

## **'RULES' ALLOW BANKS TO SEEK ASSET DETAILS OF CIVIL SERVANTS**

**ISLAMABAD:** The "Sharing of Declaration of Assets of Civil Servants Rules, 2023" allows commercial banks to seek the asset details of civil servants from the Federal Board of Revenue (FBR) before the opening of their bank accounts.

Explaining the new rules, leading tax expert Dr Ikramul Haq told *Business Recorder* that the International Monetary Fund (IMF) has been demanding from Pakistan for a public declaration of the assets of civil servants. It has also been insisting to acquire details of the overseas assets of the bureaucracy. In addition to this, the fund has also stressed for establishing an authority that could make the assets of civil servant public. Similarly, the international lender asked to make movable and immovable assets of bureaucrats overseas to ensure transparency and accountability, through an Electronic Assets Declaration System.

For meeting the condition of the IMF, the FBR has notified the Sharing of Declaration of Assets of Civil Servants Rules, 2022 vide SRO 80(I) 12023 dated February 1, 2023. These rules allow commercial banks to seek the asset details of civil servants before opening their bank accounts. "It is worth noting that the government has not included the judiciary and armed forces from the purview of the asset declarations. The most powerful and privileged classes are still protected," Dr Haq said. Under the rules, FBR is going to share a simplified or abridged version of the declaration—based on the fields agreed with the State Bank of Pakistan (SBP) declared by a civil servant in his electronic declaration filed with the FBR.

Dr Haq further explained that the bank will obtain express written consent from the civil servant of whom the bank intends to access information from the FBR. The bank is required to obtain a certificate from the civil servant as per prescribed format annexed to the rules, duly signed by the person declaring that he is a civil servant of BS-17 and above, with his complete name, designation, employee number and all other particulars that are prescribed in the format.

According to the rules, the head of compliance of the bank is to use a single authorised email address for the request or receipt of a simplified declaration. Each bank must furnish the particulars of four persons for making correspondence with the FBR for seeking data.

In order to keep the data confidential, the authorised officials of the bank will submit a declaration to the FBR that he/ she will maintain the secrecy of the information that will be provided, and it will not be divulged to any person.

In December 2021, the government of Pakistan agreed with the IMF to publicly disclose asset declarations filed by politically-exposed persons, civil servants, and their spouses, Dr Haq added.

## **'TAX LIABILITY ON ESTIMATIONS': FTO ASKS FBR TO REVISIT ITS ORDER**

**ISLAMABAD:** While disposing of a complaint, the Federal Tax Ombudsman (FTO) has directed the Federal Board of Revenue (FBR) to revisit its order of imposing tax liability made on estimations and without any definite information that is a basic requirement in terms of section 122(5) of the Income Tax Ordinance, 2001. Briefly, the complainant is a stock brokerage private limited company and engaged in sale/ purchase of client's share as well as its own shares. The complainant filed the return of income for the tax year 2016 declaring business loss of Rs336 million.

The department amended the deemed order under section 122(5A) of the Ordinance on 09.06.2022 creating tax liability of Rs1.042 million on appeal, the Commissioner (Appeals-III), annulled the order for re-examination, reconsideration, re-verification; re-adjudication with the specific directions to confront the third-party information. The department issued remand back order repeating the same original order by estimating commission of Rs0.10 per share without physically sharing the information.

The FTO referred the complaint to the secretary revenue division for comments. In response, CTO Karachi stated that the brokerage commission was not estimated but computed on the basis of third-party information as mentioned in the order. During the hearing, the author of the order was asked to explain the source of definite information from third party related to the number of shares traded and imposition of commission @ Rs0.100 per share.

The author of the order contended that the brokerage commission was computed on the basis of third-party information and commission was estimated @ 10 paisa per share shares under section 18(1) of the Ordinance. On the contrary, the complainant argued that the definite information from NCCPL on the basis of which the tax was imposed, was not shared violating the direction of CIR Appeals. Further, there is no provision for taxation on estimation.

While concluding the proceedings, the FTO observed that the department obtained third-party definite information shares by the complainant. The examination of this definite information reveals that the complainant conducted trading of 109.96 million shares on behalf of his clients. But the department did not share a copy of this information before issuing an adverse order violating the clear-cut direction of the CIR (Appeals) On the contrary, the complainant himself declared trading of 375.48 million shares more than triple the number of shares confronted in show cause notice as acknowledged by the department in the impugned order.

Further, the department estimated commission @ Rs0.10 per share on its own and made addition of Rs10.99 million, whereas, no definite information was available in this regard. Therefore, the department made assumption/ presumption on commission income for which there is no provision in Income Tax Ordinance to estimate business income.

