JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.158 of 2023
Hyderabad Chamber of Commerce and Industry
Versus
Ministry of Commerce and others

Date of Hearing:	10.05.2024
Petitioner / Appellant by:	M/s Ali Nawaz Kharal, Hassan Muneeb Zia, Ayesha Tauqeer Aslam, Narmeen Jamal, Malik Qamar Abbas, Advocates.
Respondents by:	Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General. Ms. Asia Batool, learned Assistant Attorney General. Malik Ghulam Sabir, Advocate for respondent No.5 in writ petition No.158/2023 and for the applicant in C.M. No.969/2022 in C.M.A. No.56/2022. M/s Muzaffar A. Mirza, Chief Prosecutor and Hasnain Raza, SPP, SECP. Pir Shah Gul Ahmad, Deputy Director, D.G.T.O.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide Appeal No.56/2022 and writ petition No.158/2023 since they entail certain common features.

2. Through Appeal No.56/2022 filed under Section 21(4) of the Trade Organizations Act, 2013 (**"the TO Act, 2013"**) the appellant, Hyderabad Chamber of Commerce and Industry (**"Old-HCCI"**), impugns the order dated 01.04.2022 passed by the Committee of the Federal Cabinet whereby its appeal against the order dated 27.01.2020 passed by the Directorate General of Trade Organizations (**"DGTO"**) was turned down. Through the said order dated 27.01.2020, the licence issued to the Old-HCCI was cancelled.

3. Through writ petition No.158/2023 the petitioner, Old-HCCI, questions the grant of licence dated 20.04.2022 by the Ministry of Commerce to the New-HCCI under Section 3 of the 2013 Act.

4. The record shows that on 16.03.1959, the Ministry of Commerce, Government of Pakistan granted a licence to Hyderabad Chamber of Commerce and Industry with the direction that it be registered as a

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company with limited liability. On 14.07.1960, the Old-HCCI was incorporated as a company under the provisions of the erstwhile Companies Act, 1913. On 07.05.2008, the Ministry of Commerce renewed the licence of the Old-HCCI as a trade organization under the provisions of Section 3 of the Trade Organizations Ordinance, 2007 (**"the TO Ordinance, 2007"**). This licence was valid for a period of three years and was due to expire on 06.05.2011.

5. The TO Act, 2013 was enacted on 20.02.2013. Section 6(1) of the said Act requires a trade organization to renew its licence every five years, whereas Section 6(2) provides that an application for the renewal of licence shall be made to the DGTO ninety days prior to its expiry. In terms of the proviso to Section 6(2) the DGTO, on sufficient cause being shown, by an order in writing, may extend the said period but not for a period exceeding thirty days. Section 7(1)(a) of the TO Act, 2013 provides that the licence granted to a trade organization shall be cancelled by the Federal Government where a trade organization fails to apply for the renewal of the licence granted under Section 3 of the said Act within the prescribed or extended period allowed by the DGTO.

6. Apparently, through notice dated 12.12.2011, the DGTO had required the Old-HCCI to apply for the renewal of its licence. No response was given to the said notice by the Old-HCCI. On 21.06.2013, the DGTO issued a final notice to the Old-HCCI requiring it to file an appeal before the Secretary, Commerce Division under the provisions of Section 21(2) of the TO Act, 2013 before 30.06.2013, failing which the licence would be cancelled under Section 7 of the TO Act, 2013.

7. The Old-HCCI's case is that on 27.06.2013, it applied for the renewal of its licence in the format provided in Schedule B to the Trade Organization Rules, 2013 (**"the TO Rules, 2013"**) and also deposited the requisite appeal fee. Through letter dated 31.07.2013, the DGTO pointed out nine deficiencies in the Old-HCCI's application for the renewal of its licence. After the Old-HCCI cleared some of the deficiencies the DGTO, vide letter dated 18.12.2013, required the following documents from the Old-HCCI to be furnished within a period of ten days so that the remaining deficiencies in its application for the renewal of its licence are cleared:-

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"i. Performance review report as required under rule 23(2) of TORs, 2013.

ii. Hyderabad Chamber of Commerce & Industry has been furnished only Acknowledgment of filling certain documents with Securities & Exchange Commission of Pakistan. Chamber may be required to furnish complete Corporate Compliance Certificate from SECP.

iii. An updated hard copy of the memorandum and articles of association of the trade organization as approved by the Ministry of Commerce and SECP.

iv. An updated soft copy of the memorandum and articles of association of the trade organization as approved by the Ministry of Commerce and SECP."

8. On 12.05.2014, the DGTO sent a reminder to the Secretary General of the Old-HCCI with the warning that if the required documents are not furnished within seven days, it would render the Old-HCCI's licence liable to cancellation. After this wakeup call, the Old-HCCI, vide letter dated 19.05.2014, applied to the Securities and Exchange Commission of Pakistan ("SECP") for the issuance of a corporate compliance certificate. In terms of Rule 10(2)(b) of the TO Rules, 2013, the licence of a trade organization can be renewed for a further five years subject to *inter alia* the condition that it has been reporting corporate compliance to the SECP and the DGTO. Vide letter dated 27.05.2014, the SECP informed the Secretary of the Old-HCCI that the corporate compliance certificate could not be issued since the matter regarding the election of the directors of the Old-HCCI was pending before a Court.

9. On 06.01.2015, the DGTO issued a notice to the Secretary General of the Old-HCCI calling upon him to show cause as to why the application for the renewal of its licence should not be rejected due to its failure to fulfill the requirements specified in the DGTO's letters dated 31.07.2013, 18.12.2013 and 12.05.2014. Vide letter dated 18.02.2015, the DGTO gave a period of fifteen days to the Old-HCCI to clear the deficiencies in the application for the renewal of its licence. Perusal of the said letter shows that the only two documents that the Old-HCCI was required to submit was (i) a soft copy of its Memorandum and Articles of Association made in accordance with the requirements of the TO Act, 2013 and the TO Rules, 2013 and (ii) the corporate compliance certificate issued by the SECP. Vide letter dated 04.03.2015, the DGTO informed the Old-HCCI that the

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application for the renewal of its licence will be processed subject to the submission of a corporate compliance certificate.

10. It is necessary at this stage to detail the history of the litigation with respect to the elections of the Executive Committee of the Old-HCCI. Apparently, suit No.1408/2012 was filed before the Hon'ble High Court of Sindh by members of the Old-HCCI voicing grievances pertaining to the election of the Executive Committee conducted in 2012. Vide order dated 20.09.2012, the Hon'ble High Court of Sindh issued an injunctive order which had the effect of the previously elected Executive Committee to continue working beyond its term. The Old-HCCI asserts that it was due to the said injunctive order that elections of the Executive Committee could not be held between 2012 and 2018. It also asserts that as its licence was not renewed due to the said injunctive order, the SECP was not issuing a corporate compliance certificate. The said suit was decreed vide judgment dated 05.08.2013 wherein it was held *inter alia* that the existing Executive Committee of the Old-HCCI would continue to hold their offices until the next elections.

