JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

INTRA COURT APPEALS NO. 284 & 285 OF 2016

Fauji Fertilizer Company Limited
Versus
Federation of Pakistan & 2 others

Appellant by	**:**	**Sardar Ahmed Jamal Sukhera, Advocate in both I.C.As.**
Respondent by	**:**	**Mr. Ali Nawaz Kharral, Mr. Jamal Farooq, and Barrister Shameel Saadat, advocates for respondents No. 2 and 3 in both I.C.As.** **Mr. Azmat Bashir Tarrar, learned A.A.G.**
Date of hearing	**:**	**08.06.2026**

MUHAMMAD AZAM KHAN, J. Through the instant appeals, the Appellant has challenged the Judgment dated 14.04.2016 rendered by the learned Single Judge in Chamber, whereby the constitutional petitions No.653 and 654 of 2016 filed by the Appellant, assailing the Notice dated 18.02.2016 and 17.02.2016, issued by Respondent No. 2 and 3, respectively, whereby the latter intends to verify the stocks of finished goods available as on 15.02.2016 and intends to access the premises of the Appellant Company for the purpose of verification of its accounts and record, were dismissed. The appeals are accompanied by an application under Section 5 of the Limitation Act, 1908, to condone the delay in filing the appeals, supported by an affidavit.

2. Learned counsel for the appellant, while explaining the maintainability of the appeal and the question of limitation, submitted that the appellant came to know about the dismissal of the writ petition only on 18.05.2016 upon receipt of a notice issued by the Commissioner in that regard. He contended that arguments in the writ petition had been concluded and judgment had been reserved on 21.03.2016. Thereafter, the matter was relisted through a Supplementary Cause List issued on 13.04.2016 for hearing on the very next day, i.e., 14.04.2016. According to the learned counsel, the appellant, being represented by an outside counsel, had no knowledge of such relisting and was not afforded an opportunity of hearing on 14.04.2016, as no intimation regarding

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the said fixation was conveyed to him. It was further contended that the Court Register would show that the file of the writ petition had remained in the learned Judge's chamber until approximately 10.05.2016 and had not been transmitted to the Writ Branch before that date. Learned counsel argued that there was, therefore, no reasonable means by which the appellant could have known that the judgment had been announced. He submitted that if the limitation is computed from the date on which the case file was transmitted from the learned Judge's chamber to the Writ Branch, the present appeal would be well within the prescribed statutory period of twenty days.

3. To the extent of the merits, the learned counsel for the appellants vehemently contended that the impugned notice issued under Section 38 of the Sales Tax Act, 1990, was wholly without lawful authority and jurisdiction, as no valid inquiry, duly authorized under Section 25 of the Act, was pending at the relevant time. It was argued that the correspondence relied upon by the respondents in their para-wise comments neither related to nor had any nexus with the proposed stock verification of finished goods as on 15.02.2016 and, therefore, could not constitute a lawful inquiry for the purposes of invoking Section 38. It was further contended that even assuming the existence of a pending inquiry, the intended exercise was not a routine visit contemplated under Section 38 but, in substance, a search aimed at verifying a preconceived apprehension of the Department and, therefore, could not lawfully be undertaken without first obtaining a search warrant in accordance with Section 40 of the Act. Learned counsel maintained that these material legal submissions were neither addressed nor adjudicated in the impugned judgment, which proceeded solely on the assumption that an inquiry was pending, without examining whether such an inquiry was lawfully initiated or whether the proposed action conformed to the statutory safeguards prescribed by the Act. Consequently, it was prayed that the impugned judgment and the proceedings founded upon the impugned notice be declared illegal and set aside.

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4. Learned counsel for the Respondents, at the outset, raised a preliminary objection to the maintainability of the instant appeal on the ground of limitation, contending that the Appellant had failed to demonstrate, through any cogent or reliable material, that the judgment dated 14th April, 2016 came to its knowledge only on 18th May, 2016, and that the mere assertion of ignorance, unsupported by affirmative proof, could not constitute sufficient cause for condonation of delay within the meaning of Section 5 of the Limitation Act, 1908, particularly when the Appellant was a corporate entity represented by counsel who was duty-bound to maintain diligent watch over proceedings pending before the Court. On merits, learned counsel strenuously defended the impugned Notice dated 18th February, 2016, submitting that the same had been lawfully issued by Respondent No. 2 in the bona fide and legitimate exercise of the powers vested in officers of Inland Revenue under Section 38(2) of the Sales Tax Act 1990, which confers upon such officers a broad and unqualified authority to access the premises of a registered person and to examine its accounts, records, and stock for the purposes of audit, inquiry, or investigation, without any precondition of a formally pending inquiry as a jurisdictional prerequisite for the exercise of such power. He further submitted that a valid inquiry was indeed pending at the relevant time and that the correspondence on record, duly referred to in the parawise comments filed by the Respondents, clearly established a sufficient nexus between the ongoing departmental proceedings and the proposed verification exercise, which was neither a search nor an action requiring the issuance of a warrant under Section 40 of the Act, but rather a routine inspection and stock verification squarely falling within the ambit of Section 38 and entirely consistent with the statutory framework and enforcement mandate of the revenue administration. Learned counsel accordingly urged that the learned Single Judge had correctly dismissed the constitutional petitions, that the impugned judgments were well-reasoned and unassailable in law, and that the instant appeals, being both time-barred and devoid of merit, were liable to be dismissed with costs.

