JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 3124 OF 2023

Ajmal & Brothers
Versus
Federation of Pakistan through Secretary, Revenue Division/Chairman FBR, and others.

Petitioners by	**:**	**Mr. Adnan Haider, Advocate in W.P Nos. 3124 to 3137 of 2023.** **Mr. Tauqeer Akram, Advocate in W.P Nos.3828/2023, 3931/2023, 3932/2023, 4104/2023, 465/2024 and 472/2024.** **Mr. Shah Rukh Marwat, Advocate in W.P No.3573/2023.** **Mr. Shah Rukh Marwat, proxy counsel in W.P No.3858/2023.**
Respondents by	**:**	**Raja Zubair Hussain Jarral, Advocate in W.P Nos.3124 to 3137 of 2023.** **Malik Nasir Abbas, Advocate in W.P Nos.3828/2023, 3858/2023, 3931/2023, 3932/2023, 4104/2023, 465/2024 and 472/2024.** **Mr. Ali Shahryar, proxy counsel on behalf of Customs in all writ petitions.**
Date of hearing	**:**	**12.02.2026**

MUHAMMAD AZAM KHAN, J. This consolidated judgment shall dispose of Writ Petitions Nos. 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3573, 3828, 3858, 3931, 3932 & 4104 of 2023, and 465 & 472 of 2024, as common questions of law and fact arise therein. The petitioners have assailed the vires of the amendment introduced through the Finance Act, 2023 to the Customs Act, 1969, whereby Section 156 was amended and the minimum quantum of penalty for release of certain goods was enhanced. For ready reference, the prayer clause contained in the instant writ petition is reproduced as under: -

> "It is, therefore, most respectfully prayed that an appropriate writ may graciously be issued:

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a. Declaring that the penalty provision of the Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 including the amendment inserted in it by the Finance Act, 2023 which has increased minimum penalty equal to the value of goods with respect to used auto parts to be ultra vires the Constitution and law to the extent of importers of used auto parts.

b. In the alternative to prayer a., reading down the penalty provision of the Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 including the amendment inserted in it by the Finance Act, 2023 which has increased minimum penalty equal to the value of goods with respect to used auto parts to the extent of importers of used auto parts.

c. In the alternative to prayers a. and b., declaring the penalty provision of the Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 including the amendment inserted in it by the Finance Act, 2023 which has increased minimum penalty equal to the value of goods with respect to used auto parts to be directory in nature to the extent of importer of used auto parts.

d. Declaring that in view of CGO 11 of 2006 dated 19.09.2006, SRO 499(I)/2009 dated 13.06.2009 and Valuation Ruling 1714 of 2022 dated 21.12.2022, there is no mens rea on the part of importers of used auto parts which may warrant personal penalty of Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 especially the enhanced penalty equal to the value of goods as inserted by Finance Act, 2023.

e. Declaring that amendment in Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 by Finance Act, 2023 will not apply retrospectively to the cases where vested interests had been created – Contracts/Performa Invoices were issued, Bills of Lading were prepared, L/Cs or Banking Contracts were made or GDs were filed – prior to 1st of July, 2023 which is the effective date of the Finance Act, 2023.

f. Declaring that restriction under clause 11 of Appendix-C of the Import Policy Order 2016 on import of used auto parts is contrary to CGO 11 of 2006 dated 19.09.2006, SRO 499(I)/2009 dated 13.06.2009 and Valuation Ruling 1714 of 2022 dated 21.12.2022 and has been de facto relaxed/lifted by the Federal Government.

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g. Suspending the operation of the Second Column of Serial No. 9 of the Table of section 156(1) of the Customs Act, 1969 including the amendment made by the Finance Act, 2023, which has imposed minimum penalty equal to the value of goods on used auto parts, till the decision of the instant Writ Petition.

h. Directing, during the pendency of the instant Writ Petition, to provisionally release the Consignment of the Petitioner as an interim relief; and

i. Granting any other better or appropriate relief which is fit to compensate the Petitioner."