Further, in case of definite third-party information as admitted by the department; the legal course of amendment should have been proceedings under section 122(5) of the Ordinance which states:“122(5) An assessment order in respect of tax year, or an assessment year, shall only be amended under sub-section (1) and an amended assessment for that year shall only be further amended under sub-section (4) where, on the basis of audit or on the basis of definite information the Commissioner is satisfied that —(i) any income chargeable to tax has escaped assessment; or(ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or(iii) any amount under a head of income has been mis-classified.”

Therefore, the impugned order without considering the argument of the complainant, violating the directions of CIR (Appeals) is not only contrary to law, rules or regulations but also is perverse, arbitrary, unreasonable, unjust, biased and oppressive causing administrative excesses, contrary to the principle of natural justice hence, unlawful per se.

Accordingly, the tax ombudsman has directed the FBR to direct the Commissioner CTO, Karachi to revisit the impugned order in terms of Section 122A of the Ordinance in the light of discussions after affording proper opportunity of hearing to the complainant and in accordance with the law.

## **AVOIDANCE OF DOUBLE TAXATION: DRAFT CONVENTION SIGNED WITH AFGHANISTAN**

ISLAMABAD: Pakistan and Afghanistan Friday signed draft Convention for Avoidance of Double Taxation. The delegations of Pakistan and Afghanistan met at the Federal Board of Revenue (FBR) House, Islamabad from 1st-3rd February, 2023 for the third round of negotiations on the Convention for the Avoidance of Double Taxation between Pakistan and Afghanistan.

The Afghan delegation was headed by Nida Muhammad Seddiqi, Revenue Legal Services Director, while Sajidullah Siddiqui, Director General, Directorate General of International Tax Operations FBR headed the Pakistan side. Both delegations thoroughly deliberated over all the outstanding issues identified during the second round of negotiations held in Islamabad from 27th-30th December, 2021. The negotiations were conducted in a friendly atmosphere where both sides presented their respective viewpoints.

R 4-2-2023

## **SHC DISMISSES SPECIAL CUSTOMS REFERENCE APPLICATION COLLECTOR PMBQ**

KARACHI: A Special Customs Reference Application (“SCRA”) No. 399 of 2017 filed by Collectorate Port Muhammad Bin Qasim, Karachi, through Ms. Masooda Siraj, Advocate was dismissed by a Custom Appellate bench of High Court of Sindh (SHC).

M/s. Pacific Oil Mills (Pvt.) Limited, respondent was represented by Osman A. Hadi Advocate in SCRA filed under Section 196 of the Customs Act, 1969 (“Act”) impugning an order dated 30.11.2016 passed by Custom Appellate Tribunal on a Rectification Application of the Applicant filed under Section 194B(2) of the Act in Customs Appeal No. K-2163/2013 proposing various questions of law.

At the first instance Respondent’s Counsel raised an objection regarding limitation of this Reference Application being time barred which was contested by Counsel for the Applicant.

The court after perusal of the record, confronted the Applicant's Counsel as to maintainability of this Reference Application under Section 196 of the Act as apparently, the present Reference Application is on an order passed on a Rectification Application, whereas, no Reference Application was filed against the main order of the Tribunal dated 24.3.2015.

Masooda Siraj in response submitted that the present order is an order under Section 194B(3) of the Act against which Reference Application is maintainable under section 196 and therefore, this Reference Application is competent. She further submits that the learned Tribunal has erred in dismissing the Rectification Application as the mistake of the Tribunal was apparent on record inasmuch as a wrong classification of goods was determined.

The counsel for respondent's reiterated the objection regarding limitation and submits that this Reference Application is hopelessly time barred, whereas, even otherwise, there was no mistake apparent on record and the learned Tribunal was justified in dismissing the Rectification Application. He cited a number of case laws including one Commissioner of Income Tax, Karachi Vs. Abdul Ghani (2007 PTD 967)

The SHC custom appellate bench after detailed hearing while dismissing the SCRA passed the following order:

Text of Order in Special Customs Reference Application ("SCRA") No. 399 of 2017

"It appears to be an admitted position that the learned Customs Appellate Tribunal Bench-III decided the Appeal of Respondent through order dated 24.3.2015 whereby, the Appeal was allowed and no Reference Application was ever filed by the Applicant within the limitation period. Subsequently, a Rectification Application was filed against the said order and through the impugned order, the Rectification Application has been dismissed by the learned Tribunal by holding that the grounds taken in the Rectification Application are identical to the one which were taken earlier at the time of deciding the Appeal; hence, the Tribunal cannot reopen the case de novo, whereas, there is no such mistake apparent on record which could be rectified. It was further observed that the question raised in the Rectification Application could have been agitated by way of Reference Application before High Court; hence, the Rectification Application stood dismissed. Insofar as the objection regarding limitation as raised by the Respondent's Counsel is concerned, we are of the view that apparently as per endorsement of the Assistant Registrar of Bench-III of the Tribunal the order in question was dispatched on 18.4.2017; (though the date of hearing and the order is 30.11.2016) and in absence of any further assistance on behalf of the Respondents as to the veracity of such endorsement and dispatch of the order, we do not see it appropriate to non-suit the Applicant merely on such verbal submission and hold that in the given facts and circumstances of the case this Reference Application, if otherwise competent, is within the period of limitation i.e. 90 days as prescribed in law; hence, the objection to the extent of limitation in absence of any contrary material on record is hereby overruled. As to the maintainability of this Reference Application against an order of Rectification it would be advantageous to refer to the relevant provisions of Section 194B of the Customs Act, 1969 as well as Section 196 *ibid*, which reads as under:- "194B. Orders of Appellate Tribunal. (1) The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard pass such orders thereon as it thinks fit confirming, modifying or annulling the decision or order appealed against. The Appellate Tribunal may record additional evidence and decide the case but shall not remand the case for recording the additional evidence: Provided that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the Tribunal may, for reasons to be recorded in writing, fix: [Provided further that in cases, wherein the provisions of clause (s) of section 2 have been invoked, appeals shall be decided within a period of thirty days:] [Provided further that the Appellate Tribunal may stay recovery of the duty and Sales Tax on filing of appeal which order shall remain operative for thirty days and during which period a notice shall be issued to the respondent and after hearing the parties, order may be confirmed or varied as the Tribunal deems fit but stay order shall in no case remain operative for more than one hundred and eighty days.] (2) The Appellate Tribunal may, at any time within [one] years from the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under-sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal: Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to the party of its intention to do so and has allowed a reasonable opportunity of being heard. (3) The Appellate Tribunal shall send a copy of every order passed by it under this section, disposing of an appeal, to the [officer of Customs] and in valuation cases also to the [Director] Valuation, and the other party to the appeal. (4) Save as otherwise expressly provided in [section 196], an order passed by the Appellate Tribunal in appeal shall be final. 196. Reference to High Court. (1) Within ninety days of the date on which the aggrieved person [or an Officer of Customs], as the case may be, was served with order of the Appellate Tribunal under sub-section (3) of section 194B [Omitted], the aggrieved person or any officer of Customs not below the rank of an [Deputy] Collector [or [Deputy] Director], authorized by the Collector [or Director in writing], may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.] (2)..... (3)..... (4)..... (5)..... (6)..... Page 4 of 10 (7)..... (8)..... (9)..... (10)....." 7. From perusal of the aforesaid provision i.e. sub-section (2) of Section 194B, it appears that the Tribunal is empowered to act at any time within one year from the date of its order, with a view to rectifying any mistake apparent from the record, to amend any order passed by it under-sub-section (1) *ibid* and shall make such amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal. Similarly, subsection (3) *ibid* provides that the Tribunal shall send a copy of every order passed by it under this section, disposing of an appeal, to the officer of Customs and in valuation cases also to the Director Valuation, and the other party to the appeal. On the other hand, Section 196 of the Act provides that within ninety days of the date on which the aggrieved person or an Officer of Customs, as the case may be, was served with order of the Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs, authorized by the Collector, may prefer an application, in the prescribed form, stating any question of law arising out of such order.