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5. This Court has heard, at considerable length, the learned counsel for both parties, carefully examined the available record, and given its anxious and deliberate consideration to all the legal submissions advanced on either side. Before proceeding to adjudicate upon the merits of the controversy, it is necessary to first dispose of the application filed by the Appellant under Section 5 of the Limitation Act, 1908, seeking condonation of the delay occasioned in the filing of the instant appeals.

6. The application for condonation of delay is supported by an affidavit duly sworn and signed by the learned counsel for the Appellant, wherein it has been deposed, on solemn affirmation, that the Appellant came to know of the pronouncement of the impugned judgment only upon receipt of the notice issued by the Commissioner on 18.05.2016, and that prior thereto, neither the Appellant nor its counsel had any knowledge or intimation of the announcement of the judgment, inasmuch as the matter had been re-listed through a Supplementary Cause List without any prior notice to the outstation counsel, and the case file had remained in the learned Single Judge's Chamber until approximately 10.05.2016, leaving no reasonable means by which the pronouncement could have come to the Appellant's knowledge at an earlier point in time.

7. This Court has considered the said application with the care and circumspection that it warrants. It is a well-settled principle of law, consistently affirmed by the Superior Courts of Pakistan, that procedural provisions relating to limitation are intended to serve the ends of justice and not to defeat them, and that the courts must not allow technicalities of procedure to become instruments of injustice where a party has acted in good faith and without any culpable negligence or deliberate default. The Supreme Court of Pakistan has, in a long and unbroken line of decisions, held that in matters of condonation of delay, the court must adopt a pragmatic and justice-oriented approach, and that where sufficient cause is shown, howsoever liberally that expression may fall to be construed, the application ought to be allowed, so that the matter may be

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decided on its substantive merits rather than foreclosed upon purely technical grounds. This Court is of the view that where the questions raised in an appeal are of such legal complexity and public importance as those arising in the present proceedings, it is invariably more conducive to the proper administration of justice to examine and adjudicate upon those questions on their merits, rather than to dispose of the matter upon a threshold technicality that leaves the substantive legal controversy unresolved. Accordingly, taking a liberal and justice-oriented view of the matter, as the courts are both entitled and indeed obliged to do in appropriate cases, this Court hereby allows the application for condonation of delay, condones the delay in the filing of the instant appeals, and proceeds to examine the appeals on their merits.

8. A perusal of the comments filed by the respondents during the pendency of the writ petition reveals that, upon scrutiny of the sales tax record of the appellant company, namely FFCL, certain discrepancies were detected in the value of supplies declared by the appellant. In order to ascertain the correctness of the declared sales and the corresponding payment of sales tax, the respondents initiated inquiry proceedings. The record further reflects that the first communication in this regard was issued by the Deputy Commissioner Inland Revenue vide letter No. 29 dated 12.11.2015, whereby the appellant was called upon to explain and reconcile the discrepancies noticed in its sales tax declarations for the period July to September, 2015. The principal objection raised by the learned counsel for the appellant is that the aforesaid communication did not expressly state that an “inquiry” or “investigation” under the Sales Tax Act, 1990 had been initiated against the appellant. According to the learned counsel, in the absence of such an express recital, the communication dated 12.11.2015 cannot be treated as the commencement of an inquiry or investigation and, consequently, cannot furnish the jurisdictional basis for any subsequent action purportedly taken under the Act.

9. Before addressing the substantive question whether the letter dated 12.11.2015 constituted a valid initiation of inquiry proceedings sufficient to

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sustain the subsequent notice issued under Section 38 of the Act, it is necessary to deal with the contention advanced on behalf of the Appellant that the absence of an express reference to a particular statutory provision, or the omission of the words “inquiry” or “investigation” from the said communication, is fatal to the respondents’ case. It is a settled proposition that the legal character of a document is determined not by the nomenclature assigned to it, nor by the statutory provisions expressly cited therein, but by its substance, purpose and legal effect. Courts have consistently looked beyond form to substance, for it is the substance of an act rather than the label attached to it that determines its true legal nature. To illustrate, if a notice issued by a tax authority calls upon a taxpayer to explain identified discrepancies in his declarations, produce relevant records and furnish clarification regarding transactions under scrutiny, the communication does not cease to be an inquiry merely because the word “inquiry” has not been expressly employed. By the same token, a written agreement containing all the essential elements of a contract does not lose its binding character merely because the document is not titled as a “contract.” Likewise, an order granting relief does not cease to be a judicial order simply because it omits to describe itself as such. In each case, the law looks to the substance of what has been done rather than the terminology employed by the author of the document.

