Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

Sales Tax Reference No.11/2022

M/s Warid Telecom (Pvt) Limited

Versus

Appellate Tribunal Inland Revenue, etc

Applicants by	:	M/s Muhammad Usman Shaukat and Muhammad Mohsin Nazir, Advocates.
Respondents by	:	M/s Syed Ishfaq Hussain Naqvi and Babar Bilal, Advocates. Dr. Muhammad Hasnain, AC, I.R.
Date of Hearing	:	**09-05-2022.**

ATHAR MINALLAH, C.J.- Through this consolidated judgment, we shall decide the tax references listed in Annexure-A attached hereto.

2. The taxpayers have proposed for our consideration questions of law stated to have arisen out of judgments, dated 07.03.2022, 04.03.2022 and 04.03.2022. The proceedings against the taxpayers were initiated under section 11 of the Sales Tax Act, 1990 (hereinafter referred to as the ***"Act of 1990"***). Show cause notices were issued under subsection (5) of section 11 of the Act of 1990. The Taxation Officer issued respective orders-in-original. In case of Sales Tax References No.11 of 2022 and 12 of 2022, the Commissioner Inland Revenue (Appeals) allowed the appeals and remanded the cases to the Taxation Officer with the direction to obtain relevant

evidence and, thereafter, decide the cases in accordance with law. In Sales Tax Reference No.14 of 2022, the learned Appellate Tribunal Inland Revenue (hereinafter referred to as the ***"Tribunal"***) vide order, dated 22.04.2019 had allowed the appeal and the Taxation Officer was directed to scrutinize all the issues raised in the case and, thereafter, make a determination whether the taxpayer was eligible for grant of exemption. In all the three cases in hand, the matters were sent back to the Taxation Officer for deciding the matters afresh. It is noted that the show cause notices issued under subsection (5) of section 11 of the Act of 1990 were not vacated nor findings were recorded by the learned Commissioner Inland Revenue (Appeals) or the learned Tribunal, as the case may be. The Taxation Officer, thereafter, passed orders-in-original. The appeals were preferred before the learned Collector Inland Revenue (Appeals) and then the learned Tribunal. In all the three cases, the learned Tribunal concluded that the orders-in-original passed by the Taxation Officer, after the matters were remanded to the latter, were covered under section 11 (B) of the Act of 1990 and, therefore, appeals preferred under section 45 (B) ibid were not competent before the Commissioner Inland Revenue (Appeals) nor the Tribunal. The learned Tribunal, therefore, was of the opinion that it was bereft of jurisdiction to entertain the appeals under section 46 of the Act of 1990.

3. The learned counsels for the parties have been heard at length. In case of STR No.11 and STR No.12 of 2022, two questions of law have arisen out of the judgment rendered by the learned Tribunal i.e. whether the learned Commissioner Inland Revenue (Appeals) was competent to remand the matter to the Taxation Officer for 'de novo

consideration', whether orders-in-original passed by the Taxation Officer fell under section 11 or section 11 (B) of the Act of 1990. Likewise, in STR No.12 of 2022 the main question proposed for our consideration is; whether the proceedings by the Taxation Officer after remand by the learned Tribunal were covered under section 11 or section 11 (B) of the Act of 1990. The fundamental question essentially proposed for our consideration is regarding the distinction between section 11 and section 11 (B) of the Act of 1990.

4. Section 11 is regarding assessment of tax and recovery of tax not levied or short levied or erroneously refunded. The distinct eventualities have been described in subsections (1), (2), (3), (4) and (4A) of section 11. Subsection (5) explicitly provides that no order under section 11 shall be made unless a notice to show cause has been given within a period of five years from the relevant date, to the person in default, specifying the grounds on which it is intended to proceed against him. It further provides that the officer of sales tax shall take into consideration the representation made by such person and provide him with an opportunity of being heard. On the other hand, section 11 (B) contemplates "assessment giving effect to an order". Subsection (1) of section 11 (B) provides that except where sub-section (2) applies, where, in consequence of, or to give effect to, any finding or direction in any order made under Chapter-VIII by the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court, an order of assessment of tax is to be issued to any registered person, the Commissioner or an officer of Inland Revenue empowered in this behalf shall issue the order within one year from the end of the financial year in which the order of the Commissioner (Appeals),

Appellate Tribunal, High Court or Supreme Court, as the case may be, was served on the Commissioner or officer of Inland Revenue. Subsection (2) further provides that where, by an order made under Chapter-VIII by the Appellate Tribunal, High Court or Supreme Court, an order of assessment is remanded wholly or partly and the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is directed to pass a new order of assessment, the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, shall pass the new order within one year from the end of the financial year in which the Commissioner or Commissioner (Appeals) or officer of Inland Revenue, as the case may be, is served with the order. It is noted that section 11 explicitly makes the issuance of a show cause notice as a mandatory precondition while there is no such requirement mentioned by the legislature in section 11 (B).

