JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.2399 of 2016

OMV Maurice Energy Limited
Vs.
Pakistan, through Secretary Finance and others

Petitioner by: M/s Haider Ali and Muhammad Saqib Nafees, Advocates in W.P Nos.2399/2016 & 2400/2016. Mr. Adeel Wahid, Advocate in W.P Nos.2565/2016, 2571/2016 & 50/2021. Mr. Usman Shaukat, Advocate in W.P No.909/2017.

Respondents/FBR by: Mr.Riaz Hussain Azam Bopera and Mr. Moiz Riaz Azam Bopera, Advocates in W.P Nos.2399/2016, 2400/2016 & 909/2017. Mr. Hassan Ali Khan, Advocate in W.P Nos.2565/2016, 2571/2016 & 50/21.

Assisted by: Muhammad Yahya Khan Niazi, Judicial Law Clerk.

Date of Hearing: 05.03.2025.

INAAM AMEEN MINHAS, J:- This judgment shall decide the instant writ petition as well as the writ petitions mentioned in the Annexure-A involving common questions of law and facts.

2. Brief facts are that the petitioner in the instant petition is a Pakistan branch office of a non-resident company engaged in oil and gas exploration, production and sale. The Petitioner challenges the *mala fide* and legality of the Show Cause Notice dated 03.06.2016 issued by the Deputy Commissioner Inland Revenue being *ultra vires* to the Federal Excise Act, 2005 **("FEA, 2005"),** Sales Tax Act, 1990 **("STA, 1990")**, and the Constitution of Islamic Republic of Pakistan,

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1973 **(Constitution)**. Similarly, in the connected writ petitions, the petitioners (in their respective writ petitions) have challenged the *mala fide* and legality of the Show Cause Notice **("SNC")** dated 03.06.2016 in W.P No.2399/2016, W.P No.2400/2016 and W.P No.2571/2016, dated 31.05.2016 in W.P No.2565/2016), dated 22.02.2017 in W.P No.909/2017, dated 29.12.2020 in W.P No.50/2021 issued by Deputy Commissioner Inland Revenue being *ultra vires* to the FEA, 2005, the STA, 1990 and the Constitution. The common grounds raised in the petitions are: (i) the SCNs misattribute data to the Director General of Petroleum Concessions, alleging concealment of sale and production, while using a flawed methodology (ii) it applies an inaccurate conversion formula, omits crucial tax data and miscalculates Federal Excise Duty **("FED")** liability (iii) the issuance of the SCNs is jurisdictionally defective as Deputy Commissioner Inland Revenue lacks statutory authority for such proceedings and (iv) that the SCNs cannot be issued mechanically i.e. in a combined form under two different Acts. The petitioners also raised fundamental questions of law and jurisdiction, implicating the petitioners' constitutional rights, against which the petitioners have no adequate alternate remedy, hence these petitions.

3. The learned counsel for the petitioners Mr. Adeel Wahid, Advocate in writ petition Nos.2565/2016, 2571/2016 and 50/2021 contended that the impugned SCNs were issued without jurisdiction and directly implicates the constitutional rights of the petitioners as

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such the instant petitions are maintainable before this Court in its constitutional jurisdiction; that the impugned SCNs are *ultra vires* to the FEA, 2005 and the STA, 1990 and were issued without lawful authority, therefore, are of no legal effect; that respondent No. 4/Deputy Commissioner Inland Revenue lacks jurisdiction to assess the petitioners for sales tax or FED as such powers rest solely with respondent No. 3/Commissioner Inland Revenue and the same cannot be further delegated; that issuance of the impugned SCNs under distinct and unrelated laws, leads to unlawful joint assessment despite the absence of a relevant notification for natural gas under section 7 of the FEA, 2005; that the impugned SCNs are speculative, lack specific tax shortfall allegations and improperly rely on inconclusive secondary data from the Pakistan Energy Year Book 2014, which renders the entire assessment flawed; that issuance of the impugned SCNs amounts to harassment rather than lawful assessment of tax and duty as the same were issued without jurisdiction.

4. The learned counsel for the petitioners in the connected writ petitions adopted arguments of the learned counsel for the petitioners in writ petition Nos.2565/2016, 2571/2016 and 50/2021.

