



B-COM-APP/2017/212483
GOVERNMENT OF SINDH
SINDH REVENUE BOARD
Karachi, dated, 9th March, 2017

BEFORE THE COMMISSIONER (APPEALS) SINDH REVENUE BOARD

APPEAL NO. 180/2016

ORDER-IN-APPEAL NO. 30/2017

M/s PCSIR Laboratory Complex, Karachi,
PCSIR Laboratory Complex,
Off University Road, Karachi

Appellant

Versus

Mr. Ghulam Murtaza Shar,
Assistant Commissioner, Unit-18, Sindh Revenue Board,
9th Floor, Shaheen Complex, Karachi

Respondent

Representative(s):

Mr. Hafiz Noor Muhammad Advocate for the
Appellant

Mr. Muhammad Irfan Sohu, Assistant Commissioner,
presently incharge of the Sector for the Respondent.

Date filing of Appeals: 08-06-2016

Final Date of Hearing: 07-02-2017

Date of Order: 09-03-2017

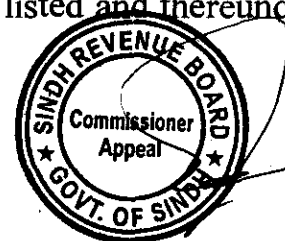
ORDER

Zamir A. Khalid, Commissioner (Appeals) SRB, - By this Order, I intend to dispose of the above titled/numbered Appeal filed against the Order in Original, bearing No. 350/2016 dated 12th May, 2016 (hereinafter referred as "OIO") passed by Mr. Ghulam Murtaza Shar, Assistant Commissioner, Unit-18, Sindh Revenue Board, against the Appellant.



1. The Appellant Respondent registered the Appellant compulsorily under section 24B, for providing the services of laboratories, classified under the tariff heading 9817.9000 of the 2nd Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred as "the Act, 2011"). The Appellant contended before the Respondent that the Appellant is a part of the Federal Government as such and is functioning under the control and finance of the Ministry of Science and Technology. And that its activity is extends only to scientific research and thus the Appellant enjoys the exemption under Article 165/165A of the Constitution of Pakistan. The Respondent did nto stand with the Appellant and held that Sindh sales tax on services is an indirect tax and is to be paid by the end consumer/services recipient, the Appellant has to act as a collection agent and has to charge and collect the tax from the service recipients and has to pay it to Sindh Revenue Board and that this levy shall not affect the income or property of Appellant and the tax burden shall be borne by the service recipients. In view whereof the Respondent held that the Article 165 of the Constitution is irrelevant and the Appellant is registerable. Accordingly, the Respondent registered the Appellant compulsorily and imposed a penalty of Rs: 100,000/- for non-compliance of Order of compulsory registration, as under Offence No. 1 of table of section 43 of the Act, 2011. The Appellant felt aggrieved and filed this appeal before me.

2. In the hearing before me the Advocate for the Appellant took the same grounds as were taken before the Respondent. In this regard the Advocate referred me to the Article 90 and 99 of the Constitution of Pakistan and submitted that executive authority of the Federation has to be exercised in the name of President of Pakistan. And that the Federal Government comprises of Prime Minister and Ministers. And that under Rule 2(1)(iii) of the Federal Rules of Business, 1973 (hereinafter referred to as the Rules of Business) business means all work done by the Federal Government. And that under Rule of Business 3(1) the Federal Secretariat to comprise of the Ministers and Divisions shown in schedule I. And that in Schedule I, at S. No. 26 the Ministry of Science and Technology is listed. And that under Rule 3(3) the business of government has to be distributed among the Divisions in the manner indicated in Schedule II. And that under entry 34 the Science and Technology Division is listed and thereunder at S.



