

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mrs. Justice Ayesha A. Malik
Mr. Justice Shahid Waheed

CIVIL PETITIONS NO.3578 AND 4598 OF 2024

[Against judgment/order dated 16.04.2024 and 24.06.2024
passed by the Islamabad High Court, Islamabad in ICAs
No.357 of 2022 and 7 of 2024, respectively]

Commissioner Inland Revenue (Legal), Islamabad
(in CPLA.3578/2024)

Commissioner Inland Revenue (Zone-IV),
Islamabad
(in CPLA.4598/2024)

...Petitioner(s)
(in both cases)

Versus

Pakistan LNG Limited and others
(in CPLA.3578/2024)

Serene Air (Pvt) Limited and others
(in CPLA.4598/2024)

...Respondent(s)
(in both cases)

For the Petitioner(s): Ms. Asma Hamid, ASC
(in both cases)
Dr. Ishtiaq, Director General (Law)

For the Respondent(s): Mr. Jehanzeb Awan, ASC
(in CPLA.3578/2024)
Nemo
(in CPLA.4598/2024)

Date of Hearing: 09.04.2025

JUDGMENT

AYESHA A. MALIK, J.- These Civil Petitions are directed against judgment dated 16.04.2024 in CPLA No.3578 of 2024 and order dated 24.06.2024 in CPLA No.4598 of 2024, which relies upon the judgement dated 16.04.2024, whereby both the intra court appeals filed by the Petitioners were dismissed by the Islamabad High Court Islamabad (**High Court**).

2. The Respondent in CPLA No.3578 of 2024 is Pakistan LNG Limited whose income tax return for the year 2020 was amended in terms of order dated 15.03.2021 under Section 122(5A) of the Income Tax Ordinance, 2001 (**Ordinance**), raising a demand of Rs.2,928,517,260/- for recovery of tax due. On the same date, notice under Section 137(2) of the Ordinance was issued informing the taxpayer of the amount due. The Respondent challenged the amended

assessment order before the Commissioner Inland Revenue (Appeals) (**CIR Appeals**) which appeal was decided on 09.03.2022 and subsequently uploaded on the web portal of the FBR (i.e., IRIS) at 3:28 pm.¹ On the same date, at 4:00 pm, notice under Section 140 of the Ordinance was issued for *immediate recovery* in terms thereof. The notice under Section 140 of the Ordinance was subsequently quashed by the learned Single Judge as being void, and the amount recovered from the bank accounts of the Respondent was ordered to be reimbursed. The Respondent in CPLA No.4598 of 2024 is Serene Air Private Limited who is a withholding agent and who statedly did not fulfil its obligations for the tax year 2020. Resultantly, proceedings in terms of Section 161 read with Section 205 of the Ordinance were decided on 31.03.2022. On the same date, notices under Section 137(2) of the Ordinance were issued raising a demand of Rs.1,883,917,790/- for recovery of withholding tax. The Respondent filed an appeal before the CIR Appeals which was decided on 11.05.2023 at 1:56 pm. On the same date, notices under Section 140 of the Ordinance were issued to the banks for *immediate recovery* at 10:30 pm. These too were set aside by the learned Single Judge, and the amount recovered was ordered to be reimbursed to the Respondent. Both Respondents challenged the recovery notices issued under Section 140 of the Ordinance, in constitutional petitions before the High Court. The learned Single Judge set aside the notices issued under Section 140 of the Ordinance in both cases and declared that a reasonable timeframe must be prescribed by the Commissioner before recovering the tax under Section 140 of the Ordinance. The learned Division Bench vide the impugned judgment dated 16.04.2024 and order dated 24.06.2024 upheld the decision of the learned Single Judge.