5. On the other hand, the learned counsel on behalf of the respondents/FBR relied upon the written comments, in which contentions of the petitioners were controverted and argued that by issuance of the impugned SCNs no fundamental or constitutional right of any of the petitioners has been infringed, rendering the writ petitions

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not maintainable; that the petitioners have no *locus standi* to institute these proceedings as the grievances raised primarily pertain to policy considerations rather than questions of legality; that the case involves factual controversy and adjudication of such controversy falls outside the constitutional jurisdiction of this Court and in this regard learned counsel for the respondents/FBR placed reliance on the authoritative judgments reported as *1997 PTD 40 (HC Lah.)* and *1996 PTD 36 (HC Lah.)*, which affirm the principle that constitutional jurisdiction is not a forum for resolving factual disputes. He further argued that under both the FEA, 2005 and the STA, 1990 only the Inland Revenue Officer is the competent authority to issue a SCN and the impugned SCNs were issued by the Inland Revenue Officer, therefore, no illegality was committed by the respondents/FBR in issuing the consolidated impugned SCNs. He also argued that since each of the petitioners filed a single income tax return for both duties i.e FED and sales tax, therefore, a combined notice incorporating provisions from both statutes was legally permissible.

6. I have heard the learned counsel for the parties and gone through the record with their invaluable assistance.

7. After a thorough analysis of the petitions and written comments of the respondents/FBR, it is apparent that the parties have not disputed that a single SCN was issued, containing the provisions of two separate laws FEA, 2005 and the STA, 1990.

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8. To resolve the controversy, it is necessary to understand the Scheme, Evolution, and Distinction of the FEA, 2005 and the STA, 1990. The FEA, 2005 and the STA, 1990 are two distinct and independent statutes, each governing different taxable events and liabilities. These laws operate, with unique provisions for record maintenance, issuance of SCN, assessments, demand creation, adjudication, recovery, time limitations and appeals. A combined SCN or order under both statues creates un-necessary complications for taxpayers and the appellate authorities while solely benefiting the Assessing Officer or Officer Inland Revenue. The procedural and substantive provisions of one Act cannot override those of the other. The Honourable Supreme Court in the case of ***Muhammad Younas Vs. Central Board of Revenue, Government of Pakistan*, (PLD 1964 SC 113)** clarified that the two taxes i.e. FED and sales tax are distinct, excise duty is a tax on production or manufacture, whereas, sales tax is a turnover tax on sales. The legal framework treats them as separate entities, preventing their conflation.

9. The legislative history of both the Acts (FEA, 2005 & STA, 1990), including successive amendments, demonstrates the clear intent to maintain them as separate and independent statutes and these laws do not indicate that they were designed to operate as complementary provisions. Each Act serves a distinct purpose and their provisions must be applied within their respective legal frameworks. The Honorable Supreme Court in the case of ***Commissioner Inland***

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***Revenue, Chenab Zone, RTO, Faisalabad vs. Rose Food Industries, Faisalabad,* (2023 SCMR 2070)** affirmed that the FEA, 2005 and the STA, 1990 are independent fiscal statutes that govern separate levies and require distinct legal proceedings.

10. The Honourable Supreme Court, in the case of ***Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad vs. Rose Food Industries, Faisalabad*, (2023 SCMR 2070)** has reiterated that the authorities responsible for the levy and charge of tax under the STA, 1990 are vested with wide-ranging powers to safeguard the interests of the exchequer but such intrusive powers are neither absolute nor can they be used in an arbitrary manner. The exercise of the powers is subject to observing the principles of procedural fairness and propriety. The tax authorities are constrained to exercise powers and jurisdiction in accordance with the provisions of the STA, 1990 and having regard to the vested rights of the taxpayer. Therefore, a public authority cannot act beyond its legally delegated powers. A statutory functionary must exercise its discretion within the limits set by the legislature. If an authority is granted specific powers under a law, it cannot unilaterally extend its jurisdiction beyond that statute. Issuing a single SCN under two distinct and independent fiscal laws is contrary to statutory provisions and the principle of jurisdictional limitation. Tax assessment under one law cannot be used as a basis for proceedings under another law and each law must be governed by its respective provisions.

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11. The issuance of a single consolidated SCN, covering different laws, is impermissible, unlawful, and without jurisdiction. This principle was elaborated in ***Cement Company Ltd., Karachi vs. Commissioner Inland Revenue (Appeals-11), Inland Revenue, Karachi*, (2018 PTD 388),** wherein it was categorically held that the Assessing Officer lacks the authority to issue a combined SCN, initiate consolidated proceedings, or pass a single assessment order under different statutes. Consequently, such an assessment order, along with any appellate orders based on it were declared void *ab initio* and without legal effect.