No. 15 is listed Pakistan Council of Scientific and Industrial Research. Further, the Appellant referred me to the S. No. 15 of Entry 66 (XV) of part I of 2nd Schedule, of Income Tax Ordinance, 2001 that the Appellant is exempt from payment of income tax. Thereafter the Advocate took me to the preamble of Pakistan Council of Scientific and Industrial Research Act No. xxx of 1983 (hereinafter referred to as the Act, 1983). It said:-

“whereas it is expedient to provide for the establishment of a Pakistan Council of Scientific and Industrial Research to undertake, promote and guide scientific and technological research in respect of problems connected with the establishment and development of industries under conditions prevailing in Pakistan, and to encourage the extension of the results of research to various sectors of the economic development of the country in the best possible manner;”

Further submitted that under section 3(2) of the Act, 1983 and submitted that the Appellant is to be a body corporate being the Pakistan Council of Scientific and Industrial Research having perpetual succession and a common seal, to hold and dispose of property, and shall by the said name sue and be sued. And that the Council is composed of 21 members including the Chairman to be appointed by the Federal Government as under section 4 (1) of the Act, 1983. Further the Appellant took me to the section 10 of the Act, 1983. Section 10 read as under:-

“10. Funds of Council.—(1) The funds of the Council shall comprise—

- (a) funds of the registered Council which stand transferred to the Council under section 22;
- (b) grants from the Federal Government and the Provincial Government;
- (c) donations and endowments; and
- (d) income and receipts from such other sources as may be approved by the Federal Government;

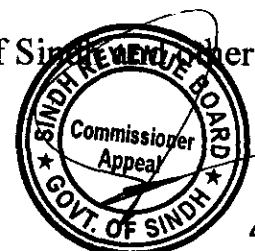


3. The Advocate also produced "FORMAT FOR BUDGET ORDER/NEW ITEM STATEMENT (NIS) FOR THE YEAR 2007-2008 and 2016-17" and submitted that the budget of the Appellant is approved by the Federal Government read with section 11 of the Act, 1983. And that under section 10(3) the bank accounts of the Appellant are with the State Bank of Pakistan or any other agency with permission of the Federal Government. And that under section 12 the employment of officers is with the special order of the Federal Government. Further the Appellant showed me some documents under which the property was transferred and the amounts were received. As far Article 165/165A are concerned the Appellant produced an Office Memorandum dated 26th July, 2012 issued by Ministry of Science and Technology, Islamabad seeking advice from the Ministry of Law and Justice. The Ministry of law and Justice Division vide their Memorandum dated 11th April, 2013 held in advice that the property of the Appellant is the property of Federal Government and therefore the Excise and Taxation Department of the Government of Punjab cannot impose the tax on property. Further the Appellant produced the detailed advice given by the Ministry of Law and Justice (Drafting & Legislation Section) pertaining to the Sindh tax as for the registration for the Act, 2011 is concerned. The Advices at para 3 said as under:-

"..... In view of the aforesaid provisions it seems appropriate to press into service the doctrine of lifting the veil of incorporation and accordingly the benefits of the Article 165 is available to the Authority because the Authority receives budget from the Federal Government and performing the function as aforesaid governments functions it is entitled to exemption under Article 165 of the Constitution from taxation under the Sindh Sales Tax on Services Act, 2011 which is a Provincial law. Therefore, this Division's U.O.No. 1420/2014-D&L dated the 21st November, 2014 which expresses contrary view is, accordingly recalled."

In the above context the Advocate submitted that the Appellant is carrying out sovereign functions of the state and thus finds exemption as available under Article 165/165A. In this regard the Appellant relied on the following Judgments:-

- 2013 PTD 2048, Civil Aviation Authority versus Prov. of Sindh, others



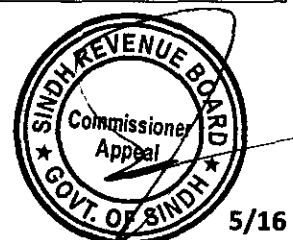
- PLD 2005 SC 670 PTCL's case.
- 1993 SCMR 468 Union Council Abdul Wahan vs Associated Cement
- Decision in Civil Appeal No. 439/2011 dated 29-01-2016 Axian Shahpur Division versus Collector Sales Tax Appeal, Faisalabad. (para-9)

(An unreported case)

4. The Advocate for the Appellant was asked to also apprise over the fact of services provided in the course of the activity or in addition to the activity. The advocate submitted that the Officials of Karachi Office who are in attendance of hearing shall apprise me over the same. However, the Advocate for the Appellant submitted that the Appellant had monopoly in the field of laboratories and there is no other such laboratory providing any such services. And further that since a tax cannot be imposed directly onto the Appellant, therefore the same cannot be imposed indirectly as well.