11. On 25.09.2013, some members of the Old-HCCI filed suit No.1204/2013 before the Hon'ble High Court of Sindh. Again vide order dated 25.09.2013, the process of the election of the Executive Committee was stayed. On 11.06.2015, the said stay order was recalled and on 03.02.2020, the said suit was dismissed as withdrawn.

12. On 03.09.2015, suit No.1648/2015 was filed by some members of the Old-HCCI before the Hon'ble High Court of Sindh and on 03.09.2015 a status quo order was issued, as a result of which elections of the Executive Committee of the Old-HCCI were not held. This injunctive order was vacated on 20.03.2018 and the said suit was dismissed for non-prosecution on 20.11.2019.

13. It was not until 27.05.2018 that elections of the Executive Committee of the Old-HCCI were held. Even by this stage, the Old-HCCI's application for the renewal of its licence was pending with the DGTO.

14. On 03.06.2019, the Old-HCCI filed writ petition No.2275/2019 before this Court praying for a direction to the SECP to issue a corporate compliance certificate to the petitioner. Furthermore, the Old-HCCI had also sought a direction to be issued to the DGTO to renew its licence.

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Since the Old-HCCI's licence had expired on 06.05.2011 and had not been renewed at any material stage, another party forming itself as the Hyderabad Chamber of Commerce and Industry ("New-HCCI"**) had, on 26.04.2019, applied to respondent No.2 for the issuance of a licence. The New-HCCI had filed an application to be impleaded as a respondent in writ petition No.2275/2019. The stance of this party was that by operation of Section 4 of the TO Act 2013, the licence granted to the Old-HCCI prior to the enactment of the 2013 Act stood revoked. The New-HCCI's grievance was that its application for the grant of a licence was not processed by the DGTO due to the pendency of litigation before this Court. Vide order dated 16.10.2019, the said writ petition was disposed of with the direction to the DGTO to decide (i) the Old-HCCI's application for the renewal of its licence, and (ii) the New-HCCI's application for the grant of a licence strictly in accordance with the law.**

15. Vide order dated 10.01.2020, the DGTO turned down the Old-HCCI's application for the renewal of its licence. Furthermore, the DGTO issued a notice to the Old-HCCI to show cause as to why its licence should not be cancelled under Section 7 (f), (g) and (h) of the TO Act, 2013 and the TO Rules, 2013. It was also ordered that the New-HCCI's application for the grant of a licence shall be processed in accordance with the said Act and Rules.

16. On 14.01.2020, a reply to the said show cause notice was submitted on behalf of the Old-HCCI seeking the withdrawal of the DGTO's order dated 10.01.2020. Vide order dated 27.01.2020, the DGTO cancelled the Old-HCCI's licence. Aggrieved by the said order, the Old-HCCI preferred an appeal before the Federal Government under Section 21(2) of the TO Act, 2013. Vide order dated 01.04.2022, the said appeal was dismissed. Appeal No.56/2022 against the said order dated 01.04.2022 has been filed by the Old-HCCI under Section 21(4) of the TO Act, 2013 before this Court.

17. On 20.04.2022, licence No.307 was granted by the Federal Government to the New-HCCI under Section 3 of the TO Act, 2013. The grant of the said licence has been questioned by the Old-HCCI in writ petition No.158/2023, which was filed on 17.01.2023.

18. Respondent No.5 in writ petition No.158/2023 is Adeel Siddique, who is the sole proprietor of Premier Paint Industry, which is a Corporate

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Member of the New-HCCI. He had filed application (C.M.No.969/2022) to be impleaded as a respondent in Appeal No.56/2022. Perusal of the order dated 27.01.2020 passed by the DGTO and the order dated 01.04.2022 passed by the Committee of the Federal Cabinet shows that respondent No.5 was heard before the said orders were passed. Therefore, respondent No.5's application for impleadment as a respondent in Appeal No.56/2022 is allowed.

19. Learned counsel for the Old-HCCI, after narrating the facts leading to the filing of the instant petition, submitted that no opportunity of a hearing was afforded to the Old-HCCI by the DGTO before passing order dated 27.01.2020 whereby its licence was cancelled; that Section 7(2) of the TO Act, 2013 obligates the Federal Government to afford an opportunity of a hearing to a trade organization before the cancellation of its licence; that the DGTO's order dated 27.01.2020 does not specify the sub-clause in Section 7 of the TO Act, 2013 which Old-HCCI was alleged to have violated; that by granting a licence to the New-HCCI, the DGTO has denied the Old-HCCI's right for the grant of a *de novo* licence under Section 9 of the TO Act, 2013; that Section 2(f) of the TO Act, 2013 defines an *"existing trade organization"* to mean an organization licenced under the Trade Organizations Ordinance, 1961 ("the TO Ordinance, 1961"**); that the *"repealed ordinance"* has been defined in Section 2(q) of the TO Act, 2013 to mean the TO Ordinance, 1961; that by virtue of Section 4(1) of the TO Act, 2013, the licence granted under Section 3 of the repealed Ordinance to an existing trade organization stands revoked with effect from 30.12.2006 and such trade organization is required to apply for the grant of a fresh licence under the 2013 Act; that the Old-HCCI was not an *"existing trade organization"* as it was granted a licence under the TO Ordinance, 2007 and therefore it did not have to apply for a fresh licence; that by virtue of Section 36 of the TO Act, 2013, anything done under the TO Ordinance, 2007 is saved and therefore the Old-HCCI's licence granted under the provisions of the said Ordinance is also saved; that the licence dated 07.05.2008 granted to the Old-HCCI stood validated and protected under Section 36 of the TO Act 2013; that the concurrent orders dated 27.01.2020 and 01.04.2022 passed by the DGTO and the Federal Government, respectively, are not supported by reasons inasmuch as**

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they do not address the grounds taken by the Old-HCCI in its reply dated 14.01.2020 to the DGTO's letter / show cause notice dated 10.01.2020; that the DGTO and the Federal Government concurrently erred by not appreciating that the SECP eventually issued a corporate compliance certificate to the Old-HCCI on 17.01.2020, which is prior in time to the orders assailed in appeal No.56/2022; and that the said certificate was issued after the Old-HCCI satisfied all the requirements of the SECP listed in its letter dated 05.11.2019. Learned counsel for the Old-HCCI prayed for the writ petition to be allowed and for the said orders dated 27.01.2020 and 01.04.2022 to be set-aside.