10. Examined in this light, the communication dated 12.11.2015 bears all the essential characteristics of an inquiry proceeding. It was issued by the Deputy Commissioner Inland Revenue in the exercise of his official functions; it identified specific discrepancies in the Appellant’s sales tax declarations for the tax periods July to September 2015; it brought those discrepancies to the notice of the Appellant; and it required the Appellant to furnish an explanation and clarification regarding the same. A communication seeking explanation and verification of identified irregularities in tax declarations is, in its very nature, an investigative exercise undertaken to ascertain the correctness of the declarations made and to determine whether any further action is warranted. The essence of an inquiry lies not in the use of a particular expression but in the initiation of a

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process of examination, verification and information-gathering by a competent authority.

11. Equally untenable is the contention that the communication is rendered legally ineffective because it does not expressly cite any provision of the Sales Tax Act, 1990. The validity of an administrative act depends upon the existence of lawful authority and not upon the meticulous recitation of statutory provisions in every communication. Where the authority issuing the communication possesses the requisite jurisdiction, acts within the scope of that jurisdiction, and issues a communication which, in substance, seeks information and clarification regarding matters falling within its lawful competence, the omission to cite a specific statutory provision is at best a defect of form and not one of substance. Such an omission cannot be elevated into a jurisdictional infirmity so as to invalidate an otherwise lawful proceeding. The chronology of events further reinforces this conclusion. The communication dated 12.11.2015 preceded the impugned notice by several months and was plainly directed towards examining discrepancies noticed in the Appellant's tax declarations. The subsequent notice, therefore, appears not as an isolated or independent action but as a natural progression of the process that had already been set in motion through the earlier communication. The suggestion that the characterization of the letter dated 12.11.2015 as an inquiry is a retrospective justification devised for purposes of litigation is, therefore, unsupported by the record and inconsistent with the sequence of events disclosed therein.

12. The true test is whether a competent officer, through a communication identifying specific matters requiring examination and calling for an explanation from the taxpayer, had commenced a process of institutional scrutiny of the taxpayer's affairs. Applying that test, the communication dated 12.11.2015 clearly constituted the initiation of an inquiry, which remained pending at the time of issuance of the subsequent notice.

13. The second contention advanced on behalf of the Appellant is that the impugned notice issued under Section 38B of the Sales Tax Act, 1990, was

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without lawful authority and jurisdiction, on the ground that no inquiry validly initiated under Section 25 of the Act was pending at the relevant time. According to the learned counsel, the existence of such an inquiry constituted a mandatory jurisdictional precondition for the lawful exercise of powers under Section 38B. For the sake of reference, Section 25 of the Act is reproduced as under: -

> *"Section 25: Audit of sales tax affairs.– (1) The Commissioner on the basis of reasons to be recorded in writing, may direct the officer of Inland Revenue not below the rank of Assistant Commissioner to conduct audit of sales tax affairs of any registered person and issue a notice to such registered person intimating him regarding audit of sales tax affairs.*
>
> *(2) The Commissioner shall communicate the reasons referred to in sub-section (1) to the registered person whose audit is to be conducted through the notice under sub-section (1).*
>
> *(3) The reasons referred to in sub-section (1) shall be based on scrutiny of the available records including sales tax and federal excise returns, income tax returns and withholding statements, financial statements or third party information:*
>
> *Provided that the reasons shall not include the mere verification of input tax, output tax, refund claim and compliance of legal provisions without identifying risk factors that require such verification.*
>
> *(4) Subsequent to the issuance of notice under sub-section (1), the officer of Inland Revenue, may call for any record or documents including record maintained under this Act, the rules made thereunder or any other law for the time being in force for conducting audit of the sales tax affairs of the person. Where such record or documents have been kept on electronic data, the registered person shall allow authorize officer of Inland Revenue access to the use of machine and software on which such data is kept and the officer of Inland Revenue may obtain duly attested hard copies of such information or data from the registered person:*
>
> *Provided that the officer of Inland Revenue shall not call for record or documents of the registered person after expiry of six years from the end of the financial year to which they relate.*
>
> *(5) The officer of Inland Revenue may require the registered person to attend his office in person or through an authorized representative. The*

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registered person shall produce such accounts, documents or any evidence as the officer of Inland Revenue may consider necessary.

(6) The officer of Inland Revenue not below the rank of Assistant Commissioner may conduct or cause to be conducted such enquiry and obtain such information from any third party as he considers appropriate.

