

IN THE SUPREME COURT OF PAKISTAN
(Appellate/Original Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
Mr. Justice Muhammad Ali Mazhar

Civil Appeal Nos. 174 to 177 of 2012

(Against the judgment dated 11.12.2003 passed by the Peshawar High Court, Peshawar in Writ Petitions No. 1980/1999, 1/2000, 120/2000 and 6/2001)

AND

Criminal Original Petition No. 59/04

(Against non-compliance of the order dated 26.02.2004 passed by this Court)

Lakson Tobacco Company Limited	<i>(in CA 174 & 175 of 2012)</i>
Pakistan Tobacco Company, etc.	<i>(in CA 176 of 2012)</i>
F.S. Tobacco Co. (Pvt) Ltd.	<i>(in CA 177 of 2012)</i>
Pakistan Tobacco Company Ltd.	<i>(in Crl.Org.P. 59 of 2004)</i>
	... Appellant/Petitioner

Versus

NWFP through Secretary Finance, etc.	<i>(in CA 174 & 175 of 2012)</i>
NWFP through Secretary Excise & Taxation Department, etc.	<i>(in CA 176 & 177 of 2012)</i>
Attaullah Khan	<i>(in Cr.O.P. 59 of 2004)</i>
	... Respondents

For the Appellants:	Mr. Raashid Anwer, ASC. <i>(in all cases)</i>
For Respondent No. 1:	Mr. Shumail Ahmad Butt, Advocate-General, KP. Mr. Imtiaz Ahmed, E.T.O., Mardan. Mr. Saeed Gul, E.T.O., Nowshera. <i>(in all cases)</i>
For the Respondent No. 2:	Mr. Rashideen Nawaz Qasoori, ASC. <i>(in all cases)</i>
Date of Hearing:	13.09.2022.

JUDGMENT

Qazi Faez Isa, J. These four appeals assail the same judgment of a learned Division Bench of the Peshawar High Court dated 11 December 2003 rendered in constitutional petitions filed by the appellants challenging the levy of tobacco development cess. The tobacco development cess was levied by the North West Frontier Province Finance Act, 1996 (**'the Act'**) as amended by the North West Frontier Province Finance Act, 1999.

2. The facts of the case, and the reasons for the decision, are well enumerated in the unreported impugned judgment, therefore, it would be appropriate to reproduce the entire judgment,¹as under:

'By this single judgment W.Ps.No.1980/99, 1/2000, 120/2000 and 6/2001, are disposed of as in all the petitions, filed by Tobacco Companies, the legality of the Tobacco Development Cess imposed by the N.W.F.P. Finance Act 1999 has been assailed. W.P.No.1980/99 has been filed by Pakistan Tobacco Company Limited, W.P.No.1/2000 by F.S. Tobacco Company Limited and the remaining two by Lakson Tobacco Company Limited, in which two different demands for the payment of the development cess have been questioned.

2. Before adverting to the impugned Tobacco Development Cess it is relevant to refer to the history of imposition of Tobacco Development Cess. The Government of N.W.F.P. had for the first time imposed the cess under Section 11 of the N.W.F.P. Finance Act 1996 which runs as under:-

"11. Tobacco development cess: There shall be levied and collected a development cess on tobacco at the rate of one rupee per kilogram at the district council exit points of the districts of Haripur, Mansehra, Abbottabad, Nowshera, Kohat, Lakki Marwat and D.I. Khan the cess will be collected by the concerned district councils and credited into government treasury."

3. The above provision was substituted by Section 11 of the N.W.F.P. Finance Act 1997, which reads:-

"11. Tobacco development cess: There shall be levied and collected a development cess on tobacco at the rate as Government may, from time to time, by notification in the official gazette, specify. The cess shall be collected at the District Council exit points of the districts of Haripur Mansehra, Abbottabad, Nowshera, Kohat, Lakki Marwat and D.I.Khan by the concerned District Councils and credited into Government Treasury."