3. The Petitioners' case is that immediate recovery is possible under Section 140 of the Ordinance and that there is no requirement to issue any further notices or give a specific date under the said section. The dispute is, therefore, with respect to the requirement of the notice under Section 140 of the Ordinance. The precise question before us is whether the Commissioner can demand immediate payment on the date the notice is issued under Section 140 of the Ordinance, or whether Section 140 of the Ordinance mandates that the notice must set out a future date for payment. This question requires our consideration and

¹ The Federal Board of Revenue (**FBR**).

therefore we grant the leave to appeal sought by the Petitioners. As all necessary documents are available on the record, it is not required that we adjourn the case for completion of any ministerial requirements. Particularly so as counsel for the parties are ready and willing to proceed with the case. Consequently, we proceed to answer the aforementioned question.

4. Counsel for the Petitioners argued that the scheme of law is such that the taxpayer needs to be informed of its tax liability vide the notice under Section 137(2) of the Ordinance. Once this notice has been issued, the taxpayer is made aware of its tax liability, which must be paid within thirty days, failing which recovery mechanisms can be adopted by the means stipulated under the Ordinance. She further argued that Section 140 of the Ordinance being a mode of recovery from persons holding money on behalf of the taxpayer, permits the Commissioner to recover the tax due, on the same day that the notice is issued as there is no requirement to set a future date for payment. In support of this argument, she placed reliance on Rule 210 C (3) of the Income Tax Recovery Rules, 2002 (**Rules**) which provides that the amount is to be paid on the day the notice is served. On this basis, the case of the Petitioners is that the High Court has erred in striking down the notices calling for immediate payment under Section 140 of the Ordinance and that the impugned judgment has imposed an undue obligation on the Commissioner to first serve a notice under Section 138(1) of the Ordinance before proceeding under Section 140 of the Ordinance against third parties.

5. The relevant provision of the Ordinance is Section 140 which provides for the recovery of tax from persons holding money on behalf of the taxpayer and notice to such third party. The Section is reproduced hereunder:

"140. Recovery of tax from persons holding money on behalf of a taxpayer.- (1) For the purpose of recovering any tax due by a taxpayer, the Commissioner may, by *notice*, in writing, require any person-

- (a) owing or who may owe money to the taxpayer; or
- (b) holding or who may hold money for, or on account of the taxpayer;
- (c) holding or who may hold money on account of some other person for payment to the taxpayer; or
- (d) having authority of some other person to pay money to the taxpayer,

to pay to the Commissioner so much of the money as set out in the *notice* by the date set out in the *notice*;

Provided that the Commissioner shall not issue notice under this sub-section for recovery of any tax due from a taxpayer if the said taxpayer has filed an appeal under section 127 in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided by the Commissioner (Appeals), subject to the condition that ten per cent of the said amount of tax due has been paid by the taxpayer.

(2) Subject to sub-section (3), the amount set out in a *notice* under sub-section (1)-

- (a) where the amount of the money is equal to or less than the amount of tax due by the taxpayer, shall not exceed the amount of the money; or
- (b) in any other case, shall be so much of the money as is sufficient to pay the amount of tax due by the taxpayer.

(3) Where a person is liable to make a series of payments (such as salary) to a taxpayer, a *notice* under sub-section (1) may specify an amount to be paid out of each payment until the amount of tax due by the taxpayer has been paid.

(4) The date for payment specified in a *notice* under sub-section (1) shall not be a date before the money becomes payable to the taxpayer or held on the taxpayer's behalf.

(5) The provisions of sections 160, 161, 162 and 163, so far as may be, shall apply to an amount due under this section as if the amount were required to be deducted from a payment under Division III of Part V of this Chapter.

(6) Any person who has paid any amount in compliance with a *Notice* under sub-section (1) shall be treated as having paid such amount under the authority of the taxpayer and the receipt of the Commissioner constitutes a good and sufficient discharge of the liability of such person to the taxpayer to the extent of the amount referred to in such receipt."

