

LHC HAS HELD THAT SECTION 8(2) (B) OF FINANCE ACT IS VALID

ISLAMABAD: The Lahore High Court (LHC) held that Section 8(2) (b) of the Finance Act, 2022, is valid, constitutional and intra vires, saying no fault is found in the exercise of legislative powers by the Parliament under entry 50 of the Federal Legislative list. The LHC on 22.12.2022 through short order had dismissed the petitions being devoid of any substance, the detailed judgment of it was announced on Tuesday.

The petitioners have challenged the constitutionality of Section 8(2) (b) of the Finance Act, 2022 on two counts; first, that the law legislated, whereby, it had allegedly taxed the foreign assets of the petitioners, is not within the territorial grasp of the Parliament; and second, the absence of legislative competence because matter of taxing immovable property exclusively falls within the legislative domain of the provincial legislature(s). It was their further argument that the parliament lacks authority to tax assets located outside the territorial limits of Pakistan, which limits are defined under Articles 1(2) and 141 of the Constitution.

The judgment authored by Justice Asim Hafeez noted that tax is levied on the value of the assets, which assets were identified as foreign assets of a resident person. Applying the rule of “pith and substance” manifestly tax levied is “in relation to the capital value of the assets”, which cannot be equated with the levy on corpus of immovable property. It said that there is no ambiguity found in the words/ phrases employed in Entry 50. Entry 50, read disjunctively, comprised two separate parts, each of which part describes/ caters for a distinct and separate class/ category of taxes; first, half of the Entry 50 provisioned for the authority to tax on the capital value of the assets, and latter half provided for taxes on the immovable property, which category of taxes is excluded from the legislative domain of the parliament.

The court noted that the counsels for the petitioners have misconstrued the definition of taxation in Article 260 of the Constitution, which needs to be given effect in the context of the category of taxes, to be levied by the parliament of provincial legislature(s) in accordance with the scope of legislative competence conferred.

The judgment said that in pith and substance, tax on capital value tax of foreign assets is not a tax on immovable property, but for all intent and purposes subject(s) of tax in question are the resident individual(s), as defined under section 13(f) of Act, 2022. “Undisputedly, provincial legislature(s) are competent to tax the immovable properties – situated within their respective territories, irrespective of the residence/ domicile of the owner, who might not be residing within the territorial limits of the Province where property is situated – for instance immovable property located in the city of Lahore is taxed under the provisions of Punjab Urban Immovable Property Tax Act 1958, which tax is imposed on the property and bears no nexus with the residence of the owner, who might be residing in Islamabad or Karachi,” it added.

The court said that the provinces cannot impose tax on capital value of assets, assessed on the aggregated capital value of the assets held by a resident individual, which might include assets outside the territorial limits of the province(s) – for instance, various properties simultaneously located in different cities of Lahore, Karachi, Peshawar, and Quetta. It said that in the wake of the character of the tax, only the Parliament could make laws for the imposition of tax on the aggregated capital value of assets – foreign assets are subject matter of challenge through these petitions. Tax on the capital value of assets cannot be construed as a municipal tax, which is otherwise applicable on foreign immovable properties in terms of “law of Situs”.

Parliament has variously drafted laws having extra-territorial operations and enforcement thereof is hardly questioned by the domestic courts. The tax in question is not on non-citizens but defined resident individuals. It noted that before the 18th amendment, taxes on capital gains on immovable properties were excluded from Entry 50, and after the amendment, the expression “on capital gains” was omitted; however, exclusion to the extent of immovable property was retained.

MONEY LAUNDERING: FBR BEGINS PROBE AGAINST 16 INDIVIDUALS

ISLAMABAD: Directorate General of Intelligence and Investigation (Customs), Federal Board of Revenue (FBR) has started an investigation against 16 rich individuals on charges of money laundering. It is learnt that the Directorate of Intelligence and Investigation (Customs) has written a letter to Federal Investigative Agency (FIA) Directors of Gilgit-Baltistan, Multan, Peshawar, Islamabad, Quetta, Lahore, and Karachi concerning the provision of information under section 25 of the Anti-Money Laundering Act, 2010.