2. Learned counsel for the petitioners submits, with considerable emphasis, that the impugned action of the respondents is a violation of Article 4, 8, 10-A, 12, 18, 23, 25, and 77 of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**). By the combined and consistent operation of Customs General Order No. 11 of 2006 dated 19.09.2006, SRO 499(I)/2009 dated 13.06.2009, and Valuation Ruling No. 1714 of 2022 dated 21.12.2022, the petitioners have, for many years, been engaged in the regular import of used auto parts. These imports were neither clandestine nor concealed; they were processed openly through customs channels, assessed by the authorities themselves, and released upon payment of applicable duties. Learned counsel further pointed out that the uniform departmental practice was to assess customs duty in accordance with the relevant valuation ruling, impose a redemption fine equivalent to 20% of the customs value, and levy a nominal penalty of a few thousand rupees. He further contends that the present controversy has arisen solely due to the amendment introduced through the Finance Act, 2023 (**the Act**), whereby Serial No. 9 of Section 156(1) of the Customs Act was modified to include the words "not less than the value of the goods," in addition to "not exceeding twice the value of the goods." According to counsel, the respondents have adopted an overly rigid and literal interpretation of this amendment, treating it as mandating, in every case, a penalty equal to 100% of the value of the goods. It is forcefully argued that such a reading is divorced from legislative intent and commercial reality. The petitioners' imports were conducted transparently, through letters of credit, banking channels, and formal customs declarations. To treat these

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regulated transactions at par with clandestine smuggling operations is, counsel submits, legally unsustainable. When customs duty, redemption fine, and a penalty equal to the full value of the goods are cumulatively imposed, the result is confiscatory in effect. The trade becomes economically nonviable. Counsel argues that this amounts to a constructive prohibition, achieved indirectly through excessive penalization, without any express statutory declaration banning the trade outright.

3. Learned counsel further submits that, although the Import Policy Order, 2016 contains restrictions concerning used auto parts, the customs regime has historically operated in a manner that permitted release of such goods upon payment of redemption fine and penalty instead of outright confiscation. This practice reflects a deliberate and pragmatic reconciliation between import policy restrictions and the adjudicatory powers vested under the Customs Act. He asserted that SRO 499(I)/2009, when read in its entirety, supports this approach by contemplating regulated release rather than automatic forfeiture. The Import Policy Order, the SRO, the Customs General Order, and the Valuation Rulings are all forms of delegated legislation. In the event of any perceived inconsistency among them, the settled principle of interpretation requires harmonization in a manner that preserves, rather than destroys, the constitutional right to carry on lawful trade and business.

4. Lastly, learned counsel advances the position that even assuming arguendo that the amendment validly enhances penalties, it cannot be applied retrospectively. The petitioners had opened letters of credit with the approval of the State Bank of Pakistan and entered into binding contractual commitments prior to the enactment of the Finance Act, 2023. The goods were ordered and shipped on the basis of the legal regime then prevailing. To subject such transactions to an enhanced and mandatory penalty regime would offend settled principles governing retrospectively in fiscal legislation. Fiscal burdens cannot be imposed retrospectively in the absence of clear and unequivocal legislative intent.

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5. Conversely, learned A.A.G. has submitted that the vires of a statutory provision can only be successfully assailed on limited constitutional grounds, namely, where it is demonstrated that the legislature lacked competence to enact or amend the law, or where the impugned provision is repugnant to, inconsistent with, or in direct conflict with any express provision of the Constitution. He contends that, absent such constitutional infirmity, a duly enacted statute enjoys a presumption of validity that cannot be displaced merely on grounds of perceived harshness or economic inconvenience. It is further urged that, in the present case, the petitioners' grievance is confined to the enhancement in the quantum of fine/penalty introduced through the Finance Act, 2023. According to learned A.A.G., such enhancement falls squarely within the legislative domain, particularly in matters of fiscal policy and regulatory enforcement. The determination of the extent, severity, or deterrent effect of penalties is a matter of legislative wisdom and policy, which lies exclusively within the province of Parliament. By seeking to question the quantum of the penalty, the petitioners have, in substance, invited this Court to reassess the wisdom and propriety of legislative judgment, an exercise which is impermissible within the scope of constitutional jurisdiction under Article 199. The Court cannot substitute its own view as to what constitutes an appropriate or proportionate penalty in fiscal matters. Unless it is shown that the amendment is constitutionally incompetent, discriminatory, manifestly arbitrary, or violative of a fundamental right, judicial interference is unwarranted. The mere fact that the amended provision imposes a higher financial burden does not render it unconstitutional. It is, therefore, contended that the petition is misconceived, as it challenges legislative policy rather than demonstrating any constitutional transgression.