20. On the other hand, the learned counsel for respondent No.5 in writ petition No.158/2023 and intervener in appeal No.56/2022 submitted that the licence dated 07.05.2008 granted to the Old-HCCI was valid for a period of three years, i.e. up to 06.05.2011; that the TO Act, 2013 was enacted on 20.02.2013 but it was not until 02.07.2013 that the Old-HCCI applied for the renewal of its licence; that Rule 10(3) of the TO Rules, 2013 requires a trade organization to apply for the renewal of its licence to the DGTO on the format set out in Schedule-B to the said Rules; that along with the application for the renewal, the applicant is to provide documents listed in Rule 10(3); that Rule 22(c) requires a trade organization to annually submit by 31st December to the DGTO a list of its members as on 30th November; that Section 6(1) of the TO Act, 2013 provides that a licenced trade organization shall require renewal of its licence every five years whereas Section 6(2) requires the application for the renewal of its licence to be made to the DGTO ninety days prior to its expiry; that in terms of Section 4 of the TO Act, 2013, the licence granted to the Old-HCCI stood revoked with effect from 30.12.2006; that a trade organization whose licence stands revoked by operation of Section 4 is required to apply for the grant of a fresh licence; that after the enactment of the TO Act, 2013, the Old-HCCI had to apply for a fresh licence and not for the renewal of its existing licence; that the reason why a trade organization was required to apply for a fresh licence was because in terms of Section 12 of the TO Act, 2013, the Memorandum and Articles of Association of a trade organization had to be in accordance with the basic template approved by the Federal Government; that it is not the Old-HCCI's case

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that it had applied for a fresh licence; that there was no need for a formal order for the cancellation of the Old-HCCI's licence since it stood revoked by operation of law, i.e. Section 4 of the TO Act, 2013; that the Old-HCCI did not even apply for the renewal of its licence ninety days before its expiration; that since the Old-HCCI's licence expired more than ten years ago, the DGTO could not renew its licence; and that the concurrent orders dated 27.01.2020 and 01.04.2022 passed by the DGTO and the Federal Government, respectively, do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for respondent No.5 prayed for the appeal as well as the writ petition to be dismissed.

21. The learned Deputy Attorney-General adopted the arguments of the learned counsel for respondent No.5.

22. By way of rejoinder, the learned counsel for the Old-HCCI submitted that the Old-HCCI does not come within the meaning of an existing trade organization as it was granted a licence under the provisions of the TO Ordinance, 2007 and not the TO Ordinance, 1961 and therefore there was no need for it to apply for a fresh licence; that the power to cancel the licence of a trade organization vests in the Federal Government and not the DGTO; that although under Section 22(1) of the TO Act, 2013, the Federal Government may, by notification in the official Gazette, direct that all or any of its powers under the said Act may be exercisable by the DGTO, the power to cancel licences of trade organizations has not been delegated by the Federal Government to the DGTO; that the order for the cancellation of the Old-HCCI's licence has been passed by the Deputy Director in the office of the DGTO and not by the Director General, Trade Organizations himself; and that the DGTO had violated the mandatory requirement of affording an opportunity of a hearing to the Old-HCCI under Section 7(2) of the TO Act, 2013 and therefore the order for the cancellation of its licence is not sustainable.

23. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal and petition have been set out in sufficient detail in paragraphs 2 to 18 above and need not be recapitulated.

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24. I propose first to decide whether it was obligatory on the Old-HCCI to have applied for a fresh licence under Section 4(1) of the TO Act, 2013 and whether its failure to do so would result in the revocation of its licence. Section 4(1) of the said Act reads thus:-

> ***"4. Revocation of licences of existing trade organisations.— (1) Except as hereinafter provided and notwithstanding anything in any other law for the time being in force and memorandum and articles or association for any trade organisation, any licence granted under section 3 of the repealed ordinance to an existing trade organisation shall stand revoked with effect from the 30th December, 2006 and such trade organisation shall be required to apply for grant of licence under this Act by the date notified by the Federal Government."***
> **(Underlining is mine for emphasis)**

25. Section 2(f) of the TO Act, 2013 defines an *"existing trade organization"* to mean an organization licenced under the TO Ordinance, 1961 whereas *"repealed ordinance"* has been defined in Section 2(q) of the TO Act, 2013 to mean the TO Ordinance, 1961.

26. As mentioned above, the Old-HCCI was first granted a licence by the Ministry of Commerce on 16.03.1959. Subsequently on 14.07.1960, it was incorporated as a company under the provisions of the erstwhile Companies Act, 1913. The Old-HCCI operated as a trade organization under the provisions of the TO Ordinance, 1961 until the promulgation of the TO Ordinance, 2007. By operation of Section 4(1) of the TO Ordinance, 2007, any licence granted to a trade organization under the provisions of the TO Ordinance, 1961 stood revoked with effect from 30.12.2006. Such trade organization was required to apply for the grant of a fresh licence under the provisions of the TO Ordinance, 2007. By virtue of Section 4(3) of the TO Ordinance, 2007, a trade organization to which a licence had been granted under the TO Ordinance, 1961 and had applied for the grant of a licence under the TO Ordinance, 2007, continued to function as a trade organization until the Federal Government decided the application for the grant of a licence.

27. In the case at hand, the Old-HCCI functioned as a trade organization for decades until the promulgation of the TO Ordinance, 2007. Since by virtue of Section 4(1) of the TO Ordinance, 2007, the Old-HCCI's licence stood revoked with effect from 30.12.2006, it applied for a fresh licence

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under the provisions of the TO Ordinance, 2007 and on 07.05.2008, a licence was granted to it by the Federal Government.

28. The TO Act, 2013 was enacted on 20.02.2013. Section 4(1) of the said Act is in *pari materia* to Section 4(1) of the TO Ordinance, 2007. Only the licences granted to trade organizations under the provisions of the TO Ordinance, 1961 stood revoked by operation of Section 4(1) of TO Act, 2013 and not those that were granted under the provisions of the TO Ordinance, 2007. Section 36 of the TO Act, 2013 provides that anything done, actions taken, orders passed, instruments made, proceedings initiated, processes or communications issued, powers conferred, assumed, and exercised by the Federal Government or the DGTO on or after 04.10.2007 and before the commencement of the TO Act, 2013 shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised and the provisions of the said Act shall have, and shall be deemed always to have had, effect accordingly. By dint of Section 36 *ibid*, the licence dated 07.05.2008 granted to the Old-HCCI under the provisions of the TO Ordinance, 2007 would be deemed to have been granted under the provisions of the TO Act, 2013. Therefore, the contention made by the learned counsel for respondent No.5 that by operation of Section 4(1) of the TO Act, 2013, the Old-HCCI's licence stood revoked or that it had to apply for a fresh licence is devoid of merit.

29. If the argument of the learned counsel for respondent No.5 that the Old-HCCI had not been granted a licence under the provisions of the TO Ordinance, 1961 is accepted, then the Old-HCCI would not come within the meaning of an *"existing trade organization"* as defined in Section 2(f) of the TO Act, 2013 and consequently neither would its licence liable to be revoked under Section 4(1) nor would it be obligated to apply for a fresh licence.

30. This Court, vide unreported order dated 18.12.2023, passed in writ petition No.4239/2023 titled "Mirza Abdul Rehman and others Vs. Director General Trade Organization and others," spurned a similar contention as the one raised by the learned counsel for respondent No.5 by holding as follows:-

> ***"3. Learned counsel for respondent No.3 contended that since the license that was issued to A.C.C.I. was not under the provisions of the***

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Trade Organizations Act, 2013 (“the 2013 Act”) but under the provisions of the Trade Organizations Ordinance, 2007, the said license cannot be renewed since by operation of Section 4 of the 2013 Act, the said license stands revoked.