(Emphasis added)

The Section provides for recovery of tax from third parties holding money on behalf of the taxpayer. The Commissioner is required to issue notice in writing to such person to pay to the Commissioner the tax due as set out in the notice, by the date set out in the notice. A bare reading of Section 140(1) reveals the express condition to set a date for payment, in the notice on which the stipulated tax has to be paid. The use of the words *by the date set out in the notice* in Section 140(1) of the Ordinance reflects the very clear requirement to provide for a future date in the notice on which the tax becomes payable, meaning that the Commissioner has to provide for a future date, being a date other than the date of the notice to make payment. In our opinion, the words *to set a date* mandates the Commissioner to set a date in the notice on which the tax liability has to be discharged by the third party such that the Commissioner, while issuing the notice, is conscious of the fact that the notice must contain a future date for payment. The act of setting a date

in the notice is a substantive requirement of the Ordinance which necessitates a legal timeline to come into effect for both the Commissioner as the enforcing authority and the third party as the person from whom recovery has to be effectuated. This legal timeline serves a dual purpose whereby it gives the Commissioner a clear date on which recovery can be effected and it gives the third-party fair notice of the demand and the opportunity to act within the prescribed period. The condition of fixing a future date is in effect a legal safeguard which ensures that the process of recovery is protected from arbitrariness and undue haste. In our opinion, it gives legal certainty to the process of recovery hence ensures that the process is conducted fairly, transparently and in a reasonable manner. This is necessary given that the mode of recovery from a third-party holding money on behalf of the taxpayer is an independent mode of recovery, that too coercive in nature, which measure should be exercised with great caution and due process. The legislative intent therefore is to regulate the discretion given to the Commissioner to recover tax on behalf of the tax payer where the taxpayer has failed to pay the tax. Consequently, the very act of setting a date mandates the Commissioner to plan for a future date and notify the third-party of the date when the recovery will be effected.

6. Counsel for the Petitioners in support of the argument of immediate recovery has relied upon Rule 210C(3) of the Rules which provides that recovery can be effected on the same day that notice under Section 140 is issued. We have carefully examined the relevant Rules and find that Rule 210C is contrary to the requirements of Section 140 of the Ordinance. The said section requires the Commissioner to set a date in the notice for recovery purposes, hence, the requirement of the Rules for immediate recovery is against the scheme of Section 140 of the Ordinance. Reliance on Rule 210C, as urged by the learned counsel for the Petitioners, would allow the Commissioner to bypass the statutory requirement and initiate immediate recovery, a course of action that not only contravenes the text of the Ordinance but also undermines its purpose. It is settled law that rules are subordinate or delegated legislation, framed under a statute and, therefore, subservient to the statute itself and must yield where there is any inconsistency.²

² Farrukh Raza Sheikh v. Appellate Tribunal Inland Revenue (2022 SCMR 1787), National Electric Power Regulatory Authority v. Faisalabad Electric Supply Co. Ltd. (2016 SCMR 550), Ziauddin v. Punjab Local Government (1995 SCMR 365).

7. We are of the opinion that the clear and unambiguous reading of Section 140 of the Ordinance is that the Commissioner shall issue notice in writing to pay the amount stated in the notice by the *date set out in the notice*. The language of Section 140 of the Ordinance does not envisage immediate or mechanical recovery rather the provision contemplates that the Commissioner will issue notice and will give a reasonable timeframe for the purpose of recovery. The question of what is reasonable has been considered by the impugned judgement by way of the suggestion that possibly a seven day notice can be considered reasonable however, we are of the opinion that the reasonableness of the timeframe given can be considered on a case to case basis depending on the circumstances and the facts of the case, given that although the legislative intent is to provide for a date, it has not given a statutory notice period before which recovery can be effected. This requirement of setting a date for payment of the tax due places the burden on the Commissioner for substantive compliance and is not a procedural formality. We find that a notice that seeks recovery on the same date as its issuance would defeat the very objective of setting out a date and would render the legal safeguard meaningless. Yet another aspect that is of significance is the constitutional underpinning of Section 140 of the Ordinance. The requirement of notice before recovery is not merely statutory but reflects the broader guarantees of due process and fair trial under Article 10A of the Constitution³, as well as the right to dignity under Article 14. Courts have consistently upheld that even in fiscal matters, recovery must be carried out in a manner that respects the individual's dignity and legal safeguards. Consequently, even where the law allows coercive recovery, it must be carried out in a way that preserves the dignity of the taxpayer.