According to the letter, the directorate said that it is conducting an inquiry under the Anti-Money Laundering Act, 2010, and has requested the FIA Directors to provide information regarding any offence detected/criminal record within their jurisdiction in respect of individuals.

In case of any such detection, they have been asked to provide supporting documents such as the FIR, and judgment of the relevant court to the directorate for further necessary action under the Anti-Money Laundering Act, the letter added.

BANK ATTACHMENTS: ABSENCE OF GRIEVANCE REDRESSAL SYSTEM IRKS TAXPAYERS

LAHORE: Absence of grievance redressal mechanism for benefit of persons whose funds were wrongfully appropriated by tax officials in the form of bank attachment is causing hassle for taxpayers, said sources.

The sources added that most of the amounts recovered from bank accounts of taxpayers have never been due and such confiscation was altogether illegal and unlawful. Such powers tantamount to abuse of authority or reckless disregard of need to exercise diligence by tax officials whose action resulted in confiscation of funds of taxpayers from their bank accounts. There is lack of prescription of standards of diligence to be employed tax officials while exercising coercive powers to realize tax demand under the provisions of Income Tax Ordinance, they said.

According to the sources, tax authorities were found exercising no practice of issuing demand notices to taxpayers and third parties to frustrate their right to seek remedy against such demand in order to meet recovery targets. Unfortunately, they added, there is no system of institutional checks in place against such practice to uphold rights of taxpayers to avail legal remedies against such demands. The Federal Board of Revenue (FBR) is endowed with duty to facilitate taxpayers and establish mechanism to address their grievances and complaints against vast powers of tax officials to adopt coercive measures to affect recovery of tax liability by attaching bank accounts, which are holding money as third party on behalf of taxpayers.

Most of the tax officials are found abusing the power of attaching bank accounts to meet collection targets by adopting abhorrent procedures of not serving notices in a timely fashion on taxpayer or third party in order to pre-empt opportunity for such persons to verify or challenge such demand and seek redressal against it, said the sources. They said the Board is planning to initiate inquiry to determine whether there existed a practice across tax jurisdiction in Pakistan whereby tax officials were denying taxpayers and third parties due notice of demand under provisions of the Ordinance to frustrate their right to seek remedy against such demand in order to meet recovery targets.

It may be noted that former Chairman FBR Shabbar Zaidi had issued his first directive to the field formations in May 2019 that there would be no bank account attachment unless taxpayer's chief executive officer/ owner is informed at least 24 hours prior to attachment and the approval of the chairman FBR is obtained. However, the FBR on Monday withdrew instructions. Resultantly, now the tax officials are not legally bound to take prior approval of the FBR chairman and give 24-hour prior intimation to the CEO/ principal officer/ owner of companies before their bank accounts attachment.

It is interesting to note that the Regional Tax office (RTO) Lahore had booked a banker for allegedly hindering tax recovery from one of its account holders through freezing of account in April last year. It was followed by the Corporate Tax Office (CTO) Islamabad, which had also lodged a similar FIR for tax recovery in the federal capital in the same period.

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BUSINESSES HAIL GOVT FOR WAIVING PORT CHARGES, ASK TO DO MORE

KARACHI: Businesspersons on Tuesday hailed the government's decision to waive off the demurrage and port charges on all stranded containers at the country's ports. However, Karachi Chamber of Commerce and Industry (KCCI) President Mohammed Tariq Yousuf said that shipping companies, freight forwarders and port handlers should also waive off their charges as only a waiver for demurrage and port charges would not make much difference. Yousaf said that banks were even delaying the release of documents where sight LC and/or formality for financial instrument (FI) has already been completed. This too was resulting in unnecessary demurrage and detention charges in addition to jeopardising bilateral trade relations.