5. On the other hand the Respondent filed written arguments. The Respondent submitted that the Appellant is providing the services as such. And that the Sind sales tax is not a tax on the property or income of the Appellant but is a pass on tax. And that even otherwise the Appellant is not exempt under Article 165/165A of the Constitution in view of the Judgment of the Honorable Supreme Court in WAPDA's case reported in PLD 2014 SC 766, in which the imposition of tax on M/s Water and Power Development Authority was upheld. Further submitted that the burden of tax has to be passed onto the recipient of services, therefore, the Appellant has no locus standi and is not an aggrieved party within the meaning of Article 165/165A to claim exemption. And that the Appellant has place of business at Sindh. And that the activity of the Appellant is an economic activity within the meaning of section 4(1)(a). And that not only the services of laboratories, but the Appellant provides the following services covered under the tariff headings mentioned therewith as well:-

9817.9000	Services provided or rendered by laboratories other than the services relating to pathological, radiological or diagnostic tests of patients,
9819.9400	Technical testing and analysis services



9840.0000	Technical inspection and certification services, including quality control certification services and ISO
9815.5000	Technical, Scientific and engineering consultants
9839.0000	Erection, Commissioning and Installation services

6. Further submitted that some of the withholding agents have received such services from the Appellant and have withheld/paid the tax to SRB. For the services provided, the Respondent relied on the Official website of the Appellant <http://pcsir-khi.gov.pk/services/>. The website showed the services of "testing and analysis, training and consultancy, calibration and repair and maintenance". As per the extracts from the website the Appellant has calibration facilities available, and also has the research facility of food, food & marine products, poultry & animal feeds, beverages, bubble gums & candies, rubber, plastic, foam adhesive & other polymeric material, coating, building materials, insulations, conducting and non-conducting materials, marble granite/blocks, pvc pipes, concrete, tiles, wood, metals etc., water and effluent, inorganic chemicals and industrial products, minerals and ores, metal and alloys, oil and fats, soil and fertilizer, leather and leather products, design and fabrication, repair and maintenance, calibration as per international standards, environmental evaluations. Other than these services there is an allied training on food and feed safety, agriculture, etc. The Appellant also has analytical section of chemical tests. Then there is training section of good laboratory practices. The plastic and polymer section, PRC pharmacology, chromatographic techniques, instrumental techniques, tablet physical parameters test. There are also consultancy services. For repair and maintenance the Appellant has the facility of repairing the small as well as big machinery items such as incubators (heating/cooling) gas chromatographs, universal testing machines, ECG machines, pressure calibrators, centrifuges, immersion circulators, infusion pumps, baby warmer, balloon pump etc.

7. The Respondent also produced a letter dated 1st December, 2016 from M/s Moore and Stephen, Shekha & Mufti representing the M/s National foods. The letter enclosed a return of M/s National Foods filed at SRB being the withholding agent, who declared an amount of Rs: 34,838/-. Thereunder, there appeared a Quotation for the