8. The facts in these cases show that within a short span of time from the decision by the CIR Appeals, notice for immediate recovery was sought by the Petitioners. In the case of the Respondent in CPLA No.3578 of 2024, the learned Single Judge in his judgement dated 07.09.2022 observed that while the appellate order passed by the Commissioner was uploaded on the FBR's web portal at 3:28 pm on 09.03.2022, the Commissioner issued a notice under Section 140 of the Ordinance to the banks at 4:00 pm on the same day, and the accounts

³ The Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**).

of the Respondent were attached and the amount in dispute was recovered instantly within a span of *half an hour*. Similarly, in the case of the Respondent in CPLA No.4598, the learned Single Judge in his judgement dated 14.12.2023 noted that while the appeal of the Respondent before the CIR Appeals was decided on 11.05.2023 at 1:56 pm, the Commissioner issued a notice under Section 140 of the Ordinance to the banks on the very same day at 10:30 pm and sought recovery of the amount in dispute. In both instances, there was no meaningful interval between the appellate decision and the initiation of coercive recovery, thereby depriving the third party from whom the money was to be recovered of adequate notice. Hence, the Commissioner's conduct in both instances effectively nullified the very purpose of serving notice, which the statute holds as precondition to coercive action in terms of Section 140 of the Ordinance.

9. The conduct of the Commissioner in the present case, therefore, falls short of the statutory requirement of Section 140 of the Ordinance. Tax recovery is not meant to be a 'grab and go' process. Even coercive recovery measures must follow a proper and fair procedure. Tax authorities should not act as penalizing agencies, but as institutions of the State tasked with facilitating compliance through clarity, transparency, and procedural propriety. The legitimacy of a tax system in large depends on whether taxpayers are able to understand not only that they are liable, but also the consequences for not discharging their liability. The rule of law demands that compliance be made and enforcement be exercised within a framework that guarantees legal certainty which is a cornerstone of any legitimate tax regime. Legal certainty requires not just that taxpayers know they owe tax, but that they are clearly informed of when, how, and on what basis recovery will be pursued. Section 140 gives effect to this requirement by obligating the Commissioner to *set out* a date for payment, an act that marks the beginning of a legal timeline and protects the taxpayer from arbitrary or immediate enforcement. The statutory framework governing taxation is premised on fairness, notice, and the right to reasonable notice. We reiterate that coercive recovery is bound by law and rules and must work within this framework. By bypassing the statutory requirement to set a payment date, the Commissioner's action undermines the very structure and intent of Section 140 of the

Ordinance and undermines the principle of legal certainty embedded within the scheme of law.

10. Although, the counsel for the Petitioners stressed on the notice of demand issued under Section 137 of the Ordinance being the only requirement of notice, we find that such understanding is not in consonance with the law. The scheme of law envisions two distinct processes for the purposes of demanding the tax and for the purposes of recovery of tax. A demand notice is served under Section 137 of the Ordinance, whereby the taxpayer is informed of the amount due and is required to pay such tax by the due date set out in the notice. On receipt of notice, the taxpayer can either discharge the liability or challenge it in appeal under Section 127 of the Ordinance. If the liability is discharged the matter ends, however, in the event that an appeal is filed, the first proviso of Section 140 of the Ordinance prescribes that the Commissioner shall not issue notice for recovery of tax due until the appeal is decided. Once the appeal is decided, the CIR Appeals is required to inform the taxpayer by notice of the decision in appeal under Section 129(4) of the Ordinance. In the event that the taxpayer fails to make payment, the Ordinance provides for the recovery of tax through the modes prescribed under Chapter X Part IV, Collection & Recovery, each mode being an independent mode of recovery which can be enforced separately or simultaneously in terms of Section 146A(4) of the Ordinance. Each mode for recovery provides for the procedure to be followed. Consequently, the Petitioners' contention that once the demand notice under Section 137 of the Ordinance has been issued, coercive measures can be adopted for recovery purposes, ignores this scheme of law where the notice under Section 140 of the Ordinance serves the very specific purpose of recovery from a third party and the due process which the third party is to be afforded when recovery is required. Additionally, while we agree with the learned Single Judge that recovery must be preceded by notice and a reasonable opportunity to comply, we consider it necessary to clarify that Section 140 of the Ordinance operates as an independent recovery mechanism. Where recovery is sought from third parties under Section 140 of the Ordinance, the requirement of notice and the setting of a future date are built into the provision itself. It does not require prior invocation of Section 138(1) of the Ordinance, which governs direct recovery from the