4. The imposition of the Tobacco Development Cess by the Finance Act of 1996 and 1997 were challenged in a number of writ petitions filed by tobacco companies, including Lakson Tobacco Company Ltd. and Pakistan Tobacco Company Ltd. The constitutionality of Section 11 of the Finance Act 1996 were upheld by this Court in its judgment delivered in the case of Pakistan Tobacco Company (W.P.No.653/1996) decided on 20-10-1997. By the same judgment, however, Section 11 of the Finance Act of 1997 was declared illegal on the ground, and to the extent, of excessive and uncontrolled delegation of powers to the executive to fix the rate of Tobacco Development Cess without prescribing any guidelines. The executive had fixed Rs.1.25 per Kg cess, which

¹ The impugned judgment was authored by Nasir-ul-Mulk, J (as he then was) and the High Court Bench included Dost Muhammad Khan, J (as he then was).

exceeded the previous rate by Rs.0.25. The Court thus struck down this excess as illegal. Apart from this partial relief to the petitioners the Court upheld the validity of Section 11 of the Finance Act of 1996 and 1997 and declared that it was not ultravires the Constitution. This judgment was upheld by the Hon'ble Supreme Court in the case of Pakistan Tobacco Company Vs. Government of N.W.F.P. (PLD 2002 S.C. 460). While upholding the judgment of this Court, the Hon'ble Supreme Court added that the High Court should have saved the law instead of destroying it. The Court directed the Provincial Government to issue fresh notification for the purpose of fixing the rate of cess in accordance with the procedure laid down under Section 22 of the N.W.F.P. General Clauses Act 1956 and in case such notification is not issued within three months, the judgment of this Court shall hold the field. The Hon'ble Supreme Court had delivered the said judgment on 28-1-2002. By then the N.W.F.P. Finance Act of 1999 had already changed the mode of levy of Tobacco Development Cess. Section 11 of the said Act, which is now impugned in the present petitions, reads:-

"11. Tobacco development cess.— (1) There shall be levied and collected a development cess on tobacco at the rate of two rupees per kilogram.

(2) The cess leviable under sub-section (1) shall be collected directly from the **tobacco factories** on the basis of **tobacco quota fixed for the factory concerned** by the Pakistan Tobacco Board.

(3) It shall be responsibility of the Excise and Taxation Department to collect the cess and deposit it in the accounts of Government immediately upon realization."

5. Mr. M Sardar Khan, Advocate, appearing for the petitioner, apart from questioning the constitutionality of the levy of tobacco cess, advanced two main contentions. These are taken one by one. The first argument was that the levy of the cess on the tobacco factories on the basis of tobacco quota fixed for the factory by the Pakistan Tobacco Board was invalid as the Tobacco Board (hereinafter called the Board) did not fix any tobacco quota for the factories, or for that matter the tobacco company concerned. In support of this contention the learned counsel referred to the comments filed on behalf of the Board in which it was stated that no such quota is fixed by the Board. The learned counsel submitted that the Board only announces the tobacco requirements of each tobacco company, which cannot be made the basis levying of the cess because Section 11, makes tobacco quota as the basis for charging the cess. It was submitted that there can be no imposition of tax or cess by inference or analogy. For this proposition the learned counsel relied upon Bank of Chettinad Ltd v. Commissioner of Income-tax, Madras(AIR 1940 Privy Council 183), A.V. Fernandes v. The State of Kerala (S)A.I.R. 1957 S.C. 657 (V 44 C.99 Oct), M/s Goodyear India Limited v. State of Haryana and another (A.I.R. 1990 Supreme Court 781) and Messrs Bisvil Spinners Limited v. Superintendent, Central Excise and Land Customs Circle Sheikhpura (PLD 1988 Supreme Court 370).

6. Responding to the above contention, Barrister Jehanzeb Rahim, Advocate General, N.W.F.P. pressed into service the principle of pith and substance and contended that the intended requirement of each tobacco factory or company, which is publicized by the Board in accordance with the Tobacco Marketing Control Rules 1993 (hereinafter called the 1993 Rules) is unmistakably the tobacco quota referred to in Sub-section 2 of Section 11 of the Finance Act 1999. The learned Advocate General referred to para 2 of Martial Law Order No. 487 and contended that the marketing of tobacco in N.W.F.P. between tobacco growers and the companies engaged in the purchase of tobacco are to be regulated by the Martial Law Order and it is under the rule making power conferred by para 4 on the Provincial Government that the 1993 Rules have been framed. That under the Rules the quota or the requirement of each company is fixed by the Board and there can be no ambiguity about the quantity so fixed. For his contentions, the learned Advocate General cited Shamas Textile Mills Limited and others v. The Province of Punjab and 2 others (1999 S.C.M.R. 1477), Secretary to the Government of Punjab, Forest Department, Punjab, Lahore v. Ghulam Nabi and 3 others (PLD 2001 Supreme Court 415) and Khan Asfandiyar Wali and others v. Federation of Pakistan (PLD 2001 Supreme Court 607).