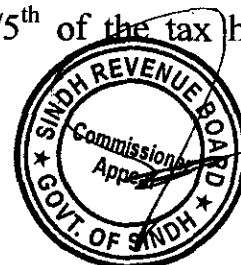


calibration issued in the name of M/s National Foods limited, of value equal to Rs: 180,233/-. In the Quotation the rates of tax are mentioned in table given therein. Just below the table at page 3 of the Quotation the cost of services has been calculated as Rs: 155,000/-, whereas a tax of Rs: 25,233/- @ 14% has been charged and thus the net Payable amount appeared as Rs: 180,233/-. Whereas the invoices have been issued for The M/s National Foods Limited who declared an amount of Rs: 25,233/- in case of this Quotation and paid the value as Rs: 155,000/- to the Appellant. The Quotation at the end says that the Appellant is exempt from payment of tax under Income tax Ordinance, 2001. The quotation further says at recital part that the Appellant "have the traceability for most of the equipment to National Physical standard Laboratory (NPSL) Islamabad and also have International traceability for some equipment". And that the Appellant has provided calibration services to most of the reputed public and private sector organization.". Thereunder is the invoice dated 06-11-2015 amounting to Rs: 155,000/- issued by the Appellant issued in favour of M/s National Foods Limited.

Another set of documents have been provided regarding the services provided to M/s Habib Metropolitan Bank Ltd. In the same way there appears a letter of the Appellant dated 20th October, 2015, enclosing the documents/parameters. Enclosed was the table of food contents listed by the Appellant for which the analytical testing was to be carried out. The cost of analysis and testing was accumulatively equalled to Rs: 68,605/- and a tax of Rs: 9,605/- @ 14% was imposed. The Invoice dated 05-11-2015 was also attached showing the same amount of Rs: 59,000/- payable. A receipt showing payment of Rs: 59,000/- issued by the M/s Habib Metropolitan Bank was also attached.

Further the Respondent attached with his arguments an extract from the online portal of the SRB comprising of a list of 09 in number withholding agents who had withheld and deposited a considerable amount of tax as per rules against the services received from the Appellant and declared the same in their returns.

8. The Respondent submitted that as a matter of fact the Appellant has provided the services, has charged and collected the tax. And that 1/5th of the tax has been



withheld and paid by the recipients of services. Further the Respondent submitted that the following laboratories are also providing the services in Pakistan:-

S. No	INSTITUTE
1	National Institute of Electronics (NIE)
2	National Institute of Oceanography (NIO)
3	Pakistan Council for Renewable Energy Technologies (PCRET)
4	Pakistan Council for Science and Technology (PCST)
5	Pakistan Council of Research in Water Resources (PCRWR)
6	Pakistan Council of Scientific and Industrial Research (PCSIR)
7	PSQCA -Pakistan Standards Quality and Control Authority
9	Pakistan National Accreditation Council (PNAC)
10	Pakistan Science Foundation (PSF)
11	Pakistan Standards And Quality Control Authority (PSQCA)
12	STEDEC Technology Commercialization Corporation of Pakistan (Private) Limited

9. The Appellant representative, namely Mr. Gulzar Hussain Jhatial, PSO and Mr. Aslam Khan appearing from Karachi Office rebutted the position and submitted that previously the website mistakenly showed some services but the same have now been removed from the website. And that their activity is research based and no other activity exists.

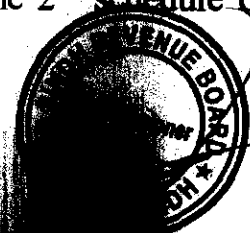
10. I have heard the parties, have gone through the relevant provisions of the Act, 2011 and the laws referred by the Advocate for the Appellant. As a matter of fact the Appellant has charged the tax @14% in the 02 cases, documents of which (two) are on surface i.e the case of M/s National Foods Limited and the case of M/s Habib Metropolitan Bank limited. Further it is a matter of fact that another 09 in number service recipients, who were acting as withholding agents had declared amounts of tax in their returns. Para No. 7 above, which is displaying these facts, may be read in this regard. And further as a matter of fact and record the burden of tax was passed onto the recipients of services. And the tax stood collected but the same was not deposited by the Appellant in the public exchequer. The same was also not declared or brought on surface by the Appellant upto these proceedings. Under the law the tax collected in any manner, either if it is an excess tax or if it was not payable and incidence of which had been passed onto the person to whom the services were provided, was required to be



paid to the Government under the provisions of section 16 of the Act, 2011. The Appellant could not and cannot hold the tax in its exchequer. It has not been surfaced that what treatment was meted out with the collected tax in the books of accounts of the fund when the same was not paid to public exchequer.