taxpayer. Hence, the specific requirement for Section 140 of the Ordinance in the notice with a date set when recovery will be effected.

11. In view of the foregoing, and having examined the statutory framework and applicable Rules, we are of the opinion that Section 140 of the Ordinance does not permit immediate coercive recovery in the absence of a date set in the notice. When read in its proper context, Section 140 of the Ordinance expressly provides that the party holding money on behalf of the taxpayer must be afforded a notice with a due date to discharge its liability. The notices issued Section 140 of the Ordinance in both the Petitions seek immediate recovery, thereby blatantly violating the requirements of Section 140 of the Ordinance, which is illegal. Accordingly, we find that no case for interference is made out. As leave has already been granted, the Civil Petitions are converted into appeals and dismissed.

JUDGE

JUDGE

JUDGE

Islamabad
09.04.2025
'Approved for Reporting'
Azmat/Nurayn Qasim

SHAHID WAHEED, J.- The present appeals, by our leave, arise from the judgments of the Islamabad High Court, which dismissed the Revenue's intra-court appeals against the Single Bench's judgments¹ that had granted relief to the taxpayer's (respondent's) writ petitions. These two cases were heard and considered together due to their shared legal implications. Following the proceedings, we announced our order in the Court, indicating our intention to dismiss both cases. My learned colleague, Justice Ayesha A. Malik, has provided a comprehensive written account of the reasoning behind our dismissal order, which I have reviewed with great care. The facts and intricacies of both cases, alongside the relevant legal provisions and their interpretations, have been meticulously articulated with clarity and precision. However, to further enhance the understanding of these reasons, I believe it is worthwhile to present them in a different way that encapsulates the essence of our findings and decision.

2. A substantial question that comes to our determination, in these cases, concerns the intersection of tax law and taxpayer's rights: In a legal framework that espouses fundamental rights—such as the right to a fair trial, access to justice, right to dignity, and due process—can there be any justifiable reason for maintaining and promoting a culture of authoritative dominance in the collection and recovery of tax from a taxpayer? This inquiry challenges existing norms that often prioritise tax recovery above the rights and protections guaranteed to taxpayers, potentially undermining the very essence of justice. It also invites a thorough examination of the delicate balance that must be upheld between the efficient recovery of tax debts, as mandated by law, and the imperative to protect the rights of those being taxed.

3. The facts leading to the question require little elaboration, as my learned colleague has already stated them

¹ This judgment (Writ Petition No.2622 of 2022) is now reported as **PAKISTAN LNG LIMITED VS FEDERATION OF PAKISTAN**, through Secretary Revenue Division, Ministry of Finance, Islamabad(2022 PTD 1763).