(7) The officer of Inland Revenue not below the rank of Assistant Commissioner shall conduct audit of the sales tax affairs to verify the correctness or otherwise of the declared tax liability, output tax, input tax claimed, tax paid, refund claimed, stocks consumed or available for ascertaining compliance or otherwise with the provisions of this Act and the rules made thereunder on the basis of the record and evidence obtained under sub-sections (5) or (6).

(8) The officer of Inland Revenue may conduct audit proceedings electronically through video links, or any other facility as may be prescribed by the Board.

(9) After completion of the audit, the officer of Inland Revenue may, if required pass an order under section 11E, after providing an opportunity of being heard to the registered person under sub-section (1) of section 11E.

(10) Notwithstanding anything contained in sub-sections (7) and (9) where a registered person fails to produce before the officer of Inland Revenue, any accounts, documents or records required to be maintained under this Act or the rules made thereunder or any other relevant document electronically kept record, electronic machine or any other evidence that may be required by the officer of Inland Revenue for the purpose of audit. The officer of Inland Revenue may proceed to make best judgment assessment under section 11D of this Act.

(11) Notwithstanding the penalties prescribed in section 33, if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge voluntarily, whenever it comes to his notice, before receipt of notice of audit, no penalty shall be recovered from him: Provided that if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge during the audit, or at any time before issuance of show cause notice under section 11E, he may deposit the evaded amount of tax, default surcharge under section 34, and twenty five percent of the penalty payable under section 33:

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Provided further that if a registered person wishes to deposit the amount of tax short paid or amount of tax evaded along with default surcharge after issuance of show cause notice under section 11E, he shall deposit the evaded amount of tax, default surcharge under section 34, and full amount of the penalty payable under section 33 and thereafter, the show cause notice, shall stand abated.]"

14. Before proceeding to examine the merits of the aforesaid contention and the statutory scheme governing the matter, it would be advantageous to reproduce Section 38B of the Sales Tax Act, 1990, which lies at the heart of the present controversy. The provision reads as follows:–

"38-B. Obligation to produce documents and provide information:

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any person required to maintain the record under the Act, on demand by an officer, not below the rank of an Assistant Commissioner Inland Revenue, by notice in writing, as and when specified in the notice, shall:

(a) produce for examination, such documents or records which the officer of Inland Revenue considers necessary or relevant to the audit, inquiry or investigation under the Act;

(b) allow the officer of Inland Revenue to take extracts from or make copies of such documents or records; and

(c) appear before the officer of Inland Revenue and answer any question put to him concerning the documents and records relating to the audit or inquiry or investigation referred to in clause (a) above.

(2) An officer of Inland Revenue conducting an audit, inquiry or, as the case may be, an investigation under the Act, may require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization, which, in the opinion of the officer of Inland Revenue, is relevant to such audit, inquiry or investigation.

(3) The Board may require, in writing, any person, department, company or organization, as the case may be, to provide any information or data held by that person, department, company or organization, which, in the opinion of the Board, is required for purposes of formulation of policy or administering the Customs, Sales Tax, Federal Excise or Income Tax.

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> *(4) Every person, department, company or organization shall furnish the information requisitioned by the Board or the officer of Inland Revenue under sub-section (2) or (3), within the time specified in the notice issued by the Board or, as the case may be, the officer of Inland Revenue."*

15. At the outset, it must be observed that the entire edifice of the Appellant's argument rests upon an assumption that Section 25 occupies a controlling and foundational position within the statutory framework and that every exercise of power under Section 38B must necessarily trace its origin to an audit or inquiry commenced thereunder. Section 25 is a provision dealing principally with the audit of sales tax affairs of a registered person. It prescribes the circumstances in which the Commissioner may direct an audit, the procedure to be followed, the powers available to the audit officer, and the consequences that may ensue upon completion of the audit. The provision is thus concerned with a specific species of regulatory scrutiny, namely a formal audit proceeding. Section 38B, on the other hand, operates in an entirely different field. Its purpose is not to regulate the conduct of an audit but to empower the tax administration to obtain access to information, records and evidence necessary for the effective enforcement of the Act. The language employed by the legislature in Section 38B does not make its operation dependent upon the prior invocation of Section 25, nor does it incorporate, either expressly or by necessary implication, any requirement that an audit proceeding must first be initiated before the powers contained therein may be exercised. The conspicuous absence of any such requirement is a powerful indication that none was intended.