12. Similarly, in ***Commissioner Inland Revenue, Zone-H, Regional Tax Office Gujranwala v. The Allied Stainless Steel Industries, Gujranwala*, (2022 PTD 1930)**, the Court upheld the findings of the Appellate Tribunal, affirming that tax proceedings must adhere to the statutory framework prescribed under each specific Act and a consolidated SCN spanning multiple statutes is contrary to law. The Court reproduced the findings recorded by the Appellate Tribunal, which are reproduced as under:-

> *"17. The most important issue of maintainability of appeal under the Federal Excise Act, 2005 is that there is no controversy existed on record that a consolidated appellate order is passed in consequent to a single adjudication order impugned on the basis of a single consolidated show-cause notice for recovery of sales tax as well as special excise duty. Special Excise Duty (SED) under section 3A, can only be imposed by initiating proceedings under enabling provisions of Federal Excise Act, 2005. Since, no separate order for special excise duty is existed on record and the order-in-original bear a single number on its face for both the levies jointly and not distinctly, therefore, we feel that no absurdity is caused in filing of a single appeal by the appellant on the*

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same cause against the same order before the learned CIR (Appeals) by the appellant. In view of all this, reliance on the judgment of Hon'ble Supreme Court of Pakistan as referred in impugned order appealed against is distinguishable and not relevant to this particular situation, hence; dismissal of appeal on this very ground is not fair and justified.

18. With regard of levy of SED, it has been observed by us that the same has been levied without issuance of show-cause notice under the relevant provisions of the Federal Excise Act. In fact the Revenue Authorities during Sales Tax proceeding in the same show cause notice demanded SED, which in no way can be termed as justified. The SED levyable under section 3A of the Federal Excise Act is a separate levy under a separate Act and require separate proceedings. In our considered opinion, since SED has been imposed without taking cognizance of the same, therefore, is not warranted under the law and liable to be set aside on this score."

13. The Courts have generally held that different taxes and duties levied under distinct statutes require separate proceedings for their assessment and recovery. This view has also been affirmed in ***Commissioner Inland Revenue, Zone-II, Regional Tax Office Gujranwala vs. The Allied Stainless Steel Industries, Gujranwala,*** **(PTCL 2023 CL. 687) (H.C. Lah),** wherein it was held as under:-

"A single consolidated show-cause notice covering multiple Acts is legally impermissible and void"

14. It is a well-established principle that where the foundation is defective, the entire edifice built thereon would fall to the ground. Any proceedings or subsequent actions, including adjudication orders, appellate orders, or recovery notices, become equally illegal. Any exercise conducted thereafter, without adhering to due process would tantamount to direct violation and flagrant deviation from the doctrine of "Due process of Law".

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15. Moreover, due process is a fundamental constitutional right. No tax can be recovered except through due process and by following prescribed procedural formalities. The tax functionaries, if allowed to assign themselves with a jurisdiction not vested in them in the sacred statute book and their desire to cross the same would amount to a flagrant violation of their legal jurisdiction and would result in abuse of their powers. It is a well-settled principle of law that any exercise conducted without due process of law is unconstitutional, illegal and void. It is also a well-settled and established principle of law that when the legislature requires the doing of a thing in a particular manner then it is to be done in that manner and all other manners or modes of doing or performing that thing are barred as held in ***Federation of Pakistan through Secretary, Finance, Islamabad and another vs. E-Movers (Pvt.) Ltd. and another***, **(2022 SCMR 1021)** and ***Chairman, NAB vs. Nasar Ullah***, **(PLD 2022 SC 497)**.

16. The Honourable Supreme Court has determined that charges or allegations should be specific otherwise the taxpayer would be prejudiced and denied the right to a fair trial. As a corollary, the adjudicating authority has to confine the proceedings to the specific charges and allegations clearly mentioned in a SCN and cannot adjudicate any charge or allegation beyond it. Adjudicating a charge or allegation not confronted in the SCN would not be sustainable in law as held in the case of ***Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad vs. Rose Food Industries, Faisalabad,*** **(2023 SCMR**

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2070). For that reason, a valid SCN must precisely cite only those statutory provisions that are materially relevant to the subject matter. It must be issued with an independent judicial mind rather than in a mechanical or arbitrary manner.