11. Section 10 of the Act, 1983 speaks about the Funds of Council. The funds basically comprise of funds transferred by Federal and Provincial Governments, donations and endowments. Under clause (d) of section 10 the fund also includes and *“income and receipts from such other sources as may be approved by the Federal Government”*. The Appellant was repeatedly asked to apprise over the receipts of fund, so to determine that whether the Appellant is raising any funds under this provision. The Appellant consistently maintained that the funds are only allocated by the Federal Government and the activity as such is research based only. And that if any activity is carried out for research and analysis, it only reimburses its expense. No document in support of such contention was ever provided, except the NIS that of the part of fund allocated by the Federal Government. Para 3 may be read regarding the NIS. Para 6 above is illustrative of the fact that the Appellant is providing multifarious services, which are commercially based. From Para 7 read and para 10 above it is clear through own documents of the Appellant that not only the services of laboratory have been provided but the Appellant has charged and collected the tax. These documents were obtained from independent source (recipient of services).

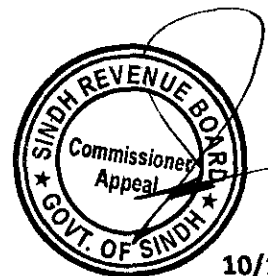
Under section 4 of the Act, 2011 the economic activity means any activity carried on by a person that involves or is intended to involve the provision of services to another person, including activity in the form of business, a profession, calling, trade or undertaking of any kind, whether the activity is undertaken for profit or not. The definition of economic activity is exclusive in nature. The activity as such as apparent from the documents is for raising funds of the Appellant. Section 2(79) defines services to mean anything which is not goods and shall include but not limited to the services listed in the first Schedule. The study of para 6 read with paras 7 and 10 above will show that such are obviously the services within the meaning of section 2(79) being the services of laboratories classified as 9817.9000 of the 2nd schedule of the



Act, 2011 and the activity as such is an economic activity within the meaning of the section 4 of the Act, 2011.

12. In order to ascertain that whether any such services listed in para 6 above are also being provided by the other service providers in the field in Pakistan or not, I have made a random search on the internet. The random search made me understand and know that the following companies, persons, entities and others are also providing the similar services in Pakistan:-

- a. Plastic Technology Centre
- b. Microtech Industries,
- c. Pakistan Testing Services
- d. Open Testing services
- e. Pakistan National Accreditation Council
- f. POF Material Testing Labs
- g. Pakistan Petroleum, Fuel & Chemical Testing,
- h. Grace Engineering Services,
- i. Oil and Gas Development Authority,
- j. Defence Science and Technology Organization,
- k. Kamstec International, Max Tech Corporation,
- l. Grace Engineering Services
- m. Oil and Gas Development Company Limited,
- n. PERAC Research & Development (PRD),
- o. Espak Environmental Services,
- p. NUST Institute of Environmental Sciences & Research (IESE)
- q. Tech TT total Technology,
- r. SEAL
- s. PMT Laboratories
- t. National Centre for non-destructive Testing,
- u. International Aeradeo Pak (Pvt) Ltd
- v. Green Maxmizing value
- w. MAKKAYS



x. Another fact of the matter is that the Appellant is providing the same services

13. As a matter of fact that the Appellant is providing industrial services as is being provided by the other number of services providers listed above and also listed in para 8 above and is competing with them as such and raising funds. The Appellant is meant and established for scientific and industrial research and to promote the research in respect of problems connected with the establishment & development of industries under the conditions prevailing in Pakistan, so to lead towards the economic development of Pakistan. To that extent the activity may be termed as a sovereign function of the state. But when the Appellant has entered into a business of raising funds by providing multifarious industrial and research laboratory services as are being provided by a number of other services providers then the same is not at all a sovereign function of the state. In order to authenticate my view point, I rely on the landmark Judgment of a Division Bench of the Honorable Supreme Court of Pakistan in the case of M/s Province of Punjab through Secretary to Government of Punjab, Communication and Works Department, Lahore versus Muhammad Tufail and Company, reported in 2017 PLD 53. The relevant portion of the Judgment is reproduced hereunder:-