7. Before advertng to the contentions of the learned counsel for the parties, it is necessary to mention the scheme for the purchase of tobacco prescribed in MLO 487 and the 1993 Rules. As pointed out by the learned Advocate General para 2 of the MLO 487 provides that all purchases by the Tobacco Companies from the growers of tobacco are to be regulated by the MLO and the rules framed there under. Under Rule 3 of the Rules, every tobacco company intending to purchase tobacco is to indicate to the Board its total requirement of tobacco for the year. The Board will then publicize this intended requirement of various types of tobacco before commencement of the planting season. This is done for the facility of the growers so that they can grow tobacco according to the requirements of the tobacco companies. The Tobacco Companies are required to execute agreements for the purchase of their targeted requirements with the growers and copies of such agreements are to be supplied to the Board alongwith the list of such agreements (see Rule 4). Under Rule 5, the Board is to scrutinize the genuineness of these agreements through a committee constituted by it.

8. The above scheme shows that the tobacco companies are to submit its requirement of tobacco to the Board, which is publicized for the benefit of the grower and the companies must then purchase the quantity so indicated by them. The objection here is to the use of the phrase "tobacco quota", fixed by the Board. Indeed none of the provisions in MLO 487 or the 1993 Rules have used the phrase "tobacco quantity". Having said that, there is also no particular phrase or word use for the tobacco requirement of the companies submitted to the Board. In para 2(I) (1) for the purchase of flue-cured Virginia the phrase "targeted requirements of flue-cured Virginia tobacco" is used. In some of the other provisions of MLO 487, like para 2(II) (a), reference is made to "purchase targets". Whether word "requirement" or "target" has

been used, the MLO does not only make provisions for the Tobacco Companies to indicate their requirement of Tobacco but also provides for binding the Tobacco Companies to purchase the indicated requirement. Para 2 (III) (3) of the MLO provides that "it shall be binding upon Tobacco Companies to purchase tobacco in accordance with their indicated purchase target."

9. As stated above, the Companies are to enter into binding agreements with the Tobacco growers. Para 6 of MLO provides for penal consequences in case of contravention of the provisions of the MLO by any person. The requirement of the Companies, after it is publicized by the Board, and consequently agreements are executed with the growers, the quantities of the tobacco which must be purchased by the Tobacco Companies become fixed. Under Rule 8 of the 1993 Rules, the Tobacco Company is barred from closing its purchase depot until such times it has purchased its full targeted demand for various tobacco. The same rule further provides that in case of surplus production by the growers the Board may allocate the surplus to the Tobacco Companies proportionate to their purchase target. The Board thus not only publicizes the requirement but fixes the quantity of tobacco which each Tobacco Companies must purchase. Neither MLO 487 nor the 1993 Rules has used any particular phrase for the quantity so fixed. This quantity has been referred to in section 11 of the NWFP Finance Act 1997 as "Tobacco quota" fixed by the Pakistan Tobacco Board. Since the basis for levy of tobacco development cess is the quantity of the tobacco fixed for each Tobacco Company under MLO 487 and the rules and no specific phrase has been used therein for the fixed quantity of tobacco, the Provincial Legislature, while drafting section 11, for the sake of brevity, has used the phrase "Tobacco Quota" fixed by the Pakistan Tobacco Board. It is not the case of the petitioners, nor indeed it can be that the Pakistan Tobacco Board fixes tobacco quota other than the one stated in MLO 487 and the Rules, whether it be referred to as the targeted requirement or the purchase target or the indicated requirement. It is also not disputed that the petitioners are the factories mentioned in subsection 2 of section 11 of the Finance Act and are subject to the development cess.

10. There are no two views that fiscal laws are to be strictly construed and that nothing is to be presumed or implied. This has been so held in the judgment cited by the learned counsel for the petitioner and very clearly stated by the Hon'ble Supreme Court in the case of Bisvil Spinners Limited, ibid, where a quote to that effect from Maxwell on interpretation of statute has been reproduced with approval. That quote also includes a sentence which says "one can only look fairly at the language used". The fair construction of the provision "tobacco quota fixed for the factory concerned by the Pakistan Tobacco Board" means nothing more or less than the quantity of tobacco which the Tobacco Companies are bound to purchase after its indicated requirements are publicized by the Board, and agreements are entered by the Companies with the growers. Thus, we have no hesitation in holding that there is no ambiguity as to the basis of levy of Tobacco Development Cess on the petitioner.

