the intention to evade the tax, the imposition of penalty of additional tax and surcharge was not justified. It was held by the Sales Tax Tribunal in the case of 2002 PTD (Trib) 300 that where the controversy between the department and the

*appellants related to interpretation of different legal provisions, the imposition of additional tax and penalty had no justification. In other case, the appellant's own Tribunal held that additional tax was punitive in nature as such unless default was willful or male fide, the recovery of the same was unwarranted.*

*27. In view of these decisions, it could not be argued by the appellants that imposition of penalty or additional tax under Section 34 was mandatory and there was no discretion left with the Authorities to allow any concession.*

14. The crux of the matter and the legal issue which is required to be determined by this Court is to examine the scope, application and interpretation of the provisions of Section 37A, 37B and various provisions relating to offences and penalties as defined in Chapter VII of the Sales Tax Act, 1990, and various SROs, including SROs 48/2008, 56/2010, 775/2011 and 2776/2011. In order to avoid narration of facts of large number of cases decided by four (04) different High Courts in the aforesaid judgment(s)/Decision(s), we may briefly state the facts giving rise to initiation of criminal proceedings by the Directorate General of Intelligence & Investigation, FBR, while invoking the provision of Section 37A and 37B of the Act which resulted in arrest and submission of interim challan against the accused person(s) nominated in the respective FIR(s) on the allegation and charge of tax fraud, preparation of fake invoices and claiming illegal and inadmissible input adjustment/refund of sales tax, however, in the absence of determination and/or assessment of tax liability under the relevant provisions of Sales Tax Act, 1990, in all the aforesaid cases.

15. Since, in all the above cases, the criminal proceedings and registration of FIRs are mainly based on the allegations of Tax Fraud by the registered persons while preparing fake Sales Tax invoices to claim false input adjustment/refund of the amount of Sales Tax, therefore, it will be expedient to examine the term '**tax fraud**' as defined under the Act as well as the provisions of the Sales Tax invoked to initiate the criminal proceedings in above cases for the recovery of the Sales Tax amount or loss of tax involved. Tax fraud has been defined in Section 2(37) of the Act as under:-

*“**tax fraud**” means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused) --*

*(i) doing of any act or causing to do any act; or*

- (ii) *(ii) omitting to take any action or causing the omission to take any action, including the making of taxable supplies without getting registration under this Act; or*
- (iii) *falsifying or causing falsification the sales tax invoices in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax liability for two consecutive tax periods or overstating the entitlement to tax credit or tax refund to cause loss of tax.”*

In essence tax fraud is falsifying a tax invoice with the intention to understate the tax liability, or to underpay the tax liability or overstate the entitlement to tax credit or tax refund to cause loss of tax. Even if we assume that the Special Judge convicts the taxpayer, he cannot award the sentence, as “fine” is dependent on **the “amount or loss of tax involved”** and it is not within the competence or jurisdiction of the Special Judge to assess tax or determine the **“amount or loss of tax involved”** which is not part of the offence but of the sentence. Further, the facility of compoundability under Section 37(A)(4) is not available to the taxpayer, unless the amount of tax due and penalties as determined under the Act.

16. The cumulative effect of the provisions of Sections 11, 25(5), 33, 37A and 37B of the Act reflects upon the intention of legislature to provide for invoking criminal proceedings against such person who is found engaged in the offence of "tax fraud" through registration of FIR and arrest of a person found involved in such offence and also to effectuate recovery of amount of sales tax evaded and not paid by the registered person. The two pre-requisites for invoking the provisions of Section 33 and 37A are: dependence of fine on the **“amount or loss of tax involved.”** and the window of compoundability which is available to the taxpayer, who can pay the **“amount of tax due alongwith such default surcharge and penalty as determined under the provisions of this Act.”** If the purpose was simple retribution and deterrence, there was no need to make the fine dependent with the amount or loss of tax involved. However, if the fine under criminal prosecution is to be dependent with the amount or loss of tax, such a criminal construct must be prefaced with the mandatory requirement of assessment of tax through civil adjudication provided under Section 11 of the Act. This precondition in our view, is the minimum constitutional requirement to ensure fair trial and due process under Articles 4 and 10-A of the Constitution.