6. Learned A.A.G further contended that the petitioners cannot claim any vested right on the basis of an alleged past departmental practice, as release of goods upon payment of redemption fine was always discretionary and subject to the statutory framework in force at the relevant time. An administrative practice, even if consistently followed, cannot override or restrict the effect of an express amendment enacted by Parliament. Once Section 156(1) was amended through

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the Finance Act, 2023, the Department became legally bound to implement the revised penalty structure. No principle of legitimate expectation or estoppel can operate against a clear legislative mandate, and commercial arrangements undertaken by the petitioners remain subject to the law as applicable at the time of import and assessment.

7. I have heard the learned counsel for the parties at length and have carefully considered the petition in light of the para-wise comments filed by the respondents.

8. Apparently, the facts giving rise to the instant constitutional petitions are that the petitioner is engaged in the import of old and used auto parts. Certain consignments imported by the petitioner arrived at the Dry Port, Islamabad; however, the same have not been cleared by the concerned authorities. The reason conveyed to the petitioner for non-clearance is that, pursuant to the amendment introduced through the Finance Act, 2023, in Serial No. 9 of Section 156(1) of the Customs Act, the minimum penalty has been enhanced to an amount not less than 100% of the value of the goods. Aggrieved by the enhancement in the quantum of penalty/fine and the consequent action of the respondents, the petitioner has invoked the constitutional jurisdiction of this Court, seeking a declaration that the amendment brought about through the Finance Act, 2023, is ultra vires the Constitution and, therefore, of no legal effect.

9. In light of the submissions advanced by the parties, the foremost question that arises for determination in the present case is whether Parliament, in exercise of its constitutional authority, possesses the competence to enact and amend statutory provisions imposing general or special taxes and allied penalties, as has been done through the Finance Act, 2023.

10. The question of legislative competence in fiscal matters must be examined within the constitutional framework that governs the distribution and exercise of taxing powers in Pakistan. The Constitution does not treat taxation as an incidental authority; rather, it recognizes it as an essential attribute of sovereignty, subject

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only to constitutional limitations. At the outset, Article 77 of the Constitution says: -

> *"No tax shall be levied for the purposes of the Federation except by or under the authority of Act of [Majlis-e-Shoora (Parliament)]."*

11. This provision embodies a constitutional command of the highest order. It is both a grant of authority and a restraint. In language plain yet profound, it vests the taxing power in the elected legislature and simultaneously prohibits its exercise by any other organ of the State except pursuant to legislative sanction. The clause reflects the foundational democratic principle that the power to tax, the power to compel contribution from the citizen for public purposes, must reside in the representatives of the people. The phrase "by or under the authority of" is of particular significance. It contemplates two modes of valid taxation. First, Parliament may itself impose a tax directly through primary legislation, specifying its nature, rate, and incidence. Second, Parliament may authorize the imposition or operationalization of tax through delegated legislation, provided such delegation is grounded in and circumscribed by statute. The Constitution thus recognizes the practical necessity of delegation in complex fiscal regimes, while ensuring that the ultimate source of authority remains legislative.

12. The scope and nature of this power were authoritatively expounded by the august Supreme Court in **PLD 1997 SC 582**. The Court held that the power of taxation is an inherent and indispensable attribute of sovereignty. It does not arise from a constitutional grant; rather, constitutional provisions relating to taxation operate as limitations upon legislative authority. The Court emphasized that the State's power to tax is general, unlimited, and absolute within its jurisdiction, subject only to constitutional restraints. Importantly, the Supreme Court clarified that entries in the Legislative List are not restrictive in character but demarcate fields of legislation. Such entries must be given a broad and liberal interpretation to enable the State to effectively discharge its functions. The Court further recognized that modern fiscal policy may adopt diverse forms of taxation, including presumptive and minimum taxes, and that the Legislature enjoys plenary authority to structure liability, impose conditions, and determine the mode

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and extent of taxation, provided constitutional boundaries are not crossed. The Hon'ble Supreme Court held: -

