IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI NAQVI

CIVIL APPEALS NO.649 TO 655 OF 2019
(On appeal against judgment dated 26.11.2015 passed by the Lahore High Court, Lahore in Writ Petitions No.15703, 16490, 16594, 29652, 30175, 31185, 9914 of 2012.)

AND

CIVIL APPEALS NO. 907-908 OF 2020
(On appeal against judgment dated 16.12.2015 passed by the Lahore High Court, Lahore in Writ Petitions No.14185 and 25076 of 2012)

AND

CMA 5787 OF 2021 IN CA 652 OF 2019
(For setting aside the ex-parte order)

Government of the Punjab through Chief Secretary, Lahore and others	**:**	**Appellants**
vs		
Defence Rays Golf and Country Club	...	CA 649/2019
DHA Lahore EME Sector	...	CAs 650-651/2019
Lahore Gymkhana club	...	CA 652/2019
M/s Royal Palm Golf & Country Club	...	CAs 653-654/2019
Punjab Club through its Secretary	...	CA 654/2019
Sukh Chan Welness Club (Pvt.) Ltd.	...	CAs 655-656/2019
The Defence Club, J-Block, DHA, Lahore	...	CAs 907-908/2020
	:	**Respondents**

For the Appellants	:	Mr. Shaukat Rauf Siddiqui, Addl. A.G. Punjab Mr. Nadeem Salah-ud-Din, Senior Law Officer (in all cases)
For the Respondents	:	Mr. Muhammad Ali Raza, ASC (in CA 649/2019)

Barrister Khurram Raza, ASC
(in CAs 650/2019 & CAs 907-908/2020)

Nemo
(in CA 651/19)

Mr. Muhammad Shakeel Ch., ASC
(in CA 652/2019 & in CMA 5787/2021)

Mr. Iftikhar Hussain Shah, ASC
(in CA 654/2019)

Ex-Parte
(in CAs 653 and 655/2019)

Date of Hearing : 28.02.2022

JUDGMENT

Munib Akhtar.: There are before us two appeals (being Nos.907 and 908/2020) arising out of a judgment of a learned Single Bench of the Lahore High Court dated 16.12.2015 and seven appeals (being Nos.649, 650, 651, 652, 653, 654 and 655/2019) arising out of a judgment dated 26.11.2015 of the same learned Single Judge. Both judgments are in essence identical and the Province is the appellant in all the appeals. The Province is aggrieved by the decisions as in terms thereof s. 7 of the Punjab Finance Act, 2011 (which remained in the field till 2015) ("2011 Act") was declared *ultra vires* the Constitution. The said section (which was also amended while in the field), insofar as presently relevant, was as follows:

> "**7. Education cess on clubs**.-- (1) This section shall have effect notwithstanding anything contained in any other law.
>
> (2) In this section— ...
>
> (b) "club" means an association or organization offering members social amenities, meals or temporary residence with minimum initial membership fee of two hundred thousand rupees, and notified as club by the Government...; ...
>
> (3) Notwithstanding any tax or duty levied under any other law, the Government shall levy cess on clubs at the following rates:-

S. No.	Activity on which cess is levied	Rate of cess
1.	Initial membership fee	10% of the initial membership fee
2.	Services rendered by the club	10% of the charge for a service rendered.

> ...
>
> (4) The cess shall be assessed and recovered in the prescribed manner...."

2. The respondents, who were of course the petitioners before the learned High Court, had submitted before that Court that the levy was in substance nothing other than the sales tax on services. It was contended that such a tax was already in the field when the 2011 Act was enacted, being then the Punjab Sales Tax Ordinance, 2000 ("2000 Ordinance"). The said Ordinance was repealed and replaced by the Punjab Sales Tax on Services Act, 2012 ("2012 Act"), which continues to be in the field. Thus, at all times material for the levy imposed by the aforementioned s. 7 there was a sales tax on services in the Province. On such basis it was contended that the respondents were being subjected to double taxation, which according to them was impermissible under the Constitution. This contention was accepted by the learned High Court, which held as follows (emphasis supplied):

> "It is evident that while abolishing the education Cess on clubs, it was observed that the Clubs are already paying sales tax at the rate of 60% since July, 2012 under the provision of the Punjab Sales Tax On Services Act, 2012. *Thus, it is sufficient to hold that the Clubs were burdened with double taxation which is not permissible under the law*."

The sentence highlighted constitutes the core of the reasoning of the learned High Court. On such basis, the petitions were allowed and it was declared that s. 7 had been *ultra vires* the Constitution.