"The State Bank has approved import funding from outside Pakistan to all those businesses who can avail such facilities whether through sister concerns or through those suppliers who can manage long-term credit, but the businesses need firm assurance that the government will not file any contravention against them at a later stage," he added. KCCI president further suggested that for all cargoes stuck at the ports and their documents in banks, whether on 60- or 180-day payment period, the payment maturity needs to be from the bill of lading date, not from the date of release of cargo. "We need a clear directive for incoming shipments that they will also be timely released otherwise all the current stocks will be hoarded by local businesses to attain maximum profits, which would further aggravate inflation," he stressed.

Banks should be bound to process all cases of Section 84 and 85 approved by the SBP before January 5, 2023 as soon as possible, whereas all credit letters should be entertained without prejudice and delays as they were already opened with the central bank's approval.

“Immediate exemption is required for anaesthesia, all lifesaving drugs and medical devices so that the private and government hospitals across Pakistan can operate normally without any interruption,” he added. Yousuf urged the government to let the import of raw materials and essentials run smoothly so there were no supply chain disruptions in the industrial processes.

Korangi Association of Trade and Industry (KATI) President Faraz-ur-Rehman welcomed the announcement by Federal Minister for Maritime Affairs Faisal Sabzwari and Minister for Commerce Naveed Qamar to waive demurrage fines on goods stuck at ports. “By waiving the fines on goods stuck at the ports, millions of dollars of foreign exchange will be saved and the problems of the importers will end,” he said. The central bank has also ended the months-long crisis by allowing 180 days late payment and removing the condition of prior authorisation, he added.

On the other hand, he expressed concern over the increase in the SBP interest rate to 17 percent. He said the rich could earn profits by keeping money in the bank, but how would the poor with no savings survive? KATI president demanded that the interest rate should be reduced immediately to save the industries from closing down, otherwise the economic crisis would likely become more serious.

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CUSTOM APPELLATE TRIBUNAL DISMISSES APPEAL BY DIRECTOR IPR (SOUTH) IN COUNTERFEIT WATCHES, AIR PODS, CHARGING CABLES CASE

KARACHI: A two member bench of Custom Appellate Tribunal (CAT) comprising Abdul Jabbar Qureshi, Member Judicial-I and Abdul Basit Chaudhry, Member Technical-I dismissed an appeal filed by Directorate of Intellectual Property Rights (IPR), Enforcement (South) against importers of watches, calculators, air-pods, charging cables.

The appellant challenged the Order in Appeal passed by Collector (Appeals) dated 29-4-2022 which allowed the appeal by the importer holding that the IPRE Directorate has not adopted the laid down legal procedure. As per details, the IPRE was approached by stake holders i.e Right Holders representing world famous brands including CITIZEN, RADO, OMEGA, ROLEX, PATE X PHILIPPE, FRANK MULLER, EMPORIO, ARMANI, FOSSIL, BEN-B BARBIE, HELLO KITTY, CALVIN KLIENE, APPLE alleging that some importers are importing counterfeit watches etc made in China and thus infringing IP rights.

The Right Holders deposited security/bank guarantee with their complaints and identified the goods/importers at which a hold was placed on the goods imported.

The IPRE South maintained in the appeal that importer and clearing agents were summoned for joint examination but they harassed, misbehaved with the custom officials and examination remained in-conclusive and an incident report was made. Thereafter examination was finally held and litigation started leading to passing of Order in Original and Order in Appeal, subject matter of appeals before the custom appellate tribunal. During proceedings Afsheen Aman Advocate represented the appellant while Irfan Shaikh represented the importers.

The counsel for respondents during the course of hearing pointed out that the hold was placed first and then Bank Guarantee was paid. This shows that the mala fide of the department and illegal manner in which hold was placed and later proceedings were initiated. The bench after hearing the sides reached to the conclusion that the appellate department failed to establish the legality of their actions. The bench holding that in the circumstances there is no need to interfere with the order of Collector of Appeal, the appeal by Directorate of IPR, E (South) was dismissed.

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