> *"The power of taxation rests on necessity, it is an essential and inherent attribute of sovereignty belonging as a matter of right to every independent State or Government.*
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> *Such power is an inherent one, and is not dependent upon any grant by the Constitution, or the consent of the owners of property subject to taxation; Constitutional provisions with respect to taxation constitute a limitation on the legislative power and not a grant of power. The power to tax rests primarily in the State, to be exercised by its legislature and the State may exercise the power directly or may delegate such power as political sub-divisions of the State. The exercise of the taxing power is a high Governmental function, in invitum in nature. Generally, the power of taxation is as extensive as the range of subjects over which the power of the Government extends. As to such subjects, and except in so far as it is limited or restrained by Constitutional provisions, a State's power of taxation, if exercised for public purposes, is general, unlimited, and absolute, extending to all persons, property, and business within its jurisdiction.*
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> *Since this power is contained in the Constitution, one's approach while interpreting the same should be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. The interpretation cannot be narrow and pedantic but the Court's efforts should be to construe the same broadly, so that it may be able to meet the requirement of ever changing society. The general words cannot be construed in isolation but the same are to be construed in the context in which they are employed. In other words, their colour and contents are derived from their context.*
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> *In a Federal Constitution like in Pakistan, the legislative power is distributed between the Provincial and the Federal Legislatures. With that view legislative lists are prepared. The entries contained therein indicate the subjects on which a particular Legislature is competent but they do not provide any restriction as to the power of the Legislature concerned. It can legislate on the subject mentioned in an entry so long as it does not transgress or encroach upon the power of the other Legislature and also does not violate any fundamental right as the legislative power is subject to constraints contained in the Constitution itself. It is also a well settled proposition of law that an entry in a legislative list cannot be construed narrowly or in a pedantic manner but it is to be given liberal construction."*

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13. In addition, the Hon'ble Supreme Court further added that: -

> *"34. Keeping in view the above case-law and the treatises and the aforesaid legal inferences drawn therefrom, we may now revert to the question of vires of the impugned sections. It may again be observed that the power to levy taxes is a sine qua non for a State. In fact it is an attribute of sovereignty of a State. It is mandatory requirement of a State as it generates financial resources which are needed for running a State and for achieving the cherished goal, namely, to establish a welfare State. In this view of the matter, the Legislature enjoys plenary power to impose taxes within the framework of the Constitution. It has prima facie power to tax whom it chooses, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses so long as they do not exceed the mandate of the Constitution. It is also apparent that the entries in the Legislative List of the Constitution are not powers of legislation but only fields of legislative heads. The allocation of the subjects in the lists is not by way of scientific or logical definition but by way of simple enumeration of broad catalogue. A single tax may derive its sanction from one or more entries and many taxes may emanate from one single entry. It is needless to reiterate that it is a well-settled proposition of law that an entry in the Legislative List must be given a very wide and liberal interpretation. The word "income" is susceptible as to include not only what is in ordinary parlance it conveys or it is understood, but what is deemed to have arisen or accrued. It is also manifest that income-tax is not only levied in the conventional manner by working out the net income after adjusting admissible expenses and permissible deductions etc., but the same may also be levied on the basis of gross receipts or expenditure etc. There are new species of income-tax, namely, presumptive tax and minimum tax."*

14. This principle was further reinforced by the Lahore High Court in **2018 PTD 287** (M/s D.G. Khan Cement Company Limited vs. FBR and others). In that case, the competence of Parliament to impose a special tax under Section 4B of the Income Tax Ordinance, 2001, was challenged. The Court held that "taxation," as defined in Article 260 of the Constitution, encompasses the imposition of any tax or duty, whether general, local, or special. It was categorically observed that Parliament possesses vast powers to impose special taxes for specific purposes, and that such levy squarely falls within its constitutional competence. Lahore High Court held that: -

> *"Taxation which has a nexus with the powers to impose tax under Article 77 includes the imposition of any tax or duty whether general, local or*

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special, and tax shall be construed accordingly. Therefore, the legislature has vast powers to impose tax or duty which can be special in nature. This clearly means that tax can be imposed for special purpose and which will include a specific purpose as sought to be canvassed by the learned counsel for the petitioners. This is a complete answer to the argument of the learned counsel for the petitioners with regard to the mention of a purpose in Section 4B of the Ordinance, 2001. It is not difficult to construe that Section 4B is a special tax and has been imposed for a special purpose and by virtue of the definition of taxation given in Article 260 the Parliament was well within its powers to impose such a tax. We will also take a glance at Entry 47 of the Fourth Schedule to the Constitution which reads as follows: -

"47. Taxes on income other than agricultural income".