4. Section 4(1) of the 2013 Act provides inter alia that any license granted under Section 3 of the repealed Ordinance to an existing trade organization shall stand revoked with effect from 30.12.2006 and such organization shall be required to apply for the grant of license under the 2013 Act by the date notified by the Federal Government. Section 2(q) of the 2013 Act defines “repealed ordinance” as the Trade Organizations Ordinance, 1961. By virtue of Section 35(a) of the 2013 Act, the Trade Organizations Ordinance, 1961 stood repealed with effect from 30.12.2006. Section 36 of the 2013 Act saves the validity of licenses issued after 04.10.2007. Since the license issued to A.C.C.I. on 29.09.2008 was under the provisions of the Trade Organizations Ordinance, 2007 and not the Trade Organizations Ordinance, 1961, the same cannot be held to have been revoked by dint of Section 4 of the 2013 Act. Since the said license was issued on a date after 04.10.2007, it stands saved by virtue of Section 36 of the 2013 Act. This leads me to the conclusion that the D.G.T.O. did not commit any illegality by first renewing A.C.C.I.’s license up to 28.09.2016 and subsequently up to 28.09.2021.”

31. Now, it needs to be determined whether the DGTO could have entertained the Old-HCCI’s application for the renewal of its licence which was filed way beyond the period prescribed in Section 6(2) of the TO Act, 2013. Unlike Section 3(7) of the TO Act, 2013, which makes a licence granted to a trade organization valid for a period of five years, under Section 3(7) of the TO Ordinance, 2007, the validity period of a licence is three years. Section 6(1) of the TO Ordinance, 2007 required a licenced trade organization to renew its licence every three years, and Section 6(2) of the said Ordinance required the application for the renewal of a licence to be made to the DGTO ninety days prior to its expiry. However, in terms of the proviso to Section 6(2) *ibid*, the DGTO, on sufficient cause being shown, by an order in writing, could extend the period not exceeding thirty days. At this stage, it may be mentioned that Section 6(2) of the TO Act, 2013 is in *pari materia* to Section 6(2) of the TO Ordinance, 2007. For the purposes of clarity, Section 6 of the TO Act, 2013 is reproduced herein below:-

“6. Renewal of licence.– (1) A licensed trade organisation shall require renewal of its licence every five years.

(2) Application for renewal of licence shall be made to the Regulator ninety days prior to the expiry of licence:

Provided that the Regulator, on sufficient cause being shown, by an order in writing, may extend the period not exceeding thirty days.”

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32. The scheme of Section 6(2) of the TO Act, 2013 and its proviso surely supports the curtailment of the DGTO's powers by the exclusion of the authority to entertain an application for the renewal of a licence which is filed after sixty days of the expiry of its licence. The proviso to Section 6(2) of the TO Act, 2013 gives discretion to the DGTO to extend the period stipulated in Section 6(2) for filing an application for the renewal of a licence but such extension cannot be beyond a period of thirty days. If this Court were to hold that the DGTO can extend the period for filing an application for the renewal of a licence by more than thirty days, the words *"not exceeding thirty days"* used in the proviso to Section 6(2) of the TO Act, 2013 shall be rendered meaningless, and an interpretation which renders a word or a phrase in a statutory provision redundant or otiose can never be justified. The TO Act, 2013 is a special enactment, and therefore the DGTO is to ensure the applications for the renewal of licences of trade organizations filed within the period prescribed in Section 6(2) of the said Act are decided as expeditiously as possible. The obvious reason why a trade organization is to apply for the renewal of its licence 90 days prior to its expiry is that the DGTO should be in a position to take a decision on the application prior to the expiry of its licence. This is because a trade organization cannot be expected to function with an expired licence. A trade organization with an expired licence is as bad as a trade organization without a licence. In an unreported order dated 18.12.2023 passed in writ petition No.4239/2023 titled "Mirza Abdul Rehman and others Vs. Director General Trade Organization and others," this Court, after making reference to Section 6 of the TO Act, 2013 and Rule 10 of the TO Rules, 2013, held as follows:-

> ***"7. Reading the above mentioned provisions of the 2013 Act and the 2013 Rules in juxtaposition, what is imperative is that an application for the renewal of the license must be made within the time prescribed in Section 6(2) of the 2013 Act and the D.G.T.O. is to endeavor to decide such application before the expiry of the license. A renewal application that is not accompanied by an audit report by a firm of chartered accountants as envisaged by Section 6(3) or by all the documents and the requirements provided in Rule 10(2) and (3) of the 2013 Rules is liable to be rejected as deficient. The D.G.T.O. is expected to strictly construe and apply the provisions of Section 6 as well as Rule 10 ibid and is under no obligation to be requiring a trade organization that has submitted an incomplete renewal application or an application not accompanied by the documents envisaged by the said provisions of law to clear the deficiencies, especially after the prescribed time limit within which, the***

renewal application has to be decided, has expired. However, it is incumbent on the D.G.T.O. to endeavor to pass an order either to accept or reject an application for renewal prior to the expiry of the license and not to keep such application pending indefinitely."

33. Additionally, vide unreported order dated 26.12.2023 passed by this Court in writ petition No.2274/2023 titled "Karachi Women Chamber of Commerce and Industry Vs. the Director General / Regulator of Trade Organizations," this Court upheld the order passed by the DGTO not to permit nominees of the Karachi Women Chamber of Commerce and Industry (South) to vote in the elections of the Executive Committee and the General Body of the Federation of Pakistan Chambers of Commerce and Industry as the licence of said trade organization had long expired and its application for renewal was still pending.

34. In the case of Mian Naseer Hayat Maggo Vs. Federation of Pakistan through the Ministry of Commerce (2019 CLD 267), the DGTO had rejected Halal Products Services and Association of Pakistan's application for the renewal of its licence on the ground that it was filed with a delay of almost three months. Section 6(2) of the TO Act, 2013 requires an application for the renewal of a licence to be submitted to the DGTO ninety days prior to its expiry whereas the said Association had applied for the renewal of its licence just four days prior to its expiry. The said Association's appeal against the order of the DGTO was allowed by the Federal Government. The order of the Federal Government was assailed in an appeal before this Court under Section 21(4) of the TO Act, 2013. This Court allowed the appeal on the ground that the appellate order had passed in violation of the requirements of Section 6(2) of the TO Act, 2013. The appellate order was set-aside and the matter was remanded to the Federal Government for a decision afresh. In the said report, it was *inter alia* held as follows:-

"***10. Section 6(1) of the 2013 Act provided that a licenced trade organization shall require renewal of its licence every five years, whereas Section 6(2) of the said Act provides that the application for the renewal of a licence shall be made to the Regulator ninety days prior to the expiry of the licence. The proviso to Section 6(2) provides that on sufficient cause being shown by an order in writing, the Regulator may extend the period not exceeding thirty days. Section 6(4) provides that the Regulator, on receipt of the application for renewal of a licence, shall endeavour to decide it before the expiry of the licence.***