16. The Appellant's interpretation further overlooks the well-settled principle that a statutory precondition affecting jurisdiction must be found within the statute itself and cannot be imported into the provision through inference, assumption or perceived administrative convenience. Courts are required to interpret legislation as enacted and not as it might have been drafted. To read Section 25 into Section 38B as an indispensable jurisdictional prerequisite would amount to adding words to the statute which the legislature deliberately omitted. Such an exercise would not constitute interpretation; it would amount

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to judicial legislation, a course consistently deprecated by superior courts. The contention is equally unsustainable when the practical operation of the Act is considered. Revenue statutes are designed to equip tax authorities with a range of investigative and enforcement tools operating at different stages and for different purposes. Some powers are intended to facilitate preliminary inquiry and information gathering, while others are designed to regulate formal audit proceedings or adjudicatory processes. To insist that every exercise of authority under Section 38B must be preceded by an audit under Section 25 would invert this legislative design and render the enforcement mechanism unnecessarily rigid and ineffective. It would mean that even where credible information regarding possible tax irregularities comes to the notice of the department, the authorities would be compelled to initiate a formal audit before taking any step to verify the information or secure the relevant record. Such an interpretation would frustrate rather than advance the object of the statute. The fallacy in the Appellant's submission becomes even more apparent when viewed from the perspective of statutory purpose. The object of Section 25 is to facilitate a comprehensive audit of a registered person's tax affairs. The object of Section 38B is to enable the collection and verification of information necessary for the administration and enforcement of the Act. While the two provisions may, in a given case, operate concurrently or overlap in their practical application, neither provision is textually subordinate to the other. Each occupies its own distinct field of operation and performs a separate legislative function. The existence of one does not condition the validity of the other.

17. Moreover, the record of the case does not support the assertion that no inquiry was pending at the relevant time. The material placed before the Court demonstrates that discrepancies had been detected in the Appellant's sales tax declarations; communications had been issued seeking clarification; explanations had been called for; and the matter remained under active examination by the tax authorities. Whether that process is described as an inquiry, investigation, scrutiny or verification is ultimately of little consequence. What is material is that the departmental machinery had already been set in

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motion for the purpose of examining identified discrepancies and determining their legal and fiscal implications. The statutory validity of such a process cannot be defeated merely because it did not conform to the particular characterization preferred by the Appellant. Viewed from any angle i.e., textual, structural, purposive or practical; the contention that a pending inquiry under Section 25 constituted an indispensable jurisdictional precondition for the issuance of the impugned notice under Section 38B is devoid of legal merit.

18. At this juncture, it is necessary to place Section 38 within its proper statutory and purposive context. Any interpretation of the provision that ignores the legislative objective sought to be achieved, or the practical realities of tax administration within which it operates, risks defeating rather than advancing the purpose for which the legislature enacted it. Its resolution carries profound practical consequences for the efficacy of the State's revenue enforcement machinery. A narrow, hyper-technical construction that would shackle revenue officers at the most critical stage of tax enforcement, the pre-audit intelligence-gathering stage, must be avoided unless the legislative text admits of absolutely no other reading. As shall be demonstrated hereinafter, not only does the text of Section 38 accommodate a broader construction, but the purposive, contextual, harmonious, and functional interpretive approaches all converge upon the conclusion that formal pendency is not a *sine qua non* for the exercise of power under this provision.

19. The purposive interpretation stands, among all recognized canons of statutory construction, as the most intellectually coherent and practically indispensable tool available to a court when ascertaining the true meaning and intended operation of a legislative provision. Its philosophical foundation rests upon a proposition of elementary yet profound importance that a statute is not a purposeless textual artifact to dissected in isolation from the human, social, economic, and administrative realities that gave rise to its enactment. Every legislative provision is the deliberate response of the legislature to a perceived mischief, lacuna, or regulatory need, and the function of the court is not merely

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to parse its words in their dictionary sense but to penetrate beneath the surface of the text, identify the animating purpose the legislature sought to achieve, and give that purpose its fullest and most effective expression. This is not judicial legislation; it is judicial fidelity to the legislative will, properly understood. The earliest authoritative articulation of this method is found in *Heydon's Case* (1584) 3 Co Rep 7a, where the Court of Exchequer Chamber resolved that: -

> *"For the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law,) four things are to be discerned and considered: 1st. What was the common law before the making of the Act. 2nd. What was the mischief and defect for which the common law did not provide. 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."*

20. Lord Denning gave this approach its most memorable modern expression in *Notham v. London Borough of Barnet* [1978] 1 WLR 220, declaring that a court should not be a prisoner of statutory words but must look to the purpose and policy of the legislation. The Sales Tax Act, 1990, was enacted against a background of widespread evasion, inadequate fiscal revenue, and a narrow tax base that placed an inequitable burden upon compliant taxpayers while permitting a substantial segment of commerce to operate outside the effective reach of the revenue administration. The Act's overarching purpose is threefold: to broaden the tax base; to ensure correct assessment and efficient collection of tax liabilities; and to deter evasion by equipping the administration with a comprehensive array of enforcement tools. Section 38 forms a critical component of this enforcement architecture representing the legislature's thoughtful response to the inability of revenue officers to access, at the pre-audit stage, information necessary to determine whether a taxpayer's affairs warrant formal scrutiny. Without this power, the enforcement machinery would be crippled at its most vital operational point, the stage at which intelligence is