34. It has been settled by respectable authorities that Entries in the Legislative List of the Constitution indicate the subject on which a particular legislature is competent to enact but they do not provide any restriction as to the power of the legislature concerned. It is also well settled that a Legislative List cannot be construed narrowly but has to be given a liberal construction. It will be noticed that Entry 47 uses the term 'taxes on income'. This in my opinion is quite significant as it empowers the legislature to impose more than one tax on the income of a person. Once again, the term 'tax on income' used in Entry 47 effectively nullifies the arguments with regard to double taxation. Therefore, only that the legislature does not impose a prohibition on double taxation but in fact permits the levy of more than one tax on income."

"39. In a taxing statute, legislature enjoys much greater latitude for selection of subjects of taxation as also for classification and the legislative will is based on diverse, economic, social and policy considerations. The economic wisdom of a tax is within the exclusive province of the legislature and questioning the legislative policy is beyond the domain of the courts."

15. In the landmark Supreme Court case **McCulloch v. Maryland (1819)**, Chief Justice John Marshall handed down one of his most important decisions regarding the expansion of Federal power.

"Before we proceed to examine this argument, and to subject it to the test of the constitution, we must be permitted to bestow a few considerations on the nature and extent of this original right of taxation, which is acknowledged to remain with the States. It is admitted that the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to

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> *carry it. The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituent."*

16. Furthermore, fiscal and economic regulation lies within the policy domain of the Legislature. Courts have consistently recognized that the determination of the rate, structure, and deterrent effect of penalties involves complex considerations of public interest, revenue protection, and regulatory discipline. Judicial review does not extend to reassessing the wisdom or severity of such measures, so long as they are enacted within constitutional competence and do not infringe a specific constitutional prohibition.

17. Applying these authoritative pronouncements to the present case, it becomes evident that Parliament was constitutionally competent to amend Section 156(1) of the Customs Act, 1969, through the Finance Act, 2023. The prescription of penalties in fiscal statutes is not an independent or extraneous exercise of power; it is ancillary and integral to the enforcement of taxation and regulatory measures. The authority to levy tax necessarily carries with it the authority to prescribe mechanisms to secure compliance, including confiscation, fines, and penalties. Without such enforcement tools, the taxing power would be rendered ineffective.

18. The second question that arises for determination in the present case is: under what circumstances, and on which recognized constitutional grounds, may the superior courts undertake judicial review of a legislative enactment when its vires are called into question?

19. Judicial review of legislation is not an open-ended authority; it is a structured and limited power, exercised with restraint and only within well-defined parameters. At the outset, it is a settled principle that every enactment passed by Parliament carries with it a strong presumption of constitutionality. The courts proceed on the assumption that the legislature understands the needs of the people, acts within its constitutional bounds, and legislates for legitimate public purposes. The burden, therefore, lies heavily upon the challenger to clearly demonstrate constitutional infirmity. Judicial invalidation of a statute is not

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undertaken lightly, nor on grounds of policy disagreement, perceived harshness, or economic inconvenience.

20. Broadly speaking, superior courts may examine the vires of legislation on three principal grounds.

21. First, the lack of legislative competence: In a constitutional order where legislative power is distributed and defined, a law may be struck down if the enacting body has transgressed the field allocated to it. The inquiry in such cases is directed to the "pith and substance" of the legislation; its true character and dominant purpose. If, in essence, the law falls outside the constitutional domain of the legislature, it is ultra vires ab initio. However, incidental encroachment does not invalidate a statute; courts adopt a liberal and pragmatic approach, sustaining legislation where its substance lies within competence.