“22. The commercial activities undertaken by a government are not included in the “ordinary connotation” of the word “Government”. Indeed we are not persuaded by the reasoning of the learned High Court in Fazal Muhammad’s case (supra) to the effect that commercial activities are undertaken by Government for welfare purposes and for that reason they are to be treated as part fo its functions. The commercial activities do not form a part of the core functions of a government which remain its executive, judicial, legislative and administrative functions. When a government enters into the domain of business and commerce it cannot be given a premium of its position and must be treated at par with its competitors or near competitors in the private sector. It must be subjected to the law of the land. Its commercial activities must be regulated in the same manner as those of the private sector. It cannot be exempted therefrom simply by the dint of being a “government”. Hence when a government is



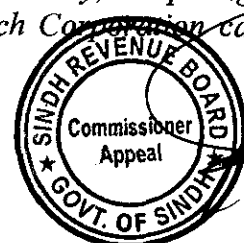
engaged in the 'business' of road building through the vehicle of construction contracts with a private contractor then it cannot be allowed to claim privileges on account of being the government. In these circumstances it would be liable to be treated as a corporation in terms of Explanation II to section 20, C.P.C. In the case of Bakhtawar Sindh (supra) the Supreme Court of India upheld the decision of the Delhi High Court dismissing an application of a contractor under section 14 and 17 of the Indian Arbitration Act by holding that the phrase "actually and voluntarily" resides, 'carried on business' or 'personally works for gain' do not apply to legal entities like the Union of India and only to natural persons. But this inapplicability is only in reference to the sovereign functions of the State (as the contract pertained to maintaining armed forces therefore it was considered to be a sovereign activity of the State). When the State carries on commercial activities then Section 20, C.P.C, would apply, as held in Ladulal Jain's case (supra). We find ourselves in agreement with this subtle but important distinction. The Government in the exercise of its core functions viz, its executive, legislative, judicial and quasi-judicial, and administrative roles exercise sovereign powers. But when it engages in commercial activities it is not exercising sovereign power, rather it engages in commercial activities it is not exercising sovereign power, rather it is engaging in business/commercial activities and merits no undue advantage over ordinary litigations: it is subject to Section 20, C.P.C, in its entirety. Therefore, the Civil Courts at Toba Tek Singh and Lahore, in case a civil suit were to be filed by the respondent, we can now return to the circumstances as they existed inter se the parties....."

14. As matter of fact, when the Appellant has engaged in the economic activity as such to raise funds and is competing with a number of other persons/entities in the business of analysis, testing and other function of laboratories then the Appellant has no monopoly in the field and thus cannot even claim any exemption. In this regard I rely on the Judgment in a case titled as **PROVINCE OF N.W.F.P. through Secretary, Local Government and Rural Development, Peshawar Versus PAKISTAN TELECOMMUNICATION CORPORATION** through Chairman and others reported in



PLD 2007 Supreme Court 670 (relied by the Appellant for his purpose of exemption under Article 165/165A). In this Judgment the Honorable Supreme Court of Pakistan held that when a government entity has no monopoly in the field then only the exemption will apply. The facts of the case are that the imposition of octroi tax was taken up by the Province of NWFP. The Honorable Supreme Court considered the case of exemption under Article 165 of Pakistan Telecommunication Corporation for the periods when it acted as Telegraph and Telephone Department and also when it acted as Pakistan Telecommunication Corporation, but the case of exemption was refused for the periods thereafter, when, under the Pakistan Telecommunication (Re-organization) Act, 1996 different telecommunication companies had come in the field. The Honorable Supreme Court at para 15 of the Judgment held as under:-