8. The moot question is that whether in the facts and circumstances this Reference Application is competent at all under Section 196 of the Act as apparently, the Applicant has not impugned the main order of the Tribunal whereby, the Appeal of the Respondent was allowed. The Applicant's Counsel has tried to overcome this objection raised by us by making a submission that the order in question is an order falling within the contemplation of sub-section (3) of Section 194B of the Act as the said provision covers all order(s) passed by the Tribunal including an order disposing of an Appeal, and since the impugned order is an order of the Tribunal, therefore, a Reference Application can be filed under Section 196 of the Act. However, with respect, we are unable to agree inasmuch as a Reference Application can only be filed against an order of the Tribunal issued under sub-section (3) of Section 194B *ibid* and in our considered view the order of rectification which has been impugned in this Reference Application is not an order of the Tribunal as provided in subsection (3) *ibid* as it is not an order disposing of an Appeal which is required to be served upon the parties to the Appeal; hence, no Reference Application can be entertained against such an order. The main order in Appeal is passed by the Tribunal under subsection (1) of section 194B of the Act, and such order of disposing of an Appeal is required to be dispatched to the parties before the Tribunal and only against such order a Reference Application can be entertained under Section 196 *ibid*. If the situation had been as contended by the Applicant's Counsel, then subsection (3) of Section 194B of the Act would have been differently worded and would not have used or restricted it to "order passed by the Tribunal disposing of an Appeal" as use of these words would then be redundant. If the legislature's intention would have been otherwise as contended by the Applicants Counsel, then it would have used the words "Tribunal shall send a copy of every order passed by it". This is not so, therefore, this contention appears to be misconceived and is hereby repelled. The argument of the Applicants Counsel to the extent that an order of Rectification is an order disposing of an Appeal is also not tenable as Rectification by itself is a request to amend or correct a mistake apparent on record, and once the Tribunal holds that there is no such mistake, the said order would not be finally disposing of the Appeal before it. It will merely be a refusal to accede to any such request for rectification. It will never be an order of final disposal of the main Appeal, except when, the Rectification is entertained or allowed in any manner, including in part or full. It would also be pertinent to observe that the period of limitation as provided under Section 196 of the Act against a final order of the Tribunal disposing of an Appeal is 90 days, whereas, a Rectification Application can be entertained by the Tribunal in terms of Section 194B(2) within one year from the date of such order. If the Applicant's contention is accepted, then apparently this Court would be extending the limitation period for filing of a Reference Application under Section 196 of the Act as in that case if the Department fails to file a Reference Application under section 196 of the Act against a final order disposing of an Appeal within limitation, it would prefer a Rectification Application as a matter of routine within one year time and would then file a Reference Application under Section 196 against a rectification order. This cannot be permitted so as to enlarge limitation which creates vested rights in favour of the opposing party. In fact, law of limitation provides settlement / end of disputes between the parties by operation of law. This is to create an atmosphere of certainty in the society. Indolent litigants do not get what they are even otherwise entitled for, if they have not acted diligently within the limitation period for taking recourse to a remedy as may be available to them. Object of law of limitation was to prevent stale demands and so it ought to be construed strictly<sup>2</sup>. 1 ZTBL v Yasmin Dahiri (2022 CLD 118) Khushi Muhammad v Mst. Fazal Bibi (PLD 2016 SC 872). Having said that, we may also clarify that there could be a situation that Rectification Application filed by any of the parties is allowed; then the main order of the Tribunal stands modified / merged in the order of Rectification, then perhaps, the aggrieved party, if any, could approach the Court under Section 196 of the Act by way of a Reference Application and can take a plea that since it was not aggrieved initially by the main order of the Tribunal; however, after Rectification of the main order, now it is aggrieved; hence, the Reference Application is maintainable. Such a possibility cannot be ruled out; and in that case the theory of merger of an original order into an order of rectification would be applicable, and then such an order could be treated as an order falling within the ambit of Section 194B (3) of the Act, disposing of an Appeal. Admittedly, this is not the case before us as the Rectification Application of the Applicant stands dismissed. It may also be noted that under the Income Tax Ordinance, 1979 (since repealed) a somewhat similar issue was raised before a learned Division Bench of this Court in the case of Commissioner of Income Tax Vs. Ateed Riaz (2002 PTD 570), followed recently by a Division Bench of this Court in Orient Electronics whereby, a Reference Application was filed under Section 136 of the Income Tax Ordinance, 1979 against an order passed on a Rectification Application filed by the Department. Under the said Ordinance, Rectification was dealt with separately under Section 156 (currently under Section 221 Ordinance, 2001.) of the said Ordinance. An objection was raised as to competency of the Reference Application and in response, the Applicant's Counsel had relied upon various Judgments of this Court as well as Calcutta High Court; however, the learned Division Bench was pleased to repel the contention of the Applicant Department, by holding that if this is permitted, then it would enhance the limitation period for filing of a Reference Application, whereas, if no Reference is filed against the main order of the Tribunal, then no Reference is entertainable under Section 136(2) of the said Ordinance against the order of Rectification passed under Section 156 *ibid*. It was further held that if Tribunal rectifies its original order by allowing or entertaining an application under Section 156 *ibid*, then it shall be deemed to be an order under Section 135 of the Ordinance and Reference pertaining to any question of law arising out of an order under Section 156 shall lie in the same manner as out of an order under section 135 *ibid*. It was further observed that a party who has failed to approach the Court by way of a Reference Application against the original order, cannot be allowed to agitate the same questions of law by way of a Reference Application against an order of Rectification, if it had failed to file any Reference against the original order within the prescribed limitation. It would be advantageous to refer to the relevant findings of the learned Division Bench which reads as under: – "In the last judgment, three earlier judgments have been considered. The ratio of all the above judgments is that an order under section 156 partakes the character of original order which is rectified under section 156 of the Income Tax Ordinance. Thus, if an order under section 62 of the Income Tax Ordinance is rectified under section 156, it assumes the character of order under section 62 of the Income Tax Ordinance, and an appeal from the order under section 156 shall lie in the same manner as from an order under section 62. Likewise, if the first or the second appellate orders under section 132 or 135 of the Income Tax Ordinance, are rectified under section 156, the rectified orders are to be read as orders under section 132 read with section 156 and order under section 135 read with section 156 of the Income Tax Ordinance, respectively. By the above judgments, it stands settled that an order under section 156 shall have the same character and be deemed to be under the same section of the Income Tax Ordinance, under which it was originally made and was rectified by recourse to section 156 of the Income Tax Ordinance. Thus, if the Income-tax Appellate Tribunal has rectified an order under section 156,