17. A Division Bench of High Court of Sindh in the case of *Zaheer Ahmed Vs. Directorate General of Intelligence and Investigation-IR and 4 others* (2015 PTD 349) under somewhat similar circumstances has quashed the FIR and the criminal proceedings for being without jurisdiction and lawful authority in the following terms:

7. We have heard both the learned counsel as well as Standing Counsel and perused the record with their assistance. In the instant case, admittedly, the petitioner is not a registered person either under Section 13 of Federal Excise Act, 2005 or under Section 14 of the Sales Tax Act, 1990, nor the petitioner has any history of being assessed to pay duty under the Federal Excise Act or to pay sales tax under the Sales Tax Act, 1990. Before the raid at the premises of the petitioner, seizing the goods and sealing the premises, admittedly, the petitioner was neither issued any show cause nor any opportunity has been provided by the respondents to the petitioner to explain his position with regard to the allegations as contained in the FIR lodged by the Directorate of Intelligence and Investigation I.O. No adjudication proceedings whatsoever have so far been initiated against the petitioner by the respondents nor any assessment or even determination of liability of the petitioner, if any, towards Federal Excise Duty or Sales Tax has been made by the respondent as provided in the Federal Excise Act, 2005 and the Sales Tax Act, 1990. Respondents have not even yet determined as to whether the petitioner is engaged in the business of producing or manufacturing any goods in Pakistan or has imported goods into Pakistan or is providing services in Pakistan, which may attract liability of any duty in terms of Section 3 of the Federal Excise Act, 2005, nor it has been determined by the respondents as to whether the petitioner is a registered person, who makes any taxable supplies, which are liable to Sales Tax in terms of Section 3 of the Sales Tax Act, 1990. Neither any show cause notice has ever been issued to the petitioner in this regard nor any assessment in terms of Section 11 of the Sales Tax Act, 1990, has been made to determine the liability of the petitioner in respect of Sales Tax or in terms of Section 12 of the Federal Excise Duty, 2005, to determine the liability of the petitioner in respect of excise duty. No recovery Notices have ever been issued to the petitioner in respect of the alleged liability of duty and taxes as mentioned in the impugned FIR and the interim challan submitted by the respondents before the Special Judge (Customs & Taxation), Karachi, in the instant case. It is pertinent to note that even in the impugned FIR there has been no specific allegation of tax fraud or willful default in payment of duty and sales tax by the petitioner, whereas, the officials of Directorate of Intelligence and Investigation I.R. have presumed that petitioner is liable to pay Sales Tax and Federal Excise Duty as he is engaged in the business of manufacturing and trading of tobacco without payment of duty and taxes, whereas, they are not even authorized under the law to either determine the liability of duty and taxes or to make any adjudication in this regard. It appears that the case against the petitioner, besides suffering from jurisdictional error and legal infirmity, is also groundless and there is no possibility of conviction on the basis of material or the evidence available on record.

18. Perusal of Section 37A shows that if such provisions are allowed to be invoked independently without any reference to the other relevant provisions of Sales Tax Act, 1990 including Section 2(37) "tax fraud", Section 3 "Scope of Tax", Section 11



"Assessment of tax" and Section 33 "Offences and Penalties", the same will be in violation of the substantial provisions relating to Charge of Sales tax and Assessment of Sales tax, as it will give unbridled powers to officials of sales tax to initiate criminal prosecution against a Registered person or any person within the supply chain, including Registration of FIR and Arrest, even without creating a lawful demand under the law. If such an interpretation is made in respect of provisions of Section 37A the same will make the aforesaid provisions of the Act as redundant, whereas, redundancy can not be attributed to legislation. Reliance in this regard can be placed in the case of *Collector of Sales Tax and Central Excise (Enforcement) and another Vs. Messrs Mega Tech (Pvt.) Ltd* (2005 SCMR 1166) where it has been held as under:

9. "...It would, however, appear that every word used by the Legislature must be given its true meaning and the provisions construed together in a harmonious manner. To our mind, it would not be legal and proper to apply one provision of law in isolation from the other provision as no surplusages or redundancy can be attributed to the legislative organ of the State..."