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gathered, risks assessed, compliance profiles constructed, and the decision to initiate formal proceedings made upon an informed evidentiary foundation. This legislative concern finds direct parallel in the observations of the UK Supreme Court in *R (on the application of HMRC) v. First-tier Tribunal* [2010] UKSC 28 (for perusal of complete judgment: https://supremecourt.uk/uploads/uksc_2010_0057_judgment_537ceb85c3.pdf) wherein it was held that revenue statutes conferring information-gathering powers must be construed so as to enable fiscal authorities to discharge their enforcement functions effectively, and that restrictive constructions impeding preliminary information-gathering are inconsistent with the evident legislative purpose. Tax evasion is, by its essential nature, a clandestine and methodically planned enterprise. The evader conceals transactions behind documentary fiction, suppresses genuine invoices, inflates input tax credits through commercially substanceless arrangements, and constructs an apparently regular paper trail calculated to defeat ordinary audit and verification. The more sophisticated the scheme, the more carefully it is camouflaged. It is precisely at this stage, before any formal proceeding has been initiated, that Section 38 assumes its greatest practical importance, enabling a revenue officer acting upon intelligence, data analytics signals, or third-party discrepancies to pierce the veil of apparent compliance and access the underlying commercial reality. Confining this power to situations of formal pendency renders it useless at the very stage it is most urgently needed when the officer is determining whether available intelligence justifies initiating proceedings at all. The most elaborately concealed evasion would, under such a construction, receive the most effective insulation from scrutiny, since the officer would be legally disabled from gathering the very material that would justify opening a formal case. Applying the four-part framework of *Heydon's Case* yields a conclusive answer. Prior to Section 38, revenue officers lacked any clear, express power to requisition records at the preliminary inquiry stage in the absence of formally initiated proceedings, a lacuna strikingly similar to that considered by the House of Lords in *R v. IRC, ex parte T.C. Coombs & Co.* [1991] 2 AC 283 (for perusal of entire

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judgment: https://www.uniset.ca/other/cs2/19912AC283.html), where it was affirmed that information-gathering powers of revenue authorities extend to the pre-formal-proceedings stage and are not confined to situations where a specific registered case is already pending. This gap enabled sophisticated evaders to operate with practical impunity during the pre-audit phase, secure in the knowledge that no compulsion could be brought to bear upon them until a formal case was officially opened. Section 38 was enacted precisely to eliminate this pre-audit information vacuum and to empower officers to build an evidentiary foundation before initiating formal proceedings, enabling the administration to operate proactively rather than reactively. The constitutional and fiscal dimension further reinforces this conclusion. The State's power to levy and collect taxes is not merely a governmental prerogative; it is the constitutional foundation of its capacity to discharge fundamental obligations to its citizens. The fiscal sovereignty of the State demands that enforcement provisions be interpreted to preserve, rather than undermine, its constitutionally grounded revenue function. Every rupee lost to evasion is unavailable for schools, hospitals, infrastructure, and national security. Tax evasion is thus a wrong not merely against the government but against every law-abiding citizen who bears the additional burden that evaders escape. The European Court of Justice in *Halifax plc v. Customs and Excise Commissioners* [2006] Ch 387 (for perusal of complete judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ecli:ECLI%3AEU%3AC%3A2006%3A121)
likewise held that enforcement provisions of indirect tax legislation must be construed to effectively counteract abuse, and that national courts must not adopt interpretations rendering anti-evasion mechanisms ineffective.

21. The modern revenue administration further depends upon sophisticated data analytics, algorithmic risk-based audit selection, automated compliance monitoring, and structured pre-audit intelligence gathering tools that are, without exception, pre-audit in their operational character. Construing Section 38 as requiring formal pendency would deprive all such techniques of their essential legal foundation, forcing the administration back upon an antiquated

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enforcement model in which formal cases can only be built upon pre-existing formal cases. Domestic legislation enacted in the context of internationally recognized administrative norms is to be construed consistently with those norms where possible, and the OECD's Forum (Organization for Economic Co-operation and Development) on Tax Administration has consistently recognized that pre-audit information-gathering powers are indispensable to effective risk-based enforcement.

22. There is yet another aspect of the matter which, in the opinion of this Court, is needed to be discussed. Indeed, even if the entire controversy regarding the true character of the communications dated 12.11.2015 and 17.02.2016 is left aside, and it is assumed, purely for the sake of argument, that the said communications did not constitute inquiry proceedings and were merely notices seeking clarification, information, or production of record, the constitutional petition filed by the Appellant would nevertheless remain premature and not maintainable in law. In other words, irrespective of whether the communications are characterized as formal inquiry proceedings or as simple requests for information, the challenge mounted by the Appellant fails at the threshold for want of a legally cognizable grievance. The jurisdiction of a High Court under Article 199 of the Constitution is not intended to be invoked at every stage of an administrative or statutory process. Constitutional jurisdiction is fundamentally remedial in character. It is designed to redress an existing legal injury, prevent an imminent violation of a legal right, or correct an action that has already resulted in adverse civil consequences. It is not available to obstruct, pre-empt, or short-circuit a lawful inquiry merely because a person apprehends that the inquiry may eventually culminate in an adverse determination. The constitutional power of judicial review is directed against decisions, actions, or proceedings that have affected legal rights; it is not ordinarily exercised against preliminary or exploratory steps undertaken by a statutory authority in the discharge of its lawful functions. The concept of a “person aggrieved” lies at the heart of constitutional adjudication. A person cannot be regarded as aggrieved merely because he has been asked to furnish information, explain discrepancies,