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> ***11. The cumulative reading of Section 6(1), (2) with its proviso and (4) shows that an application for the renewal of a licence must be filed by a trade organization ninety days prior to its expiry and a delay in filing such an application can be condoned by the Regulator by a maximum period of thirty days "on sufficient cause being shown by an order in writing".***
> ***12. The licence issued to respondent No.4 on 18.03.2013 was due to expire on 18.03.2018. In terms of Section 6(2) of the 2013 Act, respondent No.4 had to apply by 17.12.2017 (i.e., ninety days prior to the expiry of the said licence) for the renewal of its licence. It is an admitted position that respondent No.4 submitted an application before respondent No.2 for the renewal of its licence on 14.03.2018 (i.e., just four days prior to the expiry of the said licence). In respondent No.4's said application dated 14.03.2018, it has clearly been mentioned that the licence was to expire on 18.03.2018. In the said application, there is no mention of any ground which caused the delay in the submission of the said application. Respondent No.4 did not even apply for an extension in the period fixed by Section 6(2) of the 2013 Act for the submission of the application for the renewal of its licence. Having not done so, respondent No.2 cannot be faulted for rejecting respondent No.4's time barred application for the renewal of its licence.***
> ***13. … The proviso to Section 6(2) of the 2013 Act provided that the delay in the submission of the application for the renewal of the licence could be condoned by the Regulator for a period not exceeding thirty days, "on sufficient cause being shown by an order in writing". The Regulator cannot be expected to extend the period within which an application for renewal of a licence could be filed without mentioning the sufficient cause for such an extension by an order in writing. Additionally, when the applicant does not come up with any sufficient cause for the delay in the filing of an application for the renewal of its licence, the Regulator could not, on its own, condone the delay in the filing of such an application …***

35. The DGTO would be acting contrary to the requirements of Section 6(2) of the TO Act, 2013 by entertaining an application for the renewal of a licence beyond a period of ninety days prior to the expiry of the licence. In terms of the proviso to the said Section, at best the DGTO *"on sufficient cause being shown by an order in writing"* could extend such period but not exceeding thirty days. Therefore, it is safe to hold that the law does not permit the DGTO to entertain an application filed less than sixty days prior to the expiry of a licence under any circumstances. Entertaining an application for the renewal of a licence filed less than sixty days prior to the expiry of the licence would amount to "maladministration" which is defined in Section 2(2) of the Establishment of the Office of the *Wafaqi Mohtasib* Order, 1983 to include a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is a departure from established practice or procedure unless it is *bonafide* and for valid reasons.

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36. Each and every word used by the Legislature has its own import and significance. Section 6(2) of the TO Act, 2013 is to be interpreted in a manner which does not render the expression *"not exceeding thirty days"* superfluous, redundant or nugatory. It is also well settled that a proviso is in the nature of an exception to a general rule and ought to be construed strictly.[1] The proviso to Section 6(2) makes it clear that the DGTO had no power to extend the period for filing an application for the renewal of a licence beyond thirty days from the date ninety days prior to the expiry of the licence. Section 6(2) makes it mandatory for a trade organization to apply for the renewal of its licence within the time stipulated in the said provision. In holding so, reliance is placed on the following case law:-

(i) In the case of MFMY Industries Ltd. Vs. Federation of Pakistan (2015 SCMR 1550), the Hon'ble Supreme Court had the occasion to interpret Order XX, Rule 1(2) C.P.C. which provides that *"the Court shall, after the case has been heard, pronounce judgment in open court, either at once or on some future day not exceeding thirty days, of which due notice shall be given to the parties or their advocates."* It was held *inter alia* that the expression *"not exceeding thirty days"* used in Order XX, Rule 1(2) C.P.C made it mandatory for the trial Court to render its judgment within the prescribed time period.

(ii) In the case of Pawan Goel Vs. KMG Milk Food Ltd. (2008 (142) Comp. Cas 441), the Punjab and Haryana High Court came to interpret Section 10F of the Indian Companies Act, 1956 reads thus:-

> ***"10F. Appeals against the order of the Company Law Board.- Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:***
>
> ***Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."***

[1] **Abid Hussain Vs. Additional District Judge, Alipur (2006 SCMR 100) and Messrs Tariq Brothers Vs. Controller of Customs (2005 PTD 186)**

It was held *inter alia* that the proviso to Section 10F of the Indian Companies Act, 1956 has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed under Section 10F of the said Act.

(iii) The Bombay High Court in the case of Smt. Hetal Alpesh Muchhala Vs. Adityesh Educational Institute and Ors. 2009 Supreme Court OnLine 1454 interpreted the expression "not exceeding 60 days" used in Section 10F of the Indian Companies Act, 1956 in the following terms:-

> ***"The words used in the proviso to Section 10F of the Companies Act, 1956 are "not exceeding 60 days" thereby clearly prescribing the time limit of only 60 days, in addition to the initial period of 60 days allowed under Section 10F of the Companies Act, 1956, to enable a party to file an appeal. The proviso clearly shows that the power vested in the Court to condone delay on sufficient cause being shown is directory and subject to the discretion vested in the Court. However, the maximum period to the extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. The words "not exceeding" cannot be given any other meaning except "not more than" or "not beyond" or "not thereafter.""***

37. The licence dated 07.05.2008 granted to the Old-HCCI under the provisions of the TO Ordinance, 2007 expired upon lapse of three years, i.e. on 06.05.2011. There is nothing on the record to show that ninety days prior to the expiry of its licence, the Old-HCCI had applied to the DGTO for the renewal. The application for the renewal of the licence is said to have been filed on 27.06.2013, but the date of the bank draft No.4408322 entered in the application for the renewal is 02.07.2013. Therefore, the said application would be considered to have been filed on 02.07.2013. By this time, the TO Act, 2013 had been enacted.

38. Assuming that the licence dated 07.05.2008 granted to the Old-HCCI was valid for a period of five years and not three years, the same would be deemed to have expired on 06.05.2013. It is an admitted position that the Old-HCCI's application for the renewal of its licence was not filed within the period prescribed by Section 6(2) *ibid*. Further assuming that Old-HCCI was entitled to an extension of thirty days for the filing of such application, this period is to be reckoned from the date *"ninety days prior to the expiry of the licence."* Consequently, the extension by a period not

exceeding thirty days would commence from 06.02.2013, i.e. ninety days prior to the expiry of the licence. In other words, the law entitled the Old-HCCI to an extension in time for filing an application for the renewal of its licence up to 06.03.2013 only. The DGTO was not vested with the power to entertain an application for the renewal of a licence or an application for an extension in time for filing such application beyond the time limits prescribed in Section 6(2) and its proviso.