Moreover, under the Sales Tax Act there is no provision of law which authorizes the tax officials to presume any tax liability in the absence of Assessment proceedings, and to proceed against a Registered person or any person within the supply chain. Learned counsel for the appellants while making submission with regard to invoking provisions of Section 37A independently, attempted to argue that in order to unearth the "tax fraud" there is no other provision under the Act whereby through process of inquiry and investigation and initiation of criminal proceedings, including registration of FIR and arrest of the registered person involved in the offence of "tax fraud", therefore, according to learned counsel in order to recover the correct amount of sales tax and also to prevent tax evasion, the Provision of Section 37A of the Act can be invoked irrespective of having recourse to assessment proceedings under Section 11 of the Act Such contention of the learned counsel for the appellants is without any substance for the reasons that extent of criminalization of civil liability has been made dependent upon determination of such liability through process of assessment and adjudication whereas, the tax authorities have been given ample powers to make inquiry, investigation, audit, to call for information and the documents and even to summon any person for such purposes and incase of default in payment of tax due, can impose

penalties, de-registration, blacklisting and suspension of registration and default surcharge in accordance with law. Reference in this regard can be made to Section 21, 25, 32A, 33, 34, 37, 38 and 72B of the Act.

19. Under the Modern Democratic System of Government, which are run by the elected representative of the people under their respective Constitutions, the unbridled powers and authority to impose tax arbitrarily, without having any rationale or reasonableness, is now being regulated under the Constitutional restraints, whereby taxes are to be imposed reasonably, without discrimination and in such a manner that those may not encroach upon the fundamental rights of a person as guaranteed under the Constitution. The art of taxation is regarded as the **art of plucking a goose so as to gather the largest amount of feather by causing least squealing. Adam Smith**, who is regarded as Father of Modern Economic System, in 18<sup>th</sup> Century in his book "The Wealth of Nations" (1776), has defined following four canons of taxation i.e. **(i) equality, (ii) certainty, (iii) convenience of payment and (iv) economy in collection**. While explaining the first two cannons of taxation as referred to hereinabove i.e. equality and certainty, the Author has propounded that "*the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion of their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state*". In other words, the incidence of tax must fall equally on all subjects with particular reference to their class without any discrimination amongst them. Similarly, it has been further propounded that "*the tax which each individual is bound to pay ought to be certain, and no arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of the inequality, it appears, is not so great an evil as a very small degree of uncertainty*". Perusal of the provisions of Section 37A of the Act shows that unless these provisions are read in harmony with other

corresponding provisions of the Act, and invoked as per scheme of the law after assessment/adjudication of the amount of sales tax due, it can be abused by initiating criminal proceedings, including arrest of a registered person, on the mere allegation of tax fraud and default in payment of presumed tax liability which is yet to be determined through process of assessment or adjudication. Such interpretation of the provisions of Section 37A, would bring uncertainty of taxation, which is against the very spirit and purpose of imposition of any tax.

20. Invariably, imposition of any tax either direct or indirect, including Sales Tax, is regarded as a civil liability to be recovered from the tax payer, not only to collect tax but also to regulate the economy and to facilitate the business activity, however, in order to ensure tax compliance and the recovery of the amount of tax due, the penal provisions including imposition of surcharge and penalty are also incorporated in the taxing statutes. However, before invoking such provisions or adopting coercive measures for the recovery of the amount of tax due, the determination of tax liability through process of assessment or adjudication has to precede before initiating criminal proceedings, which otherwise depend upon willful default, *mens-rea* and commission of an offence of tax fraud with an intent to cause loss of tax involved or due. Admittedly in all aforesaid cases, without determination of sales tax liability and the amount of tax allegedly evaded or short paid, through process of assessment/adjudication, recourse to initiation of criminal proceedings on the allegation of tax fraud, including registration of FIR and arrest of a registered person or any person within the supply chain, amounts to, pre-empting the assessment of tax liability, whereas, in the absence of lawful demand of Sales tax pursuant to Assessment of tax due, the penal provisions including Section 33 read with Sections 37A and 37B cannot be invoked. Therefore, the penal provisions including registration of FIR and arrest of any person on the above allegations is without jurisdiction and lawful authority. It is settled principle of interpretation of taxing statute that any provision of statute cannot be read in isolation, particularly, when it is dependent upon or complimentary to other provision of the law. In case of any ambiguity or overlapping of the provisions of law, harmonious construction is to be made, so that such provision of