5. A plain reading of both the sections clearly manifest the distinction. Chapter-VIII provides statutory right of appeal before the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal under sections 45(B) and 46 of the Act of 1990 respectively. Subsection (2) of section 45 (B) empowers the Commissioner Inland Revenue (Appeals) to pass such order as the latter thinks fit, confirming, varying, altering, setting aside or annulling the decision or order appealed against. Subsection (3) unambiguously provides that the Commissioner Inland Revenue (Appeals) may make such further inquiry as may be necessary provided that he shall not remand the case for ‘de novo consideration’. The expression de novo consideration has not been defined in the Act of 1990. The said expression has been defined as meaning deciding a matter from the beginning; anew. It

refers to trying a matter anew, as if it had not been heard before and as if no decision had been previously rendered. It refers to an independent determination of the controversy without taking into account the prior resolution of the same controversy. The bar, therefore, is regarding 'de novo consideration' and does not extend to a finding, order or direction having the effect of nullifying the show cause notice issued under subsection (5) of section 11 of the Act of 1990. The remand would not amount to 'de novo consideration' if the show cause notice issued under section 11 of the Act of 1990 is merged in the order, finding or direction given by the Commissioner Inland Revenue (Appeals). This factum is crucial in order to draw a distinction between an assessment order passed under section 11 or section 11 (B), as the case may be. If the remand is of such a nature that the show cause notice issued under subsection (5) of section 11 of the Act of 1990 remains unaffected and a redetermination has to be made anew, then the proceedings would be covered under section 11 of the Act of 1990. On the other hand, if the finding, direction or order passed by the Commissioner Inland Revenue (Appeals), Tribunal, High Court or the august Supreme Court is such that it leads to the merger of the show cause notice issued under subsection (5) of section 11 of the Act of 1990, than in such an eventuality it would be covered under section 11(B) of the Act of 1990 because the assessment order would be merely giving effect to the order, finding or direction.

6. The Act of 1990 is a fiscal statute. The settled principles of interpretation of a fiscal statute are that the provisions are required to be interpreted literally and equity or presumption are alien thereto; if a provision of a taxing statute can have two reasonable explanations

then one which is favourable to the taxpayer has to be accepted; any ambiguity is required to be resolved in favour of the tax payer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. The statute has to be read as a whole and the intention of the legislature has to be discovered by paying attention to what has been said. It is settled law that while interpreting fiscal statutes the Court looks at what is clearly said; there is no room for any intendment; nor is there any equity about a tax; there is no presumption as to tax; nothing was to be read in or implied and one could only look fairly at the language used. Reliance is placed on the cases of *'Federation of Pakistan through Secretary Ministry of Finance and others v. Haji Muhammad Sadiq and others'* [PLD 2007 SC 133], *'Aslam Industries Ltd., Khanpur v. Pakistan Edible Corporation of Pakistan and others'* [1993 SCMR 683], *'Collector of Customs (Appraisement), Karachi and others v. Messrs Abdul Majeed Khan and others'* [1977 SCMR 371], and *'Messrs Hirjina & Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax Central Karachi'* [1971 SCMR 128].

7. The Commissioner Inland Revenue (Appeals) in case of Sales Tax References No.11/2022 and 12/2022, had remanded the matters to the Taxation Officer for 'de novo consideration'. Such power was not vested in the learned Commissioner Inland Revenue (Appeals). However, the orders were not assailed and, therefore, after independent determination, the Taxation Officer decided the earlier issued show cause notices anew. The proceedings were, therefore,

covered under section 11 of the Act of 1990 and they did not attract section 11 (B). Likewise, in the other connected sales tax reference, the learned Tribunal vide order, dated 22.04.2019 had directed the Taxation Officer to scrutinize all the issues raised in the case and, thereafter, make a determination whether the taxpayer was eligible for grant of exemption. The remand was definitely in the nature of 'de novo consideration' and it did not affect nor prejudice the show cause notice, which had been issued under subsection (5) of section 11 of the Act of 1990. The subsequent proceedings in all the cases in hand were, therefore, covered under section 11 of the Act of 1990 and not section 11 (B) ibid. In our opinion, the learned Tribunal has not properly appreciated the distinction between section 11 and section 11 (B) and, therefore, has erred in deciding the appeals on the sole ground that they were not competent.

8. We, therefore, hold that the proceedings in all the three tax references were covered under section 11 of the Act of 1990 and, therefore, the learned Tribunal was expected to decide the appeals on merit. The questions proposed for our consideration are answered in the light of the above discussion. The appeals will be treated as pending before the learned Tribunal and the latter is expected to afford opportunity of hearing to the parties and, thereafter, decide them on merit.

9. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court.

(CHIEF JUSTICE)

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Approved for reporting

*Asif Mughal/**

ANNEXURE-A

Sr. No.	Sales Tax Reference Reference. No.	TITLED
1.	Sales Tax Reference No.11 of 2022	M/s Warid Telecom (Pvt) Limited vs. Appellate Tribunal Inland Revenue, etc
2.	Sales Tax Reference No.12 of 2022	M/s Pakistan Mobile Communications Limited vs. Appellate Tribunal Inland Revenue, etc
3.	Sales Tax Reference No.14 of 2022	M/s Global Packers & Movers (Pvt) Ltd vs. Commissioner Inland Revenue, etc