22. Second, violation of an express constitutional limitation or fundamental right: The Constitution is the supreme law, and any statute inconsistent with it must yield. Where a legislative provision is alleged to infringe rights guaranteed under Part II of the Constitution, such as equality before law, due process, freedom of trade, or protection of property, the Court undertakes a structured inquiry. It examines whether the impugned law has a legitimate objective, whether there exists a rational nexus between the measure adopted and that objective, and whether the restriction imposed is arbitrary, discriminatory, or disproportionate. Notably, fundamental rights are not absolute; many are subject to reasonable restrictions imposed by law in the public interest. In fiscal and regulatory matters, especially, courts accord the legislature a wide margin of appreciation, recognizing that economic policy involves complex assessments not suited to judicial substitution. Only where the infringement is manifest, irreconcilable, and substantial will the Court intervene.

23. Third, colorable legislation or constitutional circumvention: While courts do not inquire into the motives of legislators, they may examine whether a statute, though framed as falling within legislative competence, in substance seeks to achieve an object beyond constitutional limits. The doctrine of colorable

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legislation embodies the principle that what cannot be done directly cannot be done indirectly. The inquiry, however, is objective and structural, focused on the legal effect of the enactment rather than subjective intent.

24. It is equally important to emphasize what does not constitute a valid ground for striking down legislation. Courts do not invalidate statutes merely because they appear harsh, burdensome, or economically stringent. Nor do they sit in judgment over legislative wisdom, prudence, or policy choices. As has been repeatedly observed in comparative constitutional jurisprudence, courts interpret the law; they do not formulate economic or fiscal policy. The determination of rates of taxation, the quantum of penalties, and the degree of deterrence required are matters entrusted to the legislative branch. In case **R.K. Garg v. Union of India, (1981) 4 SCC 675** [writ Petition No. 355 of 1981], the Indian Supreme Court held that: -

> *"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints had to be allowed to the legislature. The court should feel more inclined to given judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [354 US 457 : 1 L Ed 2d 1485 1957] where Frankfurter, J. said in his inimitable style:*
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> > *In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainly, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."*

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25. The Supreme Court of India further held in the judgment *supra* that: -

> *"Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognized and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds."*

26. In case **United States Vs. Harris, 106 U.S. 629 (1883)**, the U.S. Supreme Court held that: -

> *"We pass to the consideration of the merits of the case. Proper respect for a coordinate branch of the government requires the courts of the United States to give effect to the presumption that Congress will pass no act not within its constitutional power. This presumption should prevail unless the lack of constitutional authority to pass an act in question is clearly demonstrated. While conceding this, it must nevertheless be stated that the government of the United States is one of delegated, limited, and enumerated powers."*

27. In case **National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012)**, the U.S. Supreme Court held that: -

> *"Our permissive reading of these powers is explained in part by a general reticence to invalidate the acts of the Nation's elected leaders. "Proper respect for a co-ordinate branch of the government" requires that we strike down an Act of Congress only if "the lack of constitutional authority to pass [the] act in question is clearly demonstrated." United States v. Harris, 106 U.S. 629, 635 (1883). Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments."*

28. Applying the foregoing principles to the present case, it is evident that judicial review of legislative enactments is a narrowly circumscribed and disciplined exercise. Courts may only strike down a law when there is a clear, direct, and demonstrable conflict with constitutional provisions or where the legislature has acted beyond its prescribed competence. Mere allegations of

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harshness, economic inconvenience, or disagreement with policy do not suffice. The presumption of constitutionality places a heavy burden on the challenger to establish a constitutional infirmity. Fundamental rights must be balanced against legitimate public and fiscal objectives, and in matters of economic regulation, taxation, and fiscal enforcement, courts owe substantial deference to the legislature. The judiciary's role is to interpret the law, not to second-guess the policy choices or economic judgment of the elected legislature. Therefore, in the present case, the inquiry must remain confined to these constitutionally recognized parameters. Unless the petitioners establish that the impugned amendment falls within one of these limited categories of invalidity, judicial interference would amount to encroachment upon the legislative domain; an outcome the constitutional structure does not permit.