39. In the case at hand, the DGTO acted in transgression of Section 6(2) of the TO Act, 2013 by not just entertaining the Old-HCCI's application filed on 02.07.2013 for the renewal of its licence but also by keeping it pending for years and requiring the Old-HCCI through the letters dated 31.07.2013, 18.12.2013, 12.05.2014, 18.02.2015, and 04.03.2015 to clear the deficiencies in its application. This had the consequence of the Old-HCCI functioning without a valid licence since 06.05.2011 when its licence expired.

40. The application for the renewal of its licence filed by the Old-HCCI on 02.07.2013 was rejected by the DGTO vide order dated 10.01.2020. Through the said order, the DGTO did not just reject the Old-HCCI's application for the renewal of its licence but also issued a notice to the Old-HCCI to show cause as to why its licence may not be cancelled under Section 7 of the TO Act, 2013. Vide letter dated 27.01.2020, the DGTO informed the Old-HCCI that its licence, which had expired in 2011, had been cancelled under Section 7 of the TO Act, 2013.

41. Section 7(1)(a) of the TO Act, 2013 renders a licence granted to a trade organization liable to cancellation by the Federal Government where the trade organization fails to apply for the renewal of the licence within the period stipulated in Section 6(2) or extended period allowed by the DGTO. It is an admitted position that the Old-HCCI did not apply for the renewal of its licence within the prescribed or extended period allowed by the DGTO. As the Old-HCCI had not applied for the renewal of the licence within the time prescribed in Section 6(2) of the TO Act, 2013, this could have been a ground for the initiation of the process for the cancellation of its licence under Section 7(1)(a) of the said Act. However, the order dated 10.01.2020 explicitly provides that the show cause notice was issued to the Old-HCCI under Section 7 (f), (g) and (h) of the TO Act, 2013 and not

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under Section 7(1)(a) of the said Act. Admittedly, the Old-HCCI's licence was not cancelled under Section 7(1)(a) of the said Act which empowers the Federal Government to cancel the licence of a trade organization which fails to apply for its renewal within the prescribed period or extended period allowed by the DGTO. The Old-HCCI's licence could not have been cancelled due to violation of a provision of the said Act which does not find mention in the show cause notice. There is no reference to Section 7(1)(a) of the said Act in the show cause notice dated 10.01.2020, which simply refers to Section 7(f), (g) and (h). Section 7(1) empowers the Federal Government to cancel a licence granted to a trade organization where:-

> ***"(f) a trade organization is not complying with the orders and directions of the Federal Government or Regulator issued under this Act of the prescribed rules.***
> ***(g) a trade organization is not discharging statutory obligations as a limited company incurred under the Ordinance.***
> ***(h) a trade organization is not discharging statutory obligations under this Act or prescribed rules."***

42. It is well settled that an order which is penal in nature cannot be passed on the ground which is not mentioned in the show cause notice. Reference in this regard may be made to the following case law:-

(i) In the case of the Collector Central Excise and Land Customs Vs. Rahm Din (1987 SCMR 1840), an order of adjudication was declared to be palpably illegal and void as it was based on a ground which was not mentioned in the show cause notice. In the case of Commissioner Inland Revenue Vs. RYK Mills (2023 SCMR 1856), it was held as follows:-

> ***"The issuance of a show cause notice is an essential element in ensuring the provision of the said rights, as it provides individuals and organizations with the opportunity to explain their actions and to respond to allegations of violation or non-compliance with any law before any adverse action is taken against them. Hence, it follows that when a specific allegation is not put to the recipient, thereby failing to provide the recipient with the opportunity to respond to the same, any adjudication on the said allegation would be against the right of due process and fair trial and therefore, in contravention of Articles 4 and 10A of the Constitution."***

(ii) In the case of Poja Jaiswal Vs. Food Corporation of India (AIR 1923 Allahabad 86), the impugned order had not been passed on the basis of the specific allegations mentioned in the show cause notice

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but by considering things which were not mentioned in the said notice. The order was set-aside by holding as follows:-

> ***"30. In the light of above, in the present case admittedly, the show cause notice was issued against the petitioner with a specific imputation of charge but impugned order has been passed on the material which is not the part of imputation alleged against the petitioner in the show cause notice, as has already been discussed hereinabove. Hence, it is held that no opportunity was provided to the petitioner. The impugned order is in contravention of the principle of natural justice and liable to be set aside on this ground alone."***

(iii) In the case of Commissioner Inland Revenue Vs. Rose Food Industries (2023 SCMR 2070), it was held that charges or allegations in a show cause notice should be specific, otherwise the taxpayer would be prejudiced and denied the right of a fair trial. It was also held that the adjudicating authority has to confine the proceedings to the specific charges and allegations clearly mentioned in a show cause notice and cannot adjudicate any charge or allegation beyond it; and that adjudication of a charge or an allegation not confronted in the show cause notice would not be sustainable in law.

(iv) In the case of Ramlala Vs. State of U.P. (2023 SCC OnLine (All) 2479), the Indian Supreme Court propounded that a person must be accorded a fair chance to put up his case and therefore the authorities cannot traverse beyond the show cause notice. Relevant paragraphs are extracted herein below:-

> ***"9. The principle that emerges from the above judgments is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalize the notice on grounds that were not stated in the show cause notice."***

(v) In the case of Associated Switch Gears and Projects Vs. State of U.P. (MANU/UP/0953/2024), the Allahabad High Court espoused on the importance of a show cause notice. Relevant paragraphs are extracted below:-

> ***"8. The significance of adhering to the confines of a show cause notice lies in upholding the rule of law and preventing arbitrary exercises of power. Any action taken by an authority beyond the scope defined in the notice risks transgressing the boundaries of legality and procedural fairness. Such overreach not only undermines the legitimacy of the authority but also compromises the rights of the***

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> ***individuals or entities involved, potentially leading to legal challenges and erosion of public trust. Moreover, the issuance of a show cause notice imposes a duty on the part of the authority to meticulously outline the specific allegations or concerns prompting its issuance. This requirement fosters transparency and accountability, as the recipient is entitled to a clear understanding of the charges against it, enabling it to formulate an informed response. Any attempt by the authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the notice would violate this principle of specificity, depriving the recipient of a fair opportunity to address the accusations leveled against it.***

43. Through the order dated 10.01.2020 issued by the DGTO, the Old-HCCI was required to show cause as to why its licence may not be cancelled under Section 7(1)(h) of the TO Act, 2013. Section 7(1)(h) empowers the Federal Government to cancel a trade organization's licence which is not discharging statutory obligations under the provisions of the TO Act, 2013 or the TO Rules, 2013.

44. Section 6(1) of the TO Act, 2013 obligates a licenced trade organization to renew its licence every five years. A trade organization's application for the renewal of its licence is to be made to the DGTO on the format set out in Schedule-B to the TO Rules, 2013. Rule 10(2) sets out the conditions which a trade organization is to fulfill for the renewal of its licence. A trade organization whose licence is not renewed due to non-fulfillment of the conditions set out in Rule 10(2) *ibid* cannot be said to be discharging statutory obligations in accordance with the requirements of the TO Act, 2013 and the TO Rules, 2013. Internal bickering or litigation between the members of the trade organization would not absolve a trade organization from fulfilling its obligations imposed under the TO Act, 2013 and the TO Rules, 2013.