it shall also be deemed to be an order under section 135 of the Income Tax Ordinance and reference pertaining to any questions of law arising out of order under section 156 of the Income Tax Ordinance, shall lie in the same manner as out of an order under section 135 of the Income Tax Ordinance. However, the above proposition of law is of no help to the appellant in the present case. The reason being that admittedly the question of law proposed in the reference application arises out of the original order by the Tribunal is I.T.A. No.562/KB of 1993- 94, dated 21-9-2000 and not from the order, dated 26-1-2001 in M.A. (Rect) No.239/KB of 2000-2001 made under section 156 of the Income Tax Ordinance. No reference application was filed against the order, dated 21-9-2001 passed under section 135 of the Income Tax Ordinance, and in the order, dated. 26-1-2001 disposing of the application under section 156 of the Income Tax Ordinance the learned Members of the Tribunal made no rectification in respect of issues under consideration and held that in the facts and circumstances of the case the provisions of section 156 of the Ordinance cannot be invoked. In these circumstances the learned Members of the Tribunal while rejecting the reference application under section 136 (1) of the Income Tax Ordinance, held that the question of law proposed in the reference application, does not arise out of the order rejecting the rectification application, against which the reference application was filed. Mr. Aqeel Ahmed Abbasi, is not able to point out any infirmity in the order, dated 27-4-2001, rejecting the Reference Application No.227/KB of 2000-2001, submitted under section 136(1) of the Income Tax Ordinance. We are, of the considered opinion, that merely because a reference application lies against an order under section 156 of the Income Tax Ordinance, nobody can be allowed to circumvent the law relating to the period of limitation provided in subsection (1) of section 136 and in subsection (2) of section 136 of the Income Tax Ordinance, 1979. The effect of treating the order under section 156 made by the Tribunal under section 135, is that, for the purpose of making reference to High Court, it shall be treated as an order under section 135 of the Income Tax Ordinance. Nonetheless, a party cannot be allowed to seek a reference to the High Court in respect of question of law arising out of the original order under section 135 of the Income Tax Ordinance, if no such application was submitted within a period of ninety days of the date upon which he is served with the notice of an order under section 135 of the Income Tax Ordinance, as provided under section 136(1) of Page 8 of 10 the Income Tax Ordinance, in the garb of an order under section 156 of the Income Tax Ordinance, 1979. We would like to clarify that orders under section 135 and section 156 made by the I.T.A.T. are subject to reference to the High Court, but the period of limitation for making reference from each order would be the same as provided in subsection (1) of section 136 of the Income Tax Ordinance. If any reference application is sought to be made in respect of an order under section 156 of the Income Tax Ordinance, then the reference shall lie, if the question of law arise out of the order under section 156 only and not otherwise. If any question of law arises out of order under section 135 of the Income Tax Ordinance, then it cannot be referred to the High Court with reference to the order under section 156, if the period of limitation has expired. In the present case, we find, that the original order by the Tribunal under section 135 of the Income Tax Ordinance, was made on 21-9-2000 and no reference application was filed in respect of any question of law arising out of the said order. The applicant instead, chose to file rectification application which was rejected on 26-1-2001. Thus the only question which could arise 'out of the order of Tribunal under section 156 was whether Income Tax Appellate Tribunal was justified in rejecting the rectification application. This question has not been proposed in the present reference application and instead the question has been proposed which arises out of the order of Tribunal, dated 21-9-2000, which has become barred by time." 12. We may also observe that as against the above judgment, the case of Pakistan Electric Fittings<sup>4</sup> of a Division Bench of this Court also holds field; and perhaps is somewhat contrary to what has been held in Ateed Riaz and the opinion rendered by us in this case. However, there are various reasons not to follow that case, if at all it is a binding precedent, otherwise. Firstly, that case arises in the context of Appellate jurisdiction of this Court in terms of the then section 136 of the 1979 Ordinance, as against the Reference (Advisory) jurisdiction now existing in the realm of Income Tax as well as Customs and other taxation laws. Despite there being similarity in both provisions; per settled law the Appellate jurisdiction is more expansive and vast as against the advisory jurisdiction. This is also reflected from the said judgment in Pakistan Electric Fittings, as the Court while hearing an Income Tax Appeal even went to the extent of holding that "we may also clarify that in case we had come to the conclusion the appeal under section 136 was not maintainable, it would have been a fit case to have converted this appeal into a Constitutional petition under Article 199 of the Constitution since it is settled law that where there is no remedy, the only remedy is a Constitutional petition under Article 199." This observation or finding, perhaps to our understanding, cannot be given in Reference or Advisory jurisdiction which is restricted to the extent of answering the questions of law arising out of the order of the Tribunal. Besides this, with utmost respect and humility at our command, we beg to differ to this very proposition as in our considered view, though the converse of it may be a possibility not to non-suit a 4 2000 PTD 2407 Page 9 of 10 litigant if the facts and circumstances of a particular case so demands, including the question of limitation. However, not all proceedings of Appeal or Reference arising out of a taxing law can be converted into Constitutional petitions. Right of appeal was a creature of the statute and it was not to be assumed that there was a right of appeal in every matter brought before a Court for its consideration. Right of appeal was expressly given by a statute or some authority equivalent to a statute such as a rule taking the force of a statute. Existence of right of appeal could not be assumed on any 'a priori' ground.<sup>5</sup> Similarly "The writ jurisdiction of the High Court cannot be expended as the solitary resolution or treatment for undoing the wrongdoings, anguishes and sufferings of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction."<sup>6</sup> Lastly, in Ateed Riaz, the learned Bench has also distinguished the judgment of Pakistan Electric Fittings, and we are fully in agreement with the observations in Ateed Riaz. Hence, if at all, said judgment has any relevance, it is not applicable to the present facts in hand. 13. Lastly, when the Rectification Application filed by the Applicant department is looked into it reflects that as many as 7 questions of law<sup>7</sup> were proposed before the Tribunal, and all these questions are in fact on 5 Per Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others reported as PLD 2021 SC 391. 6 Unreported judgment dated 5.10.2022 [Sana Jamali v V Mujeeb Qamar (Civil Petition No.32-Q of 2019)] 7<sup>1</sup> 1) Whether the learned Members of the Appellate Tribunal have correctly read the record and the law, i.e. the Pakistan Customs Tariff (Volume-1), the Rule 2(a) and P.C.T. Heading 8402.1200 & 8479.8230? 2) Whether in the light of facts & circumstances of the case. Particularly in the absence any PCT heading for "Plant", the Appellate Tribunal has made a mistake of facts to hold that the Boiler has function of Oil Refining machine? 3) Whether in the light of facts & circumstances of the case the Appellate Tribunal has made mistake of law by holding that the provisions of Note 2 to Chapter-84 and the "clarification", circulated and prevailed through Public Notice No.4 / 1989, since last two decades, are not applicable on the subject case?