29. It is crystal clear from the above discussion that once the Constitution confers wide and plenary powers upon the legislature to levy general or special taxes, the wisdom, policy, or purpose behind such taxation cannot be questioned so long as it remains within constitutional limits. Further, the grievance articulated by the petitioner is confined to the enhancement in the quantum of fine brought about through the amendment introduced in the Customs Act, 1969, by means of the Finance Act, 2023. It is a settled constitutional principle that the determination of the rate or quantum of tax, duty, or penalty falls squarely within the legislative domain. The Constitution, through Article 77, expressly vests in Parliament the authority to levy taxes and, by necessary implication, to prescribe ancillary enforcement mechanisms, including penalties. The calibration of penalties, whether mild or stringent, is a matter of legislative assessment based upon considerations of deterrence, regulatory efficacy, and public interest. Courts are not equipped, nor constitutionally authorized, to substitute their own assessment of what constitutes an appropriate or proportionate quantum in fiscal regulation unless the provision demonstrably transgresses constitutional limits.

Availability of Adequate Alternate Remedy and Scope of Constitutional Jurisdiction under Article 199?

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30. The jurisdiction under Article 199 is discretionary and equitable in nature. It is not intended to supplant statutory forums or to provide an alternate avenue where the legislature has already created a complete adjudicatory mechanism. The Customs Act, 1969, constitutes a self-contained code. It provides a detailed framework for adjudication, appeals, revisions, and further recourse before appellate tribunals and superior courts. The legislature, in its wisdom, has devised a hierarchical structure to examine questions of fact and law arising out of customs proceedings. To permit a party to bypass this statutory machinery and directly approach the High Court would render the legislative scheme redundant and defeat the purpose for which specialized forums have been established. The superior judiciary has consistently held that constitutional jurisdiction is not to be exercised where an adequate and efficacious remedy is available under the relevant statute. This rule is grounded in sound judicial policy. Statutory authorities are vested with expertise in their respective domains; they are competent to determine factual controversies, assess evidence, and interpret the statute in the first instance. Constitutional courts, in contrast, exercise supervisory and corrective jurisdiction. They do not ordinarily undertake fact-finding exercises or substitute themselves for statutory forums.

31. It is also well settled that even where the vires of a provision is challenged, the existence of an alternate remedy remains a relevant and weighty consideration. The mere insertion of a constitutional challenge in the pleadings does not automatically confer a right to bypass statutory remedies. Courts have repeatedly cautioned that litigants cannot circumvent the statutory route by simply framing the dispute as a constitutional question. If the grievance essentially relates to assessment, quantification of liability, imposition of penalty, or application of statutory provisions to particular facts, such matters must first be examined within the statutory hierarchy. In case **PLD 1958 SC 437** titled Tariq Transport Company Lahore v. The Sargodha-Bhera Bus Service, Sargodha, etc., the Supreme Court observed:

> *"Where a statute creates a right and also provides a machinery for the enforcement of that right, the party complaining of a breach of the statute*

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must first avail himself of the remedy provided by the statute for such breach before he applies for a writ or an order in the nature of a writ."

32. In the same case, it was further observed:

"It is wrong on principle to entertain petitions for writs, except in very exceptional circumstances, when the law provides a remedy by appeal to another Tribunal fully competent to award the requisite relief. Any indulgence to the contrary is calculated to create distrust in statutory tribunals of competent jurisdiction and to cast an undeserved reflection on their honesty and competency and thus to defeat the legislative intent."

33. This court held that where the legislature has provided an adequate, efficacious, and accessible statutory remedy, the High Court ordinarily declines to exercise jurisdiction under Article 199, and a litigant must first exhaust such a remedy before invoking constitutional relief. The extraordinary jurisdiction under Article 199 is not designed to bypass designated forums, but to address clear and patent illegality where no equally effective alternative remedy exists. In the case titled Malik Basit Vs. Mst. Razia Sultana, etc. [W.P. No. 1080 of 2025], the court observed as under: -

"According to the rule of jurisdictive prudence, the courts usually show restraint with the directions to the parties first to take the recourse of an alternate and or equally effective mechanism and framework of remedy provided rather than to take departure to surpass or circumvent such remedy. Reliance can be placed in the case of the Government of Punjab through the Secretary, Schools Education Department, Lahore and others v. Abdur Rehman and others (2022 SCMR 25). The lawmakers' goal behind adopting these remedies is to constrain issues falling within the jurisdiction of an appellate court to be solely adjudicated before that forum. Any endeavour to bypass or evade these designated forums is deemed impermissible, as mandated by Article 199(1) of the Constitution. Where an adequate forum was available to the petitioner in the shape of an appeal that was not exhausted, the principle of exhaustion of remedies imposes a restriction on a litigant, prohibiting them from seeking a remedy in the constitutional jurisdiction.