succinctly. At the core of the dispute was the taxpayer's (respondent's) challenge to the manner in which tax recovery proceedings were executed under section 140 of the Income Tax Ordinance, 2001 ("the Ordinance"). The taxpayer (respondent) expressed dissatisfaction, claiming that the recovery process infringed upon their right to a fair trial and access to justice and undermined their dignity, primarily due to a lack of procedural propriety. To thoroughly understand this situation, it is essential to scrutinise the tax collection and recovery mechanisms outlined specifically within sections 137, 138, and 140 of the Ordinance. These sections serve as the machinery framework for the recovery process following the completion of a tax assessment and the main principle in interpreting such provisions is that taxpayer should not face unduly harsh or unfair treatment, and any benefit of the statute's language, if available, must go to the taxpayer, rather than the Revenue. However, this approach must be applied thoughtfully to ensure that a charge of tax is not defeated. From this perspective, when delving into the provisions of sections 137, 138, and 140, it becomes evident that the law prescribes a recovery process that, much like a honey bee gathering nectar from flowers without causing pain to the plant, mandates that taxation officers conduct tax collection and recovery in a manner that ensures: (a) the treatment of taxpayer with dignity and respect, (b) strict adherence to established legal protocols and procedures, and (c) the provision of transparent guidance and explanations to taxpayers. How is it so? This becomes clearer when we break down the stages involved in the imposition of tax, which consist of three phases. The first phase involves the declaration of tax liability, stating the taxpayer's financial obligations. Subsequently, the second phase encompasses the assessment process, detailing the exact sum that the taxpayer is legally obligated to pay. Finally, if the taxpayer fails to fulfill this obligation voluntarily, the third phase introduces the recovery methods to be employed. These stages are observed in this way. Upon submitting a tax return and following its assessment,

section 137(2) dictates that the Commissioner must issue a notice to the taxpayer, indicating the “amount payable” and stipulating 30 days for payment. This notice effectively culminates the initial two stages of the tax imposition process. Should the taxpayer neglect to settle the amount specified within this timeframe, the “amount payable” becomes formally classified as “tax due”, thus triggering the subsequent recovery mechanisms. The first recovery method is delineated in section 138, which provides avenues for tax recovery through the attachment of the taxpayer’s property and even arrest if necessary. Recognising the severe implications this method could have on a taxpayer’s reputation and personal liberty, the law mandates that a second notice be issued under subsection (1) of section 138, requiring the taxpayer to comply with the payment within a specified period. If the taxpayer still defaults after this notice, further recovery actions may be initiated as described in subsection (2). An alternative recovery method is detailed in section 140, which is like garnishee proceedings. In these proceedings, instead of directly targeting the taxpayer, a notice is issued to a third party (the garnishee) directing them to pay the specified amount by the date set out in the notice. It is essential to highlight that per Section 146A(4) both recovery methods can be employed consecutively or concurrently, reinforcing the notion that any attempt to recover “tax due” before the expiration of the designated period for payment of “amount payable” stands in stark contrast to the principles governing tax recovery couched in the Ordinance. By comprehensively understanding these provisions and their implications, one gains a clearer perspective on the necessity for fairness and procedural integrity in the recovery of taxes.

4. This legal position brings me to examine the soundness of the taxpayer’s (respondent’s) arguments concerning the recovery proceedings initiated against it under section 140 of the Ordinance. The taxpayer (respondent) expressed grievances, contending that although it received a notice under section 137 of the Ordinance at the time the

demand was generated by the Commissioner pursuant to the assessment order, they did not receive any subsequent notices under sections 137 or 138 after the Commissioner (Appeals) upheld the assessment order. This lack of further notification, the taxpayer argued, was a critical oversight. Moreover, the taxpayer (respondent) maintained that issuing a section 140 notice to enforce recovery from its bank accounts without first notifying it and allowing it a reasonable opportunity to address the demand and/or exercise its right to appeal before the Tribunal amounted to a violation of due process. In response, the Revenue submitted a counterargument, clarifying that the legal framework requires that the taxpayer be informed of its tax obligations through the notice issued under section 137(2) of the Ordinance. This notice serves to formally alert the taxpayer of its tax liability, which is expected to be settled within thirty days. Should it fail to comply within this timeframe, the law permits the Revenue to activate a recovery mechanism through the established procedures.