4) Whether in the light of facts & circumstances of the case the Appellate Tribunal erred in law & facts that according to the provisions of Para 1 (XI) (1)(b) of CGO 12/2002 and Note-4 of Section- XVI of the Pakistan Customs Tariff the Boiler is classifiable under PCT Heading 8479.8230 as Oil Refining machine? 5) Whether in the absence of the manufactures' catalogue, lay-out of the plant, drawings and specific design of the machine (Boiler) for Oil Refining Machinery, imported Boiler can be classified under PCT Heading 8479.8230? 6) Whether in the presence two contracts i.e (1) Proforma Invoice No.2012-207 dated: 02-08- 2012 and the sales contract No. MCV- 1205-08-R1 dated 02-08-2012, just on the basis of opening of single L/C, the description and classification of the imported goods can be changed? 7) Whether the Appellate Tribunal has made a glaring mistake of law by saying that the General Rules of Interpretation (G.I.R) are and Note-2 to Chapter 84 of the Pakistan Customs Tariff are not- applicable?" merits of the case and none of them could be called as a question which intends to seek rectification of a mistake apparent on record. In fact, all these questions ought to have been raised before this Court by way of a Reference Application impugning the main order in Appeal of the Tribunal. This was not done and belatedly a Rectification Application was filed to revive a matter which on merits had become time barred insofar as a Reference under section 196 of the Act is concerned. Therefore, the Tribunal was otherwise fully justified in holding that the said questions ought to have been raised before the High Court in a Reference Application. 14. In view of hereinabove facts and circumstances of this case we hold that the Reference Application filed under Section 196 of the Act against an order of Rectification passed in terms of Section 194B (2) of the Act is not competent and maintainable; hence, the same stands dismissed. As a consequence, thereof, the proposed questions are not required to be answered by us. Reference Application stands dismissed as not maintainable.