45. *"An application for renewal of licence"* contemplated by Section 6(2) is an application that is fully compliant with the requirements of Rule 10 of the TO Rules, 2013. An application for the renewal which does not fulfill the conditions set out in Rule 10(2) is liable to rejection by the DGTO. A renewal application which is not in the format set out in Schedule-B to the TO Rules, 2013 and does not contain all the information required under Rule 10(3) is also liable to rejection. In other words, it is only the application for the renewal of a licence which satisfies the requirements of Rule 10(2) and (3) of the TO Rules, 2013, and is filed ninety days prior to

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its expiry that can be entertained by the Regulator unless he extends the period by thirty days only by an order in writing setting out sufficient cause for such extension.

46. The DGTO's letter dated 27.01.2020 whereby the Old-HCCI's licence was cancelled makes reference to the fact that the application for the renewal of the licence submitted by it on 05.07.2013 had deficiencies inasmuch as a corporate compliance certificate issued by the SECP was not provided. In terms of Rule 10(2)(b)(ii) of the TO Rules, 2013, one of the conditions that a trade organization has to satisfy before its licence can be renewed for a further period of five years is that it had been reporting corporate compliance to the SECP and the DGTO. Without a corporate compliance certificate issued by the SECP, the licence of a trade organization cannot be renewed. In the said letter dated 27.01.2020, it has clearly been mentioned that the Old-HCCI could not fulfill the requirements for the renewal of its licence, especially the requirement of a corporate compliance certificate. It also makes reference to the show cause notice dated 06.01.2015 and the letter dated 04.03.2015 whereby the DGTO required the Old-HCCI to fulfill the requirements for the renewal of its licence. Now, the non-issuance of a corporate compliance certificate does not render a trade organization's licence liable to cancellation but without such certificate, the licence of a trade organization cannot be renewed.

47. The DGTO's letter dated 27.01.2020 also makes reference to the letter dated 05.11.2019 from the SECP to the Old-HCCI requiring the latter to fulfill the conditions mentioned therein for the issuance of a corporate compliance certificate. This letter dated 05.11.2019 is not a corporate compliance certificate and cannot be treated as such. A corporate compliance certificate is said to have been issued by the SECP to the Old-HCCI on 21.01.2020. The Old-HCCI asserts that this certificate was sent to the DGTO through courier on 21.01.2020. According to the said certificate, the Old-HCCI was compliant with its *"filing requirements under the Companies Act, 2017 upto 30.07.2009 when its last annual general meeting was held."* Through the said certificate, the Old-HCCI had been required to renew its licence.

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48. Neither does the DGTO's letter dated 27.01.2020 (whereby the Old-HCCI's licence was cancelled) nor the Federal Government's order dated 01.04.2022 (whereby the Old-HCCI's appeal against the DGTO's order dated 27.01.2020 was dismissed by the Federal Government) makes any mention of the said corporate compliance certificate dated 21.01.2020. The Old-HCCI, in its appeal to the Federal Government, had clearly pleaded that the corporate compliance certificate dated 21.01.2020 issued by the SECP had been sent by the Old-HCCI to the DGTO through courier on 21.01.2020. This ground has not been addressed by the Federal Government in its appellate order dated 01.04.2022. If the reason for the cancellation of the Old-HCCI's licence was the non-issuance of a corporate compliance certificate, this reason would not be sustainable as the said certificate had been issued prior to the cancellation of the licence.

49. Section 7(1) of the TO Act, 2013 lists the circumstances where the Federal Government is empowered to cancel the licence of a trade organization. Section 7(2) of the said Act provides that where the Federal Government intends to cancel the licence of a trade organization, it shall issue a show cause notice to such trade organization specifying the grounds for its intention to cancel the licence and provide an adequate opportunity of being heard before deciding the matter. One of the grounds taken by the Old-HCCI to challenge the cancellation of its licence is that it had not been afforded an opportunity of a hearing after the issuance of the show cause notice. Indeed Section 7(2) of the TO Act, 2013 not just requires a show cause notice to be issued to a trade organization before the cancellation of its licence but also requires an *"adequate opportunity of being heard"* to be provided to it.

50. It is well settled that the principles of natural justice, unless prohibited by the wording of a statute, must be read into each and every statute.[2] The right of personal hearing to a person against whom an adverse order is to be made is to be equated with a fundamental right, and an adverse order made without affording an opportunity of a personal hearing is to be treated as a void order.[3] If the principles of natural justice

[2] Abdul Majeed Zafar Vs. Governor of the Punjab (2007 SCMR 330)
[3] Nazir Ahmad Panhwar Vs. Government of Sindh (2005 SCMR 1814)

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are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of departure from these essential principles of natural justice. A decision taken in violation of the principles of natural justice must be declared to be no decision.[4] Violation of the principle of *audi alteram partem* (no one should be condemned unheard) would be enough to vitiate even the most solemn proceedings. This principle is said to have originated from the Islamic principles of justice.[5]

51. It is also well settled that when a provision of law is couched with penal consequences, then such a provision is considered as mandatory. The requirement in Section 7(2) of the TO Act, 2013 to issue a show cause notice and to provide an opportunity of being heard to a trade organization whose licence the Federal Government intends to cancel can lead to the penal measure of cancellation of the licence under Section 7(1)(a) of the said Act. Therefore, it is safe to hold that the requirement in Section 7(2) to provide an opportunity of being heard to a trade organization is mandatory and not directory. In the case of Collector of Customs, Model Customs Collectorate Vs. Muhammad Ismail (2023 SCMR 1319), it was held *inter alia* that the requirement to issue a show cause notice and provide a reasonable opportunity of being heard in Section 180 of the Customs Act, 1969 was mandatory and non-adherence with such provision would render the penal action of confiscation of goods under Section 168 of the said Act to be illegal. I would echo the following observations of the Hon'ble Supreme Court on the importance of an adequate opportunity of a hearing:-

> ***"9. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever civil rights, human rights, Constitutional rights or other guaranteed rights under any law are found to be at stake. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable,***

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[4] Ashiq Muhammad Khan Mazari Vs. Chairman Federal Land Commission (PLD 1977 461, see page 477)
[5] Hazara (Hill Tract) Improvement Trust Vs. Mst. Qaisra Ellahi (2005 SCMR 678)