3. Before us the learned Additional Advocate General, ably assisted by the Senior Law Officer, submitted that the learned High Court had erred materially in coming to the foregoing conclusion. It was submitted that double taxation was not impermissible under the Constitution and that the levy under s. 7, even if in substance a sales tax on services which was the subject matter of another statue, did not for that reason become unconstitutional or otherwise impermissible and beyond the competence of the Provincial Assembly. Contending that the respondents came within the scope of the charge, and were accordingly liable, the learned AAG prayed that the impugned judgments be set aside.

4. In reply learned counsel for the respondents supported the decisions and submitted that the correct conclusion had been arrived at. Reliance was placed, *inter alia*, (as had been done before the learned High Court) on entry No.49 of the Federal Legislative List of the Constitution. It was prayed that the present matters be dismissed.

5. Having heard learned counsel as above and examined the law and the record, we came to the conclusion that, with respect, the impugned judgments could not be sustained and had to be set aside. We are unable to agree with the basic proposition that found favor with the learned High Court and, as noted above, forms the core basis on which the matter was decided, that double taxation is impermissible under the Constitution. That, with respect, is not so. Double taxation is not beyond the scope of the relevant legislature, if in substance the levy in question is otherwise properly within its domain. The correct rule is that there is a very strong presumption against double taxation and a heavy burden is cast on the State to show that it has been resorted to. However, if the language of the statute is otherwise clear then the levy cannot be declared unconstitutional on such basis. It is to be noted that the question of double taxation invariably arises (although this does not necessarily always need to be so) within the four corners of the same statute. The case usually presented before the Court is that in addition to the charging section of a fiscal statute the State claims that pursuant to some other section(s) therein, the same subject matter is being taxed again. The objection taken by the taxpayer is that this is double taxation, i.e., the subject matter of the charging section is being taxed all over again. It is essentially in this context that the rule aforementioned has been laid down and applied. However, even in this context if the Court comes to the conclusion that the language of the other section is clear and unambiguously imposes the tax (which term is used here in its broadest sense) then the levy so imposed must be enforced regardless of whether it amounts to double taxation. This, of course, is not the case at hand. Here we have two different statues, one being the 2000 Ordinance/2012 Act and the other the aforementioned s. 7 of the 2011 Act. The question of double taxation does not therefore arise. The only possible question could be whether the levy imposed by s. 7 was within the legislative

competence of the Province. It is well settled that in determining the constitutionality of a levy it is its substance that will be considered, regardless of the name or label attached to it. Learned counsel for the respondents referred to Entry 49. We are, with respect, unable to see how that entry has any relevance for present purposes. Clearly, and this was quite correctly accepted by learned counsel, the levy imposed by s. 7 was not on the sale of goods. When learned counsel were queried as to what, in substance, was the levy imposed by the section if not a sales tax on services, they were, with respect, unable to come up with a satisfactory answer. In our view the substantive nature of the levy was clearly a sales tax on services. It could well be the case that this levy imposed a double financial or commercial burden on the respondents, and for the same transactions they were liable to pay sales tax both under the 2012 Act as well as s. 7. In this economic sense it may have amounted to double taxation and, indeed, perhaps that was the sense in which the learned High Court understood the levy to be. But that is not what is the legal meaning, and nature, of double taxation, with which alone the Court is considered in the facts and circumstances of the present case. It is also to be noted that sub-section (1) of s. 7 contained an express *non obstante* clause, and the charging provision (sub-section (3)) further reinforced this by itself containing another *non obstante* clause. These provisions strongly confirm the legislative intent and serve to negate any conclusion that the levy could be struck down as amounting to double taxation, whether on the legal or the economic or financial planes. Therefore, in our view, the learned High Court, with respect, erred in coming to the conclusion that s. 7 ought to be struck down on the ground that it amounted to double taxation as a matter of law, and was beyond the power conferred by the Constitution. The judgments being unsustainable have to be set aside.

6. Before concluding, we may note that the 2011 Act came into force, as the Finance Acts invariably do, on the 1st of July. However, as is clear from the charging provision it became applicable only on such entities as were notified as clubs by the Provincial Government. It is an accepted position that the relevant notification was issued on 09.03.2012. Therefore, the liability of the respondents to pay the levy only arose from that date and

continued up to 30.06.2015 (when s. 7 was omitted by the Finance Act of that year). Since the matter is somewhat old and it is only now that it has been definitively established that the respondents were liable under the section, we direct that any amounts that remain unpaid or recoverable from them shall be paid in four equal quarterly installments, the first payment being due and payable on 30.06.2022.

7. In view of the foregoing, at the conclusion of the hearing it was announced that the appeals stood allowed, with the impugned judgments being set aside.

Judge

Judge

Judge

Islamabad, the
28th February, 2022
Naveed/*

Approved For Reporting.