"15. Adverting to Andhra Pradesh (supra) it may be observed that the case relates to the income of Andhra Pradesh State Road Transport Corporation established under the Provincial statute. Supreme Court of India declared that a Corporation, though statutory, had a personality of its own distinct from that of the State or other share-holders, therefore, it could not be said that a share-holder owned property of the Corporation or carried on the business with which the Corporation was concerned. Consequently, Supreme Court declared that prima facie, the income derived by the Corporation could not be claimed by the State and, thus, was not exempt from payment of income tax. The precedent, also relied upon by Mr. Hamid Khan, learned Senior Advocate Supreme Court, to say the least, is entirely distinguishable from the issue involved in this appeal and is of no avail. In WAPDA's case (supra) a Division Bench of the Sindh High Court, in view of decision of Inter Provincial Coordination Committee to the effect that Provincial Government would exempt WAPDA from payment of property tax and octroi on its equipment and material and, in turn, WAPDA would charge electricity tariff on street lights and water schemes at domestic rates, directed the Provincial Government of Sindh to abide by the decision, which is again beyond the point involved in this appeal. Even otherwise, an appeal against the High Court judgment was filed by Sindh Government before this Court, which was later on dismissed as withdrawn as meanwhile recovery of octroi was abolished across the country. Case in point appears to be the judgment of this Court in Central Board of Revenue v. S.I.T.E. (supra), in which this Court, after lifting the veil of incorporation from S.I.T.E., a company registered under Companies Ordinance, through a resolution of the Sindh Government, held that for all relevant purposes, the company was doing entire business just like a department of Government and would, thus, be exempt from Federal taxation. This case again relates to the income of a Corporation, but the ratio thereof would apply with all force to the case of respondent-Corporation. In National Fertilizer Marketing Limited (supra) decided by a learned Judge in Chambers of the Lahore High Court no doubt it was held that though its shares may be held by the Government but neither its properties nor the income could be said to be the property or income of the Federal Government. It was a separate entity and was not even a department of the Government. The ratio of the precedent cannot be imported in the peculiar facts and background of this appeal and must be confined alone to the company under litigation. In the case of Union Council Ali Wahan (supra), this Court, while laying down the parameters for lifting the veil incorporation and refusing to lift such veil in the case of Associated Cement (Pvt.) Limited held that where Government owns, controls and manages a Corporation, which is engaged in a commercial activity, competing with other public/private companies, engaged in similar business, such Corporation cannot claim



any privilege or immunity to the disadvantage of its competitors. It would seem that this Court had distinguished the case of Karachi Development Authority versus Central Board of Revenue (NLR 2000 AC 53) and did not allow exemption to the Associated Cement Company for the reason that it was competing in commercial activities with other private companies. The ratio of the case would not be attracted in the present case as respondent-Corporation, after its incorporation and till its conversion into Pakistan Telecommunication Company Limited through PTCL through Act, 1991 had the monopoly in the telecommunication field and was not competing with any other private company working in the same field. It would, thus, be legitimate and safe to conclude that, after unveiling the veil of incorporation and ascertaining true role and actual nature and status of respondent Corporation virtually serving as an organ of State performing duties and functions primarily to be performed by the Federal Government, would be entitled to the benefits, concessions and exemptions, which were available to the erstwhile Telegraph and Telephone Department before its inception. Position might, however, be different after the Corporation turning out to be a public limited company registered with the Registrar of Companies under the Companies Ordinance, 1984 with its Board of Directors to be elected by its share-holders. Indeed impugned judgment of the Peshawar High Court also has acknowledged the entitlement of the respondent-Corporation to such extent and has not extended scope of exemption after the repeal of Act, 1991 and enactment of Act XVII of 1996. Last in the line of reference is judgment in Karachi Development Authority (supra) which deals with the liability of a statutory juristic person for payment of sales tax and exemption from payment thereof, under the provisions of Articles 165 and 165-A of the Constitution, which essentially deal with the exemption of tax on income of Federal Government and levy of tax by Parliament on such Corporations. The case, in our view is beyond the point and does not lead to solution of the controversy. Again Zila Council (supra) is a case essentially relating to levy of export tax on goods produced within area of a District Council but taken outside the district. The dispute between the parties raised a question relating to the construction of the expression "produce". It was held that District Council was competent to levy export/goods exit tax and accordingly schedule of export tax issued by it was lawful. Ratio of the decided case to observe the least does not appear to be relevant in the peculiar facts of this appeal."