6. The exceptional jurisdiction conferred by Article 199 of the Constitution is fundamentally designed to provide a specific remedy when the illegality and impropriety of an action by an executive or other governmental authority can be demonstrated without protracted inquiry. The term "adequate remedy" denotes a remedy that is effective, attainable,

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> *accessible, advantageous, and expeditious. The petitioner has an effective remedy for filing an appeal, but the petitioner missed the bus without any reasonable and lawful excuse. The doctrine of exhaustion of remedies dictates that a litigant must not pursue a remedy in a different court or jurisdiction until the remedy prescribed by law has been fully exhausted. The writ jurisdiction of the High Court should not serve as the exclusive recourse or remedy for rectifying the wrongs, distress, and sufferings endured by a party, especially when an equally efficacious, alternative, and adequate remedy is available under the law. This principle is grounded in the notion that the litigant should not be inclined to bypass or disregard the provisions enshrined in the pertinent statute, which delineate specific procedures for challenging the impugned action. Proceedings under Article 199 of the Constitution are oriented towards enforcing a right rather than establishing a legal right. Therefore, the right asserted by the petitioner must not only be clear and complete but also straightforward and there must be an actual infringement of that right."*

34. In the present context, the Customs Act, 1969, provides a comprehensive appellate framework against adjudication orders, including those relating to penalty. The petitioner had the opportunity to contest the imposition and application of the amended provision before the competent authority and, if aggrieved, to pursue appeals provided by law. The statutory forum is fully competent to interpret the amended provision, examine its applicability to the petitioner's case, and determine the extent of liability. By directly invoking Article 199, the petitioner has sought to bypass this structured mechanism. Therefore, in the absence of circumstances demonstrating that the statutory remedy is inadequate, inefficacious, or illusory, or that the impugned action is patently without jurisdiction, this Court would be slow to exercise its extraordinary jurisdiction. The principle that constitutional relief is not available where an adequate alternate remedy exists is not merely procedural, it is a doctrine rooted in constitutional balance, institutional propriety, and orderly administration of justice.

35. In view of the foregoing discussion, this Court is satisfied that the challenge mounted by the petitioners does not disclose any constitutional infirmity in the amendment introduced through the Finance Act, 2023. Parliament, acting within the ambit of Article 77 of the Constitution, possessed full legislative competence

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to amend Section 156(1) of the Customs Act, 1969, and to recalibrate the quantum of penalty in furtherance of fiscal and regulatory objectives. The prescription of penalties is ancillary to the taxing power and forms an integral part of the enforcement mechanism. The mere enhancement in the quantum of fine, however burdensome it may appear to the petitioners, does not by itself render the provision unconstitutional. No violation of any fundamental right has been established, nor has any case of legislative incompetence or constitutional transgression been made out. Further, the petitioner has failed to demonstrate that any vested or accrued right had crystallized prior to the enforcement of the Finance Act, 2023 so as to immunize them from the amended statutory regime.

36. For the reasons recorded above, this Court finds no merit in the instant petitions. The impugned amendment does not suffer from any constitutional defect, nor does the case warrant interference in the exercise of constitutional jurisdiction. Consequently, these writ petitions are hereby **DISMISSED**. No order as to costs.

37. Pursuant to the order dated 05.10.2023, the auto parts were ordered to be released on furnishing security in the form of post-dated Cheques with the Deputy Registrar of this Court in the name of the Collector of Customs, Islamabad. In view of the dismissal of the writ petitions, the said interim arrangement now stands vacated. Consequently, Respondent No. 6 / Collector of Customs, Islamabad, is directed to collect the post-dated Cheques from this office and proceed in accordance with law for the realization of the outstanding balance of duties, fine, and penalty, if any, from the petitioners.

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(MUHAMMAD AZAM KHAN)
JUDGE

Announced in Open Court on _____.

JUDGE

Approved for Reporting
Blue Slip added