11. The second contention of the learned counsel for the petitioner was that the Board fixes the quantity of tobacco for the Tobacco Companies they intend to purchase from different parts of the country, which includes the Province of Punjab. It was argued that the Province of N.W.F.P. was not empowered to levy development cess on tobacco not grown within its territory. That thus the entire levy was illegal as section 11 of the Finance Act of 1999 becomes unenforceable in that it provides for levy of cess on the tobacco not grown in NWFP.

12. The learned Additional Advocate General submitted that the petitioners purchase their tobacco mainly from NWFP and that separate records are maintained for the purchase made by them from the Province.

13. To inquire about the various kinds of tobacco grown in different parts of the country, we summoned a representative of Pakistan Tobacco Board. Mr. Sardar Hussain, Audit Officer of the Board appeared and stated at the Bar that three kinds of tobacco, flue-cured Virginia, white patta and Burley are grown exclusively in NWFP whereas dark cured tobacco is grown solely in the Province of Punjab. There is no dispute that the tobacco required and purchased by the petitioners from the Province of NWFP is clearly identifiable by the Pakistan Tobacco Board. This was stated factually and is also clear from the provisions of MLO 487 and 1993 Rules. All Tobacco Companies maintain their depots at various points for the purchase of the tobacco. The companies execute agreements with the growers, a list of which, alongwith the copies of the agreement are furnished to the Board (see Rule 4). Under rule 9 of the Rules, the Tobacco Companies are to maintain complete record of the purchases they make and submit on daily basis to the Board information of these purchases in a form prescribed by the Board. The Board thus maintains a complete record of all the purchases made by each Tobacco Company whether from the Province of NWFP or elsewhere. The tobacco purchased by the petitioners from NWFP is separately recorded and there is no possibility of a mix-up between the tobaccos purchased from NWFP with that purchased from the Province of Punjab. Obviously, the impugned development cess can be levied only on the tobacco grown in NWFP. The levy thus become enforceable to the extent of the tobacco purchased from this Province. In the case of Pakistan Tobacco Company v. Government, *ibid*, which as stated earlier was an appeal from the judgment of this Court, the Hon'ble Supreme Court had even gone to the extent of holding that the High Court ought not to have struck down the fixing of rate of development cess by the executive authority on account of excessive delegation and it should have saved the law instead of destroying it. The august Supreme Court went on to add that "section 11 of the Act even now can be saved by making directions to the Provincial Government to issue fresh notifications to the Provincial Government to issue fresh notification for the purpose of fixing the rate of cess/tax----". The Hon'ble Supreme Court allowed 3 months to the Government of NWFP to issue the necessary notification failing which the judgment of the High Court would hold the field. The principle thus laid down by the august Supreme Court is that law is to be saved rather than destroyed

and made enforceable if possible. In the light of this pronouncement of the Honourable Supreme Court, section 11 of the NWFP Finance Act 1999 is enforceable by restricting the levy of the tobacco development cess to the tobacco grown in NWFP.

14. The learned counsel for the petitioner had also questioned the very levy of the tobacco development cess on the ground of its being unconstitutional. Such arguments need not be addressed as they had already been advanced by the petitioners in the earlier cases and were not accepted by this Court and by the Honourable Supreme Court.

In view of the above discussion, the writ petitions are dismissed with the direction that the impugned development cess is leviable only on the tobacco grown in N.W.F.P.'

3. Leave to appeal the aforesaid judgment was granted *vide* order dated 29 February 2012 on the following grounds:

'2. The learned counsel appearing on behalf of the petitioners contended that where the Provincial Government or Assembly has no authority to levy a development cess irrespective of the purpose it is spent for, it being ultra vires of the Constitution shall be void. Such cess, the learned counsel added, is all the more unconstitutional where it has been levied in contravention of the provision contained in Article 146(2) and Article 147 of the Constitution of the Islamic Republic of Pakistan. Where the field, the learned counsel submitted, stood already occupied, levy of another cess under any name or for any purpose, would be uncalled for. The learned counsel by referring Article 143 of the Constitution contended that where there is conflict between the Federal and the Provincial law, it is the former that would prevail.'