15. It is bare fact that when a lot of other companies are providing the same services then the Appellant has no monopoly in the field. And when providing the services to the industries and entities as such for gain then the Appellant is also not performing any sovereign functions of the state. In view whereof the provisions of the Article 165/165A are not attracted and cannot be pressed into force and no benefit can be available to the Appellant in this regard.

16. I have reached on the conclusion based on the above findings that the Appellant is a laboratory and is well covered under the tariff heading 9817.0000 of the 2nd schedule, and is engaged in the business of "services provided or rendered by laboratories other than the services relating to pathological or diagnostic tests of patients" and is liable to tax.



17. As far as the penalty is concerned it will be seen that the Appellant has clearly violated the law by not registering under section 24, by not complying the order of compulsory registration and also by suppressing the facts. The Appellant has also committed a serious and blatant violation by collection the tax, keeping the same with it and suppressing such fact from the legal forums established and functioning under the law. Keeping the amount of the tax not owned by the Appellant amounts to unjust enrichment within the meaning of Judgment pronounced by the Honorable Supreme Court in the case of M/s Facto Belarus Tractor Limited versus Govt. of Pakistan through M/s Finance pronounced on 11th May, 2005 and attracts the penalties.

18. As far as the Judgments of the Honorable Sindh High Court in the case of Civil Aviation Authority versus Province of Sindh is concerned, it will be seen that the Judgments of the Honorable Supreme Court on the same points are also in field and therefore it was appropriate for me to follow the principals annunciated by the Honorable Supreme Court. Therefore, with utmost respect and due deference I was constrained to follow the Judgments of the Honorable Supreme Court and not the Judgment of the Sindh High Court. Further it is to be seen that in case of the Appellant the point of difference is that the Appellant has no monopoly in the field and is competing with the other such services providers, which point was neither discussed nor was decided by the Honorable Sindh High Court, therefore as well this Judgment is distinguishable from those relied upon by me and distinguishable from the facts and circumstances of the Civil Aviation Authority's case.

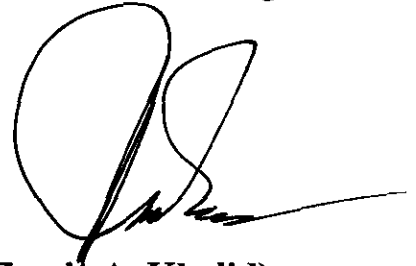
19. In view of the above given reasons the OIO is hereby upheld in *toto*. The Appellant is directed to comply with the OIO and file true and correct returns and provide the record in order to enable the Respondent to assess the Appellant in compliance of law. In the event of failure to act as such within a period of 15 days from receipt of this Order the penalty of Rs: 100,000/- shall be payable. Order accordingly.

20. The Appeal was filed on 08-06-2016. So far, total 148 statutory days (excluding adjournments taken by the Appellant) have lapsed. The case was reserved for Judgment on 07-02-2017 on which date 118 statutory days (excluding adjournments)



had lapsed. Since the case involved multifarious facts and it needed study and research of different aspects of the case, in such a situation the case could not be decided within 120 days, therefore the time was extended on 07-02-2017 for 60 days as per the powers available under section 59(5) of the Act, 2011. Today is 148th day and therefore this Order is within time.

21. This Order comprises (16) pages each page bears my official seal and signature.



(Zamir A. Khalid)
Commissioner (Appeals)
Sindh Revenue Board, Karachi

(Zameer A. Khalid)
Commissioner (Appeals)
SINDH REVENUE BOARD

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Copy for Information and necessary action to:

- (i) The Chairman, Sindh Revenue Board, Karachi.
- (ii) The Commissioner-III, Sindh Revenue Board, Karachi.
- (iii) Deputy Commissioner (Legal Wing), Sindh Revenue Board, Karachi.
- (iv) Assistant Commissioner, Unit – 24, SRB, Karachi.
- (v) Guard File.
- (vi) Office Copy.