

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Amin-ud-Din Khan

Civil Petition Nos. 682-L to 684-L and 768-L of 2017

(Against the judgment dated 19.12.2016 of the Lahore High Court, Lahore passed in Writ Petition Nos. 24827/12, 10182, 31567/13 and 22891 of 2014)

*The Commissioner Inland Revenue,
Lahore and others.* ... *(In all cases)
Petitioners*

Versus

M/s PEPSI Cola International, Lahore and others. ... *(In all cases)
Respondents*

For the Petitioners: Mr. Sarfraz Ahmed Cheema, ASC.
(In all cases) Syed Fayyaz Ahmed Sherazi, AOR (**absent**).
Mr. Naeem Hassan, Secretary (L), FBR.

For the Respondent No.1: Mr. Rashid Anwer, ASC.
(In all cases) Syed Rifaqat Hussain Shah, AOR.

Date of Hearing: 18.02.2022.

ORDER

Qazi Faez Isa, J. The learned counsel for the petitioners, in these four petitions, states that two show cause notices, both dated 31 August 2012, were issued by the Deputy Commissioner (IR), Large Taxpayers Unit, Lahore under section 11 of the Sales Tax Act, 1990 read with section 12(1) of the Federal Excise Act, 2005 and the Central Excise General Order 53 of 1967 (respectively '**the Sales Tax Act**' and '**the Excise Act**'), and another three show cause notices were issued by the Additional Commissioner Inland Revenue (Audit), Zone-II, Large Taxpayers Unit, Lahore under section 122 of the Income Tax Ordinance, 2001 ('**the Ordinance**').

2. These five notices were challenged by filing four writ petitions before the Lahore High Court, Lahore and through one common judgment the learned Judge of the High Court allowed the writ petitions in the following terms:

'39. In view of the above, these petitions are allowed and it is directed that:

a. The Commissioner shall, by proceeding under section 2(46)(e) of the Act, 1990, set up a Valuation Committee within a period of two months from the receipt of the order of this Court. The Valuation Committee shall make a determination of the value of the Concentrate on which the duty under the Act, 1990 is to be assessed.

b. Upon the assessment of the duty and taxes, as aforesaid, the respondent-department shall proceed on the show cause notices accordingly. It is made clear that the First and Second Show Cause Notices shall be held in abeyance till the time the Valuation Committee returns its findings and thereafter the proceedings shall be dependent on the valuation so made by the Committee.

c. Notwithstanding the above, the First Show Cause Notice with regard to the allegation of evasion of excise duty only may be proceeded with by the officer concerned and Pepsi may take all objections available to it in reply to the show cause notice which will be considered on its own merits by the concerned officer.

d. The Income Tax Notices shall also be held in abeyance till the determination by the Valuation Committee and thereafter shall take their own course in terms of the conclusion drawn by the Valuation Committee, or the officer adjudicating the First Show Cause Notice, as the case may be.'

3. The learned Mr. Sarfraz Ahmed Cheema submits on behalf of the petitioners that the respondent No. 1 did not respond to the show cause notices, avoided the departmental hierarchy provided under the Sales Tax Act, the Excise Act and the Ordinance. And, if the grievance of the respondent No. 1 was not addressed, then it could have filed an appeal before the designated officer, then before the Appellate Tribunal, and thereafter references would lie to the High Court. However, the respondent challenged the said notices in the High Court by filing petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan. On merits he submits that the High Court should not have sent the matter for the determination of the Valuation Committee, particularly since the case of the respondent No. 1 came under clause (a) sub-section (46) of section 2 of the Sales Tax Act. The learned counsel has also referred to a case from the Indian jurisdiction of the *Commissioner of Central Excise, Surat v M/s Surat Textiles Mills Limited* (which is a downloaded version of the judgment and the relevant citation has not been provided) and to a judgment of the Customs, Excise & Sales Tax Appellate Tribunal, Lahore dated 24 May 2004 in the case titled *Excise Appeal No. 418/LB/2001 and Sales Tax Appeal No. 625/LB/2001* (at page 126 of the paper-book). In conclusion the learned counsel submits that the matter involves a factual controversy

which should not have been assailed in the constitutional jurisdiction of the High Court.