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or produce documents relevant to an inquiry. To attain the status of a person aggrieved, it must be demonstrated that some legal right has been infringed, some legal burden has been imposed, some civil consequence has ensued, or some adverse determination affecting rights, obligations, status, property, or business interests has been made. Mere participation in a statutory process does not amount to legal prejudice. Equally, the possibility that an adverse order may be passed at some future stage is not, in itself, a sufficient foundation for invoking constitutional jurisdiction. Examined from this perspective, neither the communication dated 12.11.2015 nor the notice dated 17.02.2016 determined any liability against the Appellant. Neither communication created a tax demand, imposed a penalty, suspended any statutory entitlement, cancelled any registration, confiscated any property, or otherwise altered the legal position of the Appellant in any manner whatsoever. The communications merely called upon the Appellant to provide clarification regarding identified discrepancies and to facilitate examination of the relevant record. They were investigative and informational in nature, not adjudicatory. They neither adjudged the Appellant to be in default nor recorded any finding of wrongdoing. At the stage when the constitutional petitions were instituted, the statutory process had not matured into any decision capable of affecting the Appellant's rights.

23. Indeed, the very object of seeking clarification is to enable the authority to ascertain the correct factual position before arriving at any conclusion. A notice seeking explanation proceeds upon no final assumption of liability and carries with it no presumption of guilt. It affords the recipient an opportunity to place his version before the authority so that an informed decision may eventually be taken. To permit judicial intervention at such a preliminary stage would be to transform constitutional jurisdiction into a mechanism for supervising every step of an ongoing administrative inquiry, a consequence wholly inconsistent with the settled limits of judicial review. If every notice seeking information, every request for clarification, or every preliminary inquiry were to be treated as giving rise to an independent constitutional cause of action, the inevitable result would be the paralysis of statutory administration. Public authorities would be

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prevented from even collecting the information necessary to determine whether any violation of law exists. The statutory process would stand interrupted before reaching the stage at which rights are actually determined. Courts have consistently discouraged such premature challenges because they substitute speculative apprehension for actual legal injury and invite judicial intervention in matters that may ultimately be resolved in favour of the person concerned without any adverse action whatsoever. In a judgment passed by this Court in the case titled "*Attock Gen Limited Vs. Federation of Pakistan and others*" [Writ Petition No. 1756 of 2018], this Court held that: -

> *"16. The jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is extraordinary, equitable, and discretionary in nature, and is primarily intended to provide relief to a person, who is aggrieved by an act, order, or omission of a public authority that adversely affects his legal rights. It is a settled principle of constitutional jurisprudence that the invocation of such jurisdiction is contingent upon the existence of a grievance that is real, substantive, and grounded in an adverse determination or action having civil consequences. In other words, the sine qua non for maintaining a constitutional petition is the presence of an "aggrieved person," i.e., one whose legally protected rights or interests have been prejudicially affected by an order or action of a competent authority.*
>
> *17. It is equally well established that not every administrative communication or procedural step gives rise to a cause of action warranting interference under Article 199 of the Constitution. The superior courts have consistently held that constitutional jurisdiction is not meant to be invoked at a preliminary or exploratory stage of proceedings, particularly where no adverse order has been passed. An "adverse order," in legal contemplation, is one which determines rights or liabilities, or otherwise visits a person with civil consequences such as financial burden, penalty, or legal disability. Absent such determination, a person cannot be said to be "aggrieved" in the constitutional sense so as to justify the exercise of writ jurisdiction.*
>
> *18. The rationale underlying this principle is rooted in judicial restraint and the orderly administration of justice. Constitutional courts do not ordinarily interfere in matters that are still in a fluid or investigative stage, as premature intervention may disrupt statutory processes and preclude the competent authorities from performing their lawful functions. Thus, where a communication merely seeks information,*

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clarification, or explanation, without adjudicating upon rights or imposing any liability, it does not attain the character of an adverse order and, consequently, does not furnish a valid basis for invoking constitutional jurisdiction. Applying this principle, it follows that only when a competent authority passes an order that finally or even provisionally determines rights to the detriment of a party, can such party be regarded as "aggrieved" and entitled to seek relief under Article 199 of the Constitution. In the absence of such adverse determination, the constitutional petition is premature and not maintainable.