5. The arguments presented by both parties indicate a fundamental misunderstanding of the applicable legal provisions governing tax recovery procedures. It is conceded that, following the assessment order, the Commissioner initiated a tax demand and issued a notice under section 137(2) requiring the taxpayer (respondent) to pay the specified amount within a 30-day timeframe. Rather than fulfilling this obligation, the taxpayer (respondent) filed an appeal with the Commissioner (Appeals), which ultimately proved unsuccessful. It appears that at this juncture, confusion emerged regarding the appropriate course of action: specifically, whether a fresh notice under section 137(2) was warranted, whether a notice under section 138(1) should be issued, or if proceedings could be initiated under section 140 by merely serving a notice upon the taxpayer's (respondent's) bank on the same day instructing it to remit the outstanding tax amount. Before probing deeper into which approach was procedurally correct, it is essential to recount two fundamental principles of tax law relevant to this

case. Firstly, section 137(2) explicitly refers to the “amount payable” as delineated in the assessment order or amended assessment order or any other order, indicating that until this “amount payable” is settled within the stipulated period, it cannot be classified as “tax due” within the sphere of sections 138 and 140. This distinction is crucial because it establishes that the mechanisms provided under sections 138 and 140, which are designed for tax recovery, cannot be set in motion until such time as the initial obligation to pay has been met. Secondly, it must be noted that sections 138 and 140 establish two independent and distinct modes for tax recovery. Consequently, the procedures enacted under one section cannot be utilised to activate the process chalked out in the other. Given these principles, I now examine the requisite steps that the Commissioner should have taken following the decision on the taxpayer’s (respondent’s) appeal. An essential guideline in this context is that when an appeal is properly brought before a higher authority, and that authority either modifies, reverses, or upholds the order put in issue before it, the order from the lower authority merges with the decision from the higher authority, and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law². This concept is known as the doctrine of merger, which is rooted in the necessity to maintain order within the judicial process and to uphold the integrity of the justice delivery system. The rationale supporting the merger doctrine is clear: there can only be one operative order addressing the same subject matter at any given moment. In light of this doctrine, we can logically deduce that, following the appellate order, the previous notice issued under section 137(2), pursuant to the assessment order or amended assessment order, had lost its significance and efficacy. It stood wiped out. To clarify this point further, let’s consider a scenario in which the assessment order is modified upon appeal, resulting in a reduction of the “amount payable”. In such

² GLAXO LABORATORIES LIMITED *Versus* INSPECTING ASSISTANT COMMISSIONER OF INCOME-TAX (1992 PTD 932) and COMMISSIONER OF INCOME-TAX, CENTRAL ZONE B *Versus* FARROKH CHMICAL INDUSTRIES (1992 SCMR 523)

situation, it becomes crucial to determine whether the original demand notice under section 137(2), which was issued in accordance with the initial assessment order, remains valid, or, would it be necessary to issue a new demand notice that aligns with the revised amount specified in the order on appeal? The answer is that a fresh demand notice would indeed be necessary. This is because the original “amount payable” as assessed in the initial assessment order has been modified and effectively merged with the findings of the order on appeal, thereby necessitating an updated notice to reflect the revised amount. Consequently, given the facts of the present case, the Commissioner was required to issue a fresh notice under section 137(2) reflecting the amounts determined in the appellate order, demanding payment from the taxpayer (respondent) within a fresh 30-day period. Only if the taxpayer (respondent) failed to pay the “amount payable” as established in the appellate order within the allotted time could the recovery mechanisms provided in sections 138 or 140 be activated. Given that no notice under section 137(2) had been generated after the appeal, no amount could be considered as “tax due.” Therefore, any recovery actions taken based on that premise would be deemed invalid.