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therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice [Ref: Sohail Ahmad v. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) and Inspector General of Police, Quetta and another v. Fida Muhammad and others (2022 SCMR 1583)]. In the case of Commissioner of Income-Tax, East Pakistan v. Fazlur Rahman (PLD 1964 SC 410), this Court held in an Income Tax matter that where the proceedings are judicial or quasi-judicial in nature it is sufficient to entitle a party to a hearing in the absence of a specific provision to the contrary. At the same time it should be pointed out that the right to be heard is not confined to proceedings which are judicial in form. As has been held by this Court in The Chief Commissioner, Karachi v. Mrs. Dina. Sohrab Katrak (PLD 1959 SC (Pak.) 45) the maxim "no man shall be condemned unheard" is not confined to Courts but extend to all proceedings, by whomsoever held which may affect the person or property or other right of the parties concerned in the dispute, and the maxim will apply with no less force to proceedings which affect liability to pay a tax. In the case of University of Dacca through Vice Chancellor and another v. Zakir Ahmed (PLD 1965 SC 90), this Court held that nevertheless, the general consensus of judicial opinion seems to be that, in order to ensure the "elementary and essential principles of fairness" as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and "to correct or controvert any relevant statement brought forward to his prejudice." Of course, the person, body or authority concerned must act in good faith, but it would appear that it is not bound to treat the matter as if it was a trial or to administer oath or examine witnesses in the presence of the person accused or give him facility for cross-examining the witnesses against him or even to serve a formal charge-sheet upon him. Such a person or authority can obtain information in any way it thinks fit, provided it gives a fair opportunity to the person sought to be affected to correct or contradict any relevant statement prejudicial to him. In other words, in order to act justly and to reach just ends by just means the Courts insist that the person or authority should have adopted the above "elementary and essential principles" unless the same had been expressly excluded by the enactment empowering him to so act. Whereas in the Mrs. Anisa Rehman v. P.I.A.C. and another (1994 SCMR 2232), it was held by this Court that there is judicial consensus that the Maxim audi alteram partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read in as a part of every statute if the right of hearing has not been expressly provided therein."

52. Perusal of the order dated 27.01.2020 shows that the DGTO had issued notices to the parties for a hearing on 11.12.2019 and that on the said date, the parties had attended the hearing. Now, it is crucial to bear in mind that the date on which (as per the contents of the said order dated 27.01.2020) the parties were heard, was prior to the issuance of the show cause notice dated 10.01.2020. Section 7(2) of the TO Act, 2013 contemplates an adequate opportunity of being heard to be provided to a

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trade organization after and not before the issuance of a show cause notice specifying the grounds for the Federal Government's intention to cancel the licence. Since an adequate opportunity of being heard before the cancellation of a licence is an explicit requirement under Section 7(2) of the TO Act, 2013, an order passed in violation of the said requirement could not have been sustained by the Federal Government while deciding the Old-HCCI's appeal. As there is nothing on the record to show that an adequate opportunity of being heard was provided to the Old-HCCI after the issuance of the show cause notice dated 10.01.2020, I am of the view that the process leading to the decision to cancel the Old-HCCI's licence suffers from a procedural irregularity rendering the said decision unsustainable.

53. The New-HCCI is said to have submitted an application for the grant of licence as a trade organization to the DGTO on 26.04.2019. By this time, the licence dated 07.05.2008 granted to the Old-HCCI had not been cancelled by the Federal Government. During the subsistence of the Old-HCCI's said licence, the New-HCCI could not have applied to the DGTO for the issuance of a licence in its favour. There is no provision either in the TO Act, 2013 and/or the TO Rules, 2013 which permits more than one trade organization with the same name and object to be granted licences. The DGTO, on 20.04.2022, granted a licence to the New-HCCI. This was done after the DGTO cancelled the Old-HCCI's licence on 27.01.2020 and the dismissal of the Old-HCCI's appeal by the Federal Government on 01.04.2022.

54. True, it was after the cancellation of the Old-HCCI's licence through the DGTO's order dated 27.01.2020 that the New-HCCI was granted a licence on 20.04.2022. The Old-HCCI's appeal (Appeal No.58/2022) against *inter alia* the cancellation of its licence was filed on 20.04.2022 but owing to an office objection, the memo was returned and was re-filed on 21.04.2022. I propose to proceed on the assumption that the said appeal had not been filed by the time the licence dated 20.04.2022 was granted to the New-HCCI. This licence would certainly not have been granted had the Old-HCCI's licence not been cancelled. The cancellation of the Old-HCCI's licence had first been subjected to an appeal before the Federal Government, albeit successfully and then before this Court. Since I have

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come to the conclusion that the decision regarding the cancellation of the Old-HCCI's licence was not sustainable due to the non-fulfillment of the mandatory requirement provided in Section 7(2) of the TO Act, 2013, the licence subsequently granted to the New-HCCI cannot remain operative.

55. Section 9(1) of the TO Act, 2013 provides that where a licence of a trade organization is cancelled under Section 7, the Federal Government may consider grant of a licence *de novo* after a period of one year from the date of cancellation of the licence. The proviso to the said Section gives the power to the Federal Government to consider the grant of a licence *de novo* at an earlier date where the licence is cancelled under Section 7(1)(a). In the case at hand, the Old-HCCI's licence was not cancelled under Section 7(1)(a) of the TO Act, 2013. But the Federal Government granted a licence to the New-HCCI before the expiry of one year from the date of cancellation of the Old-HCCI's licence. By doing so, the Federal Government not just transgressed Section 9(1) of the TO Act, 2013 but also deprived the Old-HCCI from applying for a licence *de novo* with changed sponsors as required by Section 9(1) of the TO Act, 2013. The provisions of the TO Act, 2013 does not deprive a trade organization whose licence is cancelled under Section 7 to apply for a licence *de novo* under Section 9 as long as such application is made with changed sponsors.

56. As regards the objection taken by the learned counsel for the Old-HCCI that since Section 7 of the TO Act, 2013 empowers the Federal Government to cancel the licence of a trade organization, the DGTO could not have usurped the powers of the Federal Government either by issuing the show cause notice dated 10.01.2020 or cancelling the Old-HCCI's licence. This objection has no substance since Section 22(1) of the TO Act, 2013 provides that the Federal Government may, by notification in the official Gazette, direct that all or any of its powers under the said Act shall, in relation to such matters or subject to such conditions as may be specified therein, also be exercisable by the DGTO/Regulator. In exercise of the said powers, the Federal Government vide notification No.F.No.12(1)/2012 TO, dated 06.03.2013, delegated its powers to the Regulator except the powers conferred on the Federal Government under sub-Section (2) and (3) of Section 21 of the TO Act, 2013.

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57. In view of the above, the appeal No.56/2022 as well as writ petition No.158/2023 are allowed in that orders dated 27.01.2020 and 01.04.2022 passed by the DGTO and the Federal Government, respectively, are set-aside, and the licence dated 20.04.2022 granted by the Ministry of Commerce to the New-HCCI is declared to have been granted in violation of the requirements of Section 9(1) of the TO Act, 2013. The matter is remanded to the DGTO who shall be at liberty to amend the show cause notice dated 10.01.2020 and thereafter decide whether or not to cancel the Old-HCCI's licence after affording it as well as respondent No.5 an opportunity of a hearing as required by Section 7(2) of the TO Act, 2013. No costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 22/05/2024.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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