4. The learned Mr. Rashid Anwer represents the respondent No. 1. He submits that the learned Judge of the High Court had actually accepted the contention/proposal of the Deputy Attorney General for Pakistan to refer the matter to the Valuation Committee and had kept alive the show cause notices even though the prayer in the petitions (filed by the respondent No. 1) had sought the quashment of the show cause notices. He next submits that the said show cause notices were based on conjectures and surmises, and as such clause (a) of sub-section (46) of section 2 of the Sales Tax Act was not applicable. Further, that in such cases value is appropriately determined by the Valuation Committee and it is for just such type of cases that the law provided for the Valuation Committee under clause (e) of sub-section (46) of section 2 of the Sales Tax Act. By referring the matter to the Valuation Committee the petitioners could not possibly have any grievance, and all the more so when the Valuation Committee is constituted by the petitioner No. 1, submits the learned Mr. Rashid Anwer. He supports his submissions by referring to Notification No. LTU/CIR/Zone-II/9726 dated 17 April 2017, through which a five-member Valuation Committee was constituted, headed by the Additional Commissioner (IR) Legal, Zone-II, LTU, Lahore as its Chairman. Deputy Commissioner (IR), (Audit-08), Zone-II, LTU, Lahore and Deputy Commissioner (IR), (Audit-09), Zone-II, LTU, Lahore were its members and another two members were the nominees of the Lahore Chamber of Commerce and Industry. The learned counsel states that the Valuation Committee commenced its work and held a number of hearings, but thereafter meetings were not called, probably on account of the intervention of the petitioners as they may have felt that the decision of the Valuation Committee may go against them. He submits that once the Valuation Committee had commenced its work and the impugned judgment of the High Court had not been suspended it would not be appropriate, after six years, to stop the Valuation Committee from its work.

5. We have heard the learned counsel for the parties and examined the documents on record and the cited judgments. The only question which needs to be considered at this juncture is whether the exercise of constitutional jurisdiction by the High Court was called for and, if it was, whether the impugned judgment accords with the law. The show cause

notices had conjectured on the value/price of the concentrate used by the respondent No. 1. The value was derived on conjectural basis and the High Court held that this did not accord with the law, which envisaged a Valuation Committee under clause (e) of sub-section (46) of section 2 of the Sales Tax Act, and that such Valuation Committee should have determined it. The High Court was correct in holding that clause (a) of sub-section (46) of section 2 of the Sales Tax Act did not apply. It is also not correct to state that the High Court had decided a factual controversy. The impugned judgment was in accordance with the law and one which had preserved the interest of both sides. The law had provided for determination by a Valuation Committee in cases such as the present when value/price could not be easily ascertained. However, the petitioners had arbitrarily determined value, without recourse to the Valuation Committee, and the High Court exercised its constitutional jurisdiction to ensure that the law was followed, and did so by referring the matter for determining value/price to the statutory Valuation Committee. The show cause notices issued under the Sales Tax Act, the Excise Act and the Ordinance were dependent on the correct ascertainment of value/price; the learned Judge had deferred action, if any, thereon till after the matter had been determined by the Valuation Committee. Both the learned counsel had also made submissions on the merits of the case. However, we have restrained ourselves from expressing any view on the merits of the case so as not to adversely affect the case of either party and not to undermine the task assigned to the Valuation Committee.

6. For the reasons mentioned above, we are not inclined to grant leave to appeal, which is declined, and, consequently, these petitions are dismissed.

Judge

Judge

Islamabad:
18.02.2022

Approved for Reporting
(M. Tauseef)