4. The learned Mr. Raashid Anwer, representing the appellants, submits that the grounds as noted in the leave granting order, though raised before the High Court in the four writ petitions were not attended to by the learned Judges of the High Court. Though leave was not granted on any other ground we permitted learned counsel to also address us on those aspects of the case which were attended to in the impugned judgment. The learned counsel has also submitted a written synopsis (through CMA No. 6644 of 2022) in which he has most ably fleshed out in his submissions before us, which are reproduced hereunder:

'1. Violation of the provisions of Article 143 of the Constitution: Art. 143 states that if there is a conflict between a Federal law and a Provincial law, then the Federal law shall prevail. In the present case, the impugned Provincial law is in conflict with an earlier Federal law (i.e. the Pakistan Tobacco Board Ordinance, 1968) which seeks to tax the same activity.

2. Provinces cannot legislate in relation to topics mentioned in the Federal List:The impugned law imposes a cess on tobacco. Obviously the taxing event can only be on either the production of tobacco or on the sale of tobacco. It therefore come within the scope of either Entry 44 (Duties of excise) or, Entry 49 (Taxes on the sales and purchases of goods). Either way it is *ultra vires*.

3. The taxing event is vague:The impugned law states: "There shall be levied and collected a development cess on tobacco". So therefore the Act imposes a tax on tobacco. But is it a tax on the growing of tobacco leaves? Is it a tax on the sale of tobacco leaves? Is it a tax on the production of tobacco? Is it a tax on the sale of tobacco? Is it a tax on the consumption of tobacco? What is the activity which is being taxed? It is submitted that there is no answer and hence the law is liable to be struck down.

4. The taxing payer has not been specified:The impugned levy does not indicate who will be taxed. The provision states that it is applicable to "Tobacco Factories" however "Tobacco Factories" are not a legal entity. The Petitioner is not a Tobacco Factory but is instead a company which happens to own Tobacco Factories. No tax can be imposed by analogy. A fiscal statute is subject to the rule of strict construction. Any benefit of doubt must be given to the taxpayer.

5. The rate of tax is also not clear:The law calculates the levy at the rate of Rs 2/kg on the basis of tobacco quota fixed for the factory concerned by the Pakistan Tobacco Board. Therefore, before the liability of any tax payer can be calculated, there must be a quota fixed by the Pakistan Tobacco Board. It is an admitted fact that no such quota is actually fixed by the Pakistan Tobacco Board for any factory. It is therefore respectfully submitted that the basic requirement for collection has never been fulfilled.'

5. The learned Mr. Shumail Ahmad Butt, Advocate-General, Khyber Pakhtunkhwa ('AG'), submits that the impugned judgment is well reasoned and attends to each and every contention of the learned counsel. As regards the constitutionality of the said law, questioned by Mr. Raashid Anwer, the learned AG states that it was not discussed in detail in the impugned judgment because it was already resolved by the decision of this Court in the case of *Pakistan Tobacco Company Ltd. v Government of N.W.F.P.*,² filed by one of the present appellants was a party, and in which this specific question of constitutionality of the law was addressed.³ The learned AG points out that there was a material error in the printing in the law report of the judgment in the said case. The error was committed in the following sentence. '*There is doubt that the levy of "Tobacco Development Cess" falls within the prerogative of the Provincial Assembly and the same can be levied and collected for*

²PLD 2002 Supreme Court 460.

³ Ibid. para 22, p. 487.

*development purpose in the Province*⁴, which had left out the word 'no' preceding the word 'doubt'. 'There is no doubt that the levy of "Tobacco Development Cess" falls within the prerogative of the Provincial Assembly and the same can be levied and collected for development purpose in the Province.' The learned AG to support this contention has filed a certified copy of the said judgment of this Court (through CMA No. 6497 of 2020). Mr. Raashid Anwer, learned counsel representing the appellants, did not dispute that the word 'no' had been left out from the said law report. Therefore, it is held that the corrected version of the said sentence included the word 'no' before the word 'doubt'. The learned AG states that the said case of *Pakistan Tobacco Company*, which is a precedent of this Court, is a complete answer to the contention that section 11 of the North West Frontier Province Finance Act, 1999, which imposed the tobacco development cess, was constitutional.