CN 3-2-2023

## **FBR NOTIFY LARGE-SCALE RESHUFFLING OF PCS OFFICERS RANGING BS-20 TO BS-17**

KARACHI: Federal Board of Revenue (FBR) has notified a large-scale reshuffling of Pakistan Customs Service (PCS) officers ranging Bs-20 to BS-17 with immediate effect.

Accordingly, Mr. Sadiqullah Khan (Pakistan Customs Service/BS-20) is transferred from the office of Director, Pakistan Customs Academy (PCA), Karachi to Director, Directorate of Customs Valuation, Peshawar.

Mr. Hassan Saqib Sheikh (Pakistan Customs Service/BS-20) is assigned the additional charge of the post of Collector, Collectorate of Customs, Gilgit-Baltistan in addition to his present duties. Collector, Collectorate of Customs, Islamabad.

Ms. Nyma Batool (Pakistan Customs Service/BS-20) to Director, Directorate (HQs), Post Clearance Audit & Internal Audit, Karachi. She is also assigned the additional charge of the post of Director, Directorate of CPEC, Karachi.

Abid Hussain Hakro (Pakistan Customs Service/BS-19) to Director (OPS), Directorate of Transit Trade, Quetta. He is also assigned additional charge of the post of Director (OPS), Directorate of Transit Trade, Gwadar.

Mr. Arbab Qaisar Hamid (Pakistan Customs Service/BS-19) to Director (OPS), Directorate of Transit Trade, Peshawar from Director (OPS), Directorate of Customs Valuation, Peshawar.

Mr. Taimoor Kamal Malik (Pakistan Customs Service/BS-19) to Chief, (OPS) Federal Board of Revenue (HQ), Islamabad from Additional Director, Directorate of IPR Enforcement (North), Islamabad.

Mr. Tasleem Akhtar (Pakistan Customs Service/BS-19) to Director (OPS), Pakistan Customs Academy (PCA), Karachi from Additional Director, Pakistan Customs Academy (PCA), Karachi.

Mr. Yasin Murtaza (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisalment, Port Muhammad Bin Qasim, Karachi from Additional Collector, Collectorate of Customs Appraisalment (West), Custom House, Karachi.

Ms. Farah Farooq (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisalment (East), Custom House, Lahore from Additional Collector, Collectorate of Customs Appraisalment, Lahore.

Mr. Haroon Waqar Malik (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisalment, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Additional Collector, Collectorate of Customs Appraisalment, Port Muhammad Bin Qasim, Karachi.

Mr. Tahir Abbas (Pakistan Customs Service/BS-19) is assigned the additional charge of the post of Additional Director, Directorate of Reforms and Automation (Customs), Karachi in addition to his present place of posting of Additional Collector, Collectorate of Customs Appraisalment (East), Custom House, Karachi.

Mr. Honnak Baloch (Pakistan Customs Service/BS-19) to Additional Director, Directorate of Input Output Coefficient Organization (South), Karachi from Additional Collector, Collectorate of Customs Enforcement, Custom House, Karachi.

Mr. Ataullah Shabbir (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisement (West), Custom House, Karachi from Additional Director, Directorate of Intelligence & Investigation, FBR, Gwadar.

Ms. Saleha Zakir Shah (Pakistan Customs Service/BS-19) Additional Collector, Collectorate of Customs, Islamabad International Airport from Additional Collector, Collectorate of Customs, Islamabad.

Dr. Imran Rasool Khan (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Enforcement, Sargodha from Additional Collector, Collectorate of Customs, Gwadar.

Mr. Muhammad Hassan Farid (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs (Adjudication), Faisalabad from Additional Director, Directorate of IPR Enforcement (Central), Lahore.

Mr. Moeen Afzal Ali (Pakistan Customs Service/BS-19) to Additional Director, Directorate of Intelligence & Investigation, FBR, Lahore from Additional Collector, Collectorate of Customs Enforcement, Quetta.

Ms. Tayyaba Bukhari (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs (Adjudication), Lahore from Additional Director, Directorate of Intelligence & Investigation, FBR, Lahore.

Mr. Muhammad Moazzam Raza (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisement, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Additional Collector, Collectorate of Customs Appraisement (East), Custom House, Karachi.

Mr. Fazli Shakoor (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Enforcement, Peshawar from Additional Collector, Collectorate of Customs Appraisement, Peshawar.

Mr. Asim Rehman (Pakistan Customs Service/BS-19) to Additional Collector, Collectorate of Customs Appraisement, Port Muhammad Bin Qasim, Karachi from Additional Collector, Collectorate of Customs, Islamabad.

Mr. Muhammad Faisal (Pakistan Customs Service/BS-19) to Additional Director, Directorate of Transit Trade (HQ), Karachi from Additional Collector, Collectorate of Customs Enforcement, Custom House, Karachi.