17. The respondents/FBR have specifically raised the question of maintainability of these writ petitions, asserting that a writ petition is generally not maintainable against a SCN. While it is a settled principle that the Courts do not ordinarily entertain writ petitions challenging SCN, exceptions exist where judicial review is taken by the Court to see whether the act of the authority is in accordance with the law. The Court may assume constitutional jurisdiction when the exercise of authority is wholly without jurisdiction, in violation of statutory provisions, or otherwise barred by law, as affirmed by this Court in ***Pakistan Oilfields Limited vs. Federation of Pakistan through Ministry of Finance,*** **(2020 PTD 110 Islamabad)**. It is a well-established principle that a writ petition challenging a SCN is maintainable, when the same has been issued without jurisdiction, lacks lawful authority, or is patently illegal. This principle has been reaffirmed by the Honourable Supreme Court in ***Gatron Industries (Ltd.) vs. Government of Pakistan*****, (1999 SCMR 1072)**, wherein the Court held that where a notice is *ultra vires*, unconstitutional, or beyond the competence of the issuing authority, judicial intervention is warranted.

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18. In the present case, the petitioners have challenged the SCNs on multiple grounds primarily that no provision under the FEA, 2005, or the STA, 1990, authorizes the issuance of a consolidated SCN. The absence of statutory authorization renders the issuance of the impugned notices void *ab initio*, lacking legal sanctity. Since the very foundation of the impugned notices is unlawful and contrary to the relevant statutes, therefore, I hold that these writ petitions are maintainable.

19. It is settled law that, while interpreting fiscal statutes, the Court looks to what is clearly said and there is no room for any intendment nor is there any equity about a tax. There is no presumption as to tax and nothing was to be read in or implied and one could only look fairly at the language used. This principle has been affirmed in ***M/s Mirpurkhas Sugar Mills Ltd. vs. Govt. of Sindh and others*, (1993 SCMR 920)**, ***Muhammad Younus vs. Central Board of Revenue and others,* (PLD 1964 SC 113), *Commissioner of Income Tax vs. Mst. Khatija Begum*, (PLD 1965 SC 472), *Govt. of West Pakistan and others vs. M/s Jabees Ltd.,* (PLD 1991 SC 870)** and ***Government of Pakistan and others vs. M/s Hashwani Hotels Ltd.,* (PLD 1990 SC 68).**

20. This Court holds that a SCN must be issued separately under the relevant statutory provisions and subject to observing the principles of procedural fairness and propriety. This would allow a taxpayer to meaningfully respond to the specific allegations asserted against him upon which the subsequent original adjudication, if any, will be based.

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21. Before concluding, it must be noted that the department retains the liberty to initiate separate and independent proceedings under the FEA, 2005 and the STA, 1990 by issuing separate SCNs by the law. If the law permits separate proceedings, the tax authorities must adhere to statutory requirements without attempting to circumvent them through procedural shortcuts. Where a composition audit is contemplated, the legislative intent is clearly expressed and absence of such provisions in the current context confirms that no such consolidated assessment is permissible. The Department must ensure that a SCN is issued separately and that independent proceedings are conducted since the issuance of the SCNs is the most crucial in the context of a fair trial and due process and is the foundation of the entire proceedings conducted by the tax authorities and the same cannot be ignored as held in ***Commissioner Inland Revenue, Lahore vs. Millat Tractors Limited, Lahore,*** **(2024 SCMR 700)**.

22. In view of the above discussion, the instant writ petition as well as the writ petitions mentioned in the Annexure-A are **allowed** and the impugned consolidated SCNs under two separate laws are declared as unlawful, without jurisdiction and void *ab initio*. Given this clear legal defect, there is no need to address the other legal questions raised in these writ petitions.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 24.03.2025.

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APPROVED FOR REPORTING.
R.Anjam

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Annexure-A

1	Writ Petition No.2400 of 2016	OMV (Pakistan) Exploration GMBH vs Pakistan through the Secretary Finance and others
2	Writ Petition No.2571 of 2016	Ocean Pakistan Limited vs Deputy Commissioner Inland Revenue and others
3	Writ Petition No.2565 of 2016	Orient Petroleum Pvt. Limited vs Deputy Commissioner Inland Revenue and others
4	Writ Petition No.909 of 2017	M/s OMV (Pakistan) Exploration Gesellschaft MBH vs Federation of Pakistan and others
5	Writ Petition No.50 of 2021	Orient Petroleum Pvt. Limited vs Deputy Commissioner Inland Revenue and others

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