6. The learned AG rebutted the contention of the learned counsel for the appellants, that both the Federation and the Province had legislated in respect of the same matter. The learned AG by referring to serial numbers 44 and 49 of the Federal Legislative List⁵ stated that the Province had not encroached upon the legislative domain of the Federation. He submitted that what the Province had levied was *tobacco development cess* which was in the nature of a fee and that this levy was also for the benefit of the appellants since the amount paid could only be spent as stipulated in subsection (3) of section 11 of the Act, reproduced hereunder:

'(3) The proceeds of the cess shall be utilized for:-

- (i) special maintenance and development of roads, highways, and "special plant protection service in the tobacco growing areas in the Province;
- (ii) such activities as are directed towards the development of tobacco production in the Province; and
- (iii) promotion of education in tobacco growing areas;.'

7. With regard to what constitutes *cess*, the learned AG referred to the case of *Federation of Pakistan v Durrani Ceramics*,⁶ relevant paragraph 19 whereof is reproduced hereunder:

'19. Upon examining the case-law from our own and other jurisdictions it emerges that the 'Cess' is levied for a particular

⁴Ibid, middle of para 22, p, 487.

⁵ made pursuant to Article 142 of the Constitution of the Islamic Republic of Pakistan.

⁶ 2014 SCMR 1630, para 19, p. 1645.

purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy. Both are compulsory exaction of money by public authorities. Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax'.'

The learned AG submitted that the tobacco development cess is levied on the quota of raw tobacco purchased, or which should have been purchased, by the appellants and it is immaterial whether it is referred to as a *quota*, *purchased target* or anything else because the chargeability section is not based on such a distinction; there is no doubt or confusion because admittedly the appellants enter into contracts with growers of tobacco specifying the quantity to be purchased. He further submits that these are not cases of purported overcharging, and if in cases it is contended that the appellants were overcharged they could challenge the same before the competent authority.

8. Learned Mr. Rashideen Nawaz Qasoori represents the Pakistan Tobacco Board and agrees with and adopts the submissions made by the learned AG.

9. Exercising his right of reply, the learned Mr. Raashid Anwer, states that it is an established principle that taxing statutes must be precisely drafted and if there is any ambiguity therein the same is to be interpreted in favour of the subject (or taxpayer) and the courts should neither rewrite a provision of the law nor fill-in any lacunae therein; reference is made to two cases of the Supreme Court of India⁷ and on the following three precedents of this Court: *A & B Food Industries v Commissioner of Income Tax*,⁸ *Government of Sindh v Muhammad Shafi*,⁹ *Government of Pakistan v Hashwani Hotel*.¹⁰

10. The contention of the appellants' learned counsel that section 11 of the Act was unconstitutional and that this aspect of the case was not considered by the learned Judges is not correct since this Court had held that the imposition of the tobacco development cess was not *ultra vires* the Constitution; in the case of *Pakistan Tobacco Company v Government of*

⁷*Mathuram Agrawal v State of Madhya Pradesh* (AIR 2000 SC 109, para 11, p.113) and *Commissioner of Income-tax v M/s. N.C. Budharaja and Company* (AIR 1993 SC 2529, para 13, p.2535).

⁸ 1992 SCMR 663, 674.

⁹ PLD 2015 SC 380, 386.

¹⁰ PLD 1990 SC 68, 74.

*NWFP*¹¹ which was a decision by a three-Member Bench of this Court and one with which we are in agreement with. As regards Mr. Raashid Anwer's submission, with regard to the manner in which taxing statutes have to be interpreted and that the judges should not fill-in any purported lacunae therein, we agree with him but in these cases the learned Judges of the High Court had neither violated the rule of interpretation of fiscal statutes nor had filled-in any purported lacunae in the law. The *tobacco development cess* that was levied was in the nature of fee, and the amounts collected were to be spent for the benefit of the tobacco manufacturers and the tobacco growers, who sustain the tobacco manufacturing the industry (including the appellants herein).

11. The impugned judgment had clearly and comprehensively set out the facts and attended to the propositions raised before the High Court and we are not persuaded to take a different view from the one taken therein. Therefore, these appeals are dismissed, but there shall be no order as to costs. In view of the fact that the appeals have been dismissed Criminal Original Petition No. 59 of 2004 also stands dismissed. We conclude by commending the learned AG and the learned Mr. Raashid Anwer who attended to these appeals with the competence and professionalism which we have come to expect from them.

Judge

Judge

Judge

Islamabad

13.09.2022

Approved for Reporting

Arif

¹¹PLD 2002 Supreme Court 460, para 22, p. 487.