6. That apart, a careful examination of the records reveals that on the very day the appeal order was issued, the Commissioner, without first confirming that the appellate order as stipulated in section 129(4) had been duly served on the taxpayer (respondent), rushed to issue a notice under section 140 to the Bank demanding an immediate payment by the close of that same day. This notice was fundamentally flawed for several reasons. Firstly, it was issued prematurely, as the Commissioner (Appeals) was required to serve his decision on the taxpayer (respondent) before any such notice could be sent out. Secondly, any recovery actions against a taxpayer (respondent) could not be initiated without providing them with a reasonable timeframe to settle the “amount payable” specified in the appellate order. Thirdly, failing to afford the taxpayer

(respondent) sufficient time to pursue further legal options regarding the appeal was manifestly unjust. Fourthly, it caused an injury to the dignity of the taxpayer (respondent). It is important to emphasise that the right to dignity is the most central of all fundamental rights, as it is the source from which all other rights are derived³. The Ordinance aims to strike a balance between ensuring tax recovery and upholding taxpayer dignity. The recovery process executed in these cases disregarded this balance. The failure to verify whether the “amount payable” had been classified as “tax due” before declaring the taxpayer (respondent) as a defaulter – and subsequently issuing a direct payment notice to the person holding money on behalf of the taxpayer (respondent) – amounted to discrediting the taxpayer (respondent) within its community and negatively affecting its business reputation. All of these factors strongly suggest that the pursuit of tax recovery took precedence over the protections afforded to the taxpayer (respondent) within a legal framework that upholds fundamental rights, such as the right to a fair trial, access to justice, dignity, and due process. No legal standards can justify this culture of authoritative dominance in tax recovery, as it fundamentally undermines the core principles of justice. This creates an imbalance between the need for efficient tax recovery and the protection of taxpayer’s rights.

7. Another significant aspect of this case highlights the excessive and autocratic exercise of the Revenue’s authority, which severely impeded the taxpayer’s (respondent’s) ability to seek judicial remedies and breached due process rights. In the case concerning LNG, the Commissioner (Appeals) decided on the appeal on the 9th of March, 2023, and later uploaded it to the FBR’s web portal at precisely 3:28 PM. A notice demanding payment under section 140 was issued at 4:00 PM on the same day. Similarly, regarding Serene Air, the appeal decision was made on the 11th of May, 2023, at 1:56 PM, followed by a notice

³ Edward J, Eberle, *Dignity and Liberty: Constitutional Visions in Germany and the United States* (2002).

under section 140 demanding payment at 10:30 PM—all on the same day. This diegesis raises a curious question: could the Commissioner legitimately demand immediate payment on the precise date the notice was issued, according to section 140 of the Ordinance? Upon scrutinising subsection (1) of section 140, it becomes clear that the Commissioner, through written notice, may require any person holding money on behalf of a taxpayer to pay the specified amount “by the date” set out in the notice. The expression “by the date” conveys the notion of making a payment “on or before the date”⁴. This implies that the payment window should encompass a reasonable duration, ensuring that persons (garnishees) have sufficient time to fulfill their obligations, fairness in the proceedings, and to prevent any semblance of arbitrariness or capriciousness. Had the intention been different, the legislature could easily have employed the wording “on the date” set out in the notice, which would have allowed for an alignment of the notice date with the payment date. However, determining what constitutes a “reasonable time” will inevitably differ from one situation to another, so it is prudent not to impose a fixed timeframe. Thus, it is essential to leave this matter to the discretion of the recovery officer, who can assess the specific circumstances surrounding each case. Therefore, I hold the opinion that the notices issued under section 140 in these cases were invalid and could not legally mandate immediate payment of tax from a garnishee who held money on behalf of the taxpayer (respondent).

8. The above discussion concludes that the petitioner - Revenue has been unable to substantiate the validity of the notice under section 140 of the Ordinance. Consequently, I think that an order as asked for should not be made. Therefore, I am not inclined to disturb the acceptance of the taxpayer’s (respondent’s) writ petitions and dismissal of the petitioner’s (Revenue’s) intra-court appeals, not for the reasons given by the High Court, but for what I have stated above.

⁴ EASTAUGH and OTHERS VS MACPHERSON [1954] 3 ALL ER 214 (CA)

9. These appeals fail and are accordingly dismissed.

Judge

APPROVED FOR REPORTING