law may not render the other provisions as redundant or nugatory. Reliance in this regard can be placed in the case of *D.G. Khan Cement Company Ltd. and others Vs. Federation of Pakistan and others* (2004 SCMR 456) wherein it has been held as under:

18. *The contention has considerable force. According to the well-established principles of interpretation and construction of the Statutes laid down by the superior Courts, harmonious construction is to be made keeping in view the different provisions of the Statute after fully understanding the intention with which the same had been made and the object which was intended to be achieved. The intention behind the promulgation of relevant provisions of the Sales Tax Act as reproduced' above is clearly manifest that the sales tax should go to the Government: treasury within the tax period after the same having become due and should not be retained by the manufacturers. There is no hard and fast rule as to when and at what stage, the transaction shall be deemed to be the transaction of sale of the goods. Each case has to be decided according to the facts and circumstances of the case, in particular the practice, usage of a particular nature of business or trade. In the case in hand, the manufacturers used to receive amount of consideration in advance for the supply of cement to be made later. It is clear from the provisions of Sections 2(22) and (30) of the Sales Tax Act that time of supply was deemed to be the date on which advance payment was received or the supply made whichever was earlier. There is no difficulty in holding that in such a case, the amount of consideration received in advance shall be deemed to be the price on that date of the proportionate quantity of cement and the sales tax should be deposited before 20th of the succeeding month in the Government treasury instead of the date of delivery of the goods at the subsequent stage. In other words, we in order to put the matter beyond any ambiguity, have no hesitation in holding that in such a situation, the date of receipt of amount of consideration in advance can well be construed to be the date of sale for the purpose of payment of sales tax.*

21. Similarly in the case of *Waqar Zafar Bakhtawari and 6 others Vs. Haji Mazhar Hussain Shah and others* (PLD 2018 SC 81) following *dicta* has been laid down:

9. *"...It is settled that while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute; rather all possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved. If some precedent law is required in this behalf, reference can be made to the judgments reported as Combined Investment (Pvt.) Ltd. v. Wali Bhai (PLD 2016 SC 730), Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar (2015 SCMR 1494), Aftab Shahban Mirani v. Muhammad Ibrahim (PLD 2008 SC 779), Collector of Sales Tax and Central Excise (Enforcement) and another v. Messrs Mega Tech (Pvt.) Ltd. (2005 SCMR 1166), Mirza Shaukat Baig v. Shahid Jamil (PLD 2005 SC 530) and D.G..."*

22. In view of hereinabove facts and circumstances of the aforesaid cases, we have no hesitation to conclude that without investigative audit or issuance of show cause notice or providing opportunity to explain the matters, registration of F.I.R., initiation of criminal proceeding and arrest of registered person is without jurisdiction and lawful authority. We further hold that criminal

prosecution follows adjudication and assessment of tax under Section 11 of the Act, therefore, pre-trial steps including arrest and detention cannot be given effect to unless the tax liability of the taxpayer is determined in accordance with law. Accordingly, all the judgments/orders, under challenge, allowing the writ petitions are hereby maintained; however, for the reasons recorded by us hereinabove. Above are the reasons of our short order of even date, which reads as under:

*“These appeals/petition are dismissed for reasons that will be elaborated upon later. Parties may file their written submissions within two weeks.”*

Judge

Judge

Judge

**Islamabad.**

04.12.2024

Tanveer Ahmed

**"Approved for Reporting"**