19. In the present case, no adverse order has been passed against the petitioner, nor has any determination been made affecting its rights or liabilities. The impugned communication, being merely a request for explanation, does not entail any civil consequences or impose any legal burden upon the petitioner. In the absence of such adverse action, the petitioner cannot be regarded as an "aggrieved person" within the contemplation of Article 199 of the Constitution. Furthermore, no infringement of any fundamental or constitutional right has been demonstrated, nor has any legal injury been caused to the petitioner at this stage. It is a settled principle that constitutional jurisdiction is not invoked in the abstract or in anticipation of a possible adverse outcome, but rather in response to an actual and existing grievance arising from a definitive act or order of a public authority. Consequently, the present petition, being premature and not founded upon any adverse determination, is not maintainable."

24. Finally, this Court turns to the last remaining aspect of the case, however, before doing so, it would be appropriate to reproduce the relevant contents of the letter dated 17.02.2016, issued by the respondent department to the appellant and has been assailed in the writ petition: -

"2. Undersigned is powered to call for information under Section 38B of the Sales Tax Act 1990 as specified in the notice and intend to invoke the same in your case whereby you are directed to produce the following necessary information to this office by 18.02.2026.

a. Location wise stock of finished goods.
b. Quantity in Matric Tonns of above stock available on each location on 15.02.2016.

3. Your early cooperation shall be highly appreciated."

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25. Indeed, there was no certainty whatsoever that the departmental proceedings would culminate in any adverse action against the Appellant. Had the Appellant submitted the requisite reply, clarification, or supporting record in response to the communications issued by the department, and had such explanation been found satisfactory, the matter could well have been closed without any further proceedings. Even if the department, after considering the Appellant's response, had formed an adverse view and proceeded to pass an order prejudicial to the Appellant's interests, such an order would then have furnished a concrete cause of action and could have been challenged before the appropriate forum in accordance with the remedies provided under the law. The Appellant, however, chose not to participate in the fact-finding process and instead sought judicial intervention before the competent authority had reached any conclusion whatsoever. Such a course effectively invited the Court to adjudicate upon a speculative apprehension rather than an actual legal injury, which is impermissible in the exercise of constitutional jurisdiction.

26. Instead of availing this opportunity and allowing the statutory process to run its course, the Appellant chose to invoke the constitutional jurisdiction of the High Court at the threshold stage. Such recourse, before the completion of the fact-finding process and before any adverse determination had been made, was plainly premature. It is a well-established rule of judicial restraint that where proceedings are still at an initial or investigative stage, and the competent authority has yet to arrive at any conclusion, the parties are expected to participate in the process and place their case before the authority concerned. Courts ordinarily refrain from interfering at such stages because premature intervention not only interrupts the statutory process but also deprives the authority of the opportunity to examine the explanation offered and arrive at a considered determination in accordance with law. The statutory framework of the Sales Tax Act, 1990, further reinforces this conclusion. The Act provides a complete and self-contained mechanism for adjudication and redress of grievances. If, upon completion of the inquiry, verification, or audit process, any adverse order had been passed against the Appellant, the law afforded adequate

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and efficacious remedies through the hierarchy of forums established under the statute. The legislative scheme contemplates that disputes arising from tax proceedings should, in the first instance, be examined and resolved within the specialized framework created by the Act. Constitutional jurisdiction is not intended to supplant or bypass that statutory mechanism, particularly in fiscal matters where questions of fact and technical tax administration are entrusted to specialized authorities.

27. In the presence of such a comprehensive remedial structure, and in the absence of any adverse determination affecting the Appellant's rights, the invocation of constitutional jurisdiction at the stage of a mere request for clarification was neither warranted nor legally sustainable. The challenge mounted by the Appellant was directed not against a completed decision but against the very process by which the department sought to ascertain the factual correctness of the declarations made by the Appellant. Such a challenge was premature, devoid of any existing legal grievance, and contrary to the settled principles governing the exercise of jurisdiction under Article 199 of the Constitution.

28. In view of the foregoing discussion, this Court finds no legal or factual infirmity in the impugned judgments warranting interference in the exercise of appellate jurisdiction. The learned Single Judge has correctly appreciated the statutory scheme. The Appellant has failed to demonstrate that any vested legal right was infringed or that the impugned notice or letter resulted in any adverse civil consequences so as to render the constitutional petitions maintainable. Likewise, the objections rose with regard to limitation, and the applicability of Section 38B of the Sales Tax Act, 1990, does not merit acceptance for the reasons already recorded hereinabove. Consequently, finding no illegality, jurisdictional defect, or material irregularity in the impugned judgments, the instant appeals are ***dismissed*** being devoid of merit, along with all pending applications. There shall be no order as to costs.

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(INAAM AMEEN MINHAS)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of June, 2026.

JUDGE **JUDGE**

Sajid

Approved for Reporting
Blue slip added.

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