Mr. Shams-ur-Rehman (Pakistan Customs Service/BS-19) to Additional Director, Directorate of Transit Trade, Peshawar from Director, Strategic Exports Control, Ministry of Foreign Affairs, Islamabad.

Mr. Shah Faisal (Pakistan Customs Service/BS-19) to Additional Director, Directorate General of Customs Valuation, Karachi from Additional Collector, Collectorate of Customs Appraisement, Quetta.

Mr. Mohammad Rehan Akram (Pakistan Customs Service/BS-19) to Director, Strategic Exports Control, Ministry of Foreign Affairs, Islamabad from Additional Director, Directorate of Cross Boarder Currency Movement, Islamabad.

Mr. Abdul Mueed (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Enforcement, Quetta from Second Secretary, Federal Board of Revenue (Hq), Islamabad.

Syed Kareem Adil (Pakistan Customs Service/BS-18) to Deputy Director, Directorate of Input Output Coefficient Organization (Central), Lahore from Second Secretary, Federal Board of Revenue (Hq), Islamabad.

Mr. Amjad Hussain Rajper (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Enforcement, Custom House, Karachi from Deputy Director, Directorate of Intelligence & Investigation, FBR, Gwadar.

Mr. Sajid Ali Baloch (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Enforcement, Khuzdar from Deputy Collector, Collectorate of Customs Appraisement, Quetta.

Mr. Umair Zahid (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Appraisement (West), Custom House, Lahore from Deputy Collector, Collectorate of Customs Appraisement, Lahore.

Mr. Muhammad Arshad Malik (BS-18) to Assistant Director (Audit), Directorate of Internal Audit-North (Customs), Islamabad (Stationed at Lahore) from Assistant Director (Audit), Directorate of Post Clearance Audit (Central), Lahore.

Ms. Farheen Zahra (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs, Islamabad International Airport from Deputy Collector, Collectorate of Customs, Islamabad.

Ms. Azka Zafar Rana (Pakistan Customs Service/BS-18) to Deputy Director, Directorate of Intelligence & Investigation, FBR, Karachi from Deputy Collector, Collectorate of Customs, Jinnah International Airport (JIAP), Karachi.

Ms. Saima Rahim (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs, Islamabad International Airport, Islamabad from Deputy Collector, Collectorate of Customs, Islamabad.

Rana Umair Arshad (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Enforcement, Khuzdar from Deputy Collector, Collectorate of Customs, Gwadar.

Mr. Muhammad Ijaz Shaheen (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore from Deputy Director, Directorate of Internal Audit-North (customs), Islamabad (Stationed at Lahore).

Ms. Zohrain Bhaur (Pakistan Customs Service/BS-18) to Deputy Director, Directorate of Post Clearance Audit (Central), Lahore from Deputy Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore.

Ms. Jaweria Shahid (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs Appraisalment (East), Custom House, Lahore from Deputy Collector, Collectorate of Customs Appraisalment, Lahore.

Raja Bilal Naseem (Pakistan Customs Service/BS-18) to Deputy Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore from Deputy Collector, Collectorate of Customs Enforcement, Lahore.

Syed Talha Salman (Pakistan Customs Service/BS-17) to Deputy Director, (OPS) Directorate of Intelligence & Investigation, FBR, Gwadar from Deputy Collector, (OPS) Collectorate of Customs Enforcement, Custom House, Karachi.

Syeda Sidra Munawar Kazmi (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Lahore from Assistant Collector, Collectorate of Customs Appraisalment, Lahore.

Mr. Waqar Ahmed (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Enforcement, Quetta from Assistant Collector, Collectorate of Customs, Jinnah International Airport (JIAP), Karachi.

Mr. Shafaat Ali Mirza (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Lahore from Assistant Collector, Collectorate of Customs Appraisalment, Lahore.

Mr. Saif Ullah Khan (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Karachi.

Ms. Sobia Azam (Pakistan Customs Service/BS-17) is assigned the additional charge of the post of Assistant Director, Directorate of National Nuclear Detection Architecture (NNDA), Lahore in addition to her already assigned duties as Assistant Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore.

Ms. Tanya Khan Mohmand (Pakistan Customs Service/BS-17) is assigned the additional charge of the post of Assistant Director, Directorate of Internal Audit-North (Customs), Islamabad in addition to her already assigned duties as Assistant Director, Directorate of Post Clearance Audit (North), Islamabad.

Ms. Naseem Arshad (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Lahore from Assistant Director, Pakistan Customs Academy (PCA), Lahore.

Mr. Atta Ullah (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Karachi.

Mr. Ahmed Nawaz (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisalment, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Assistant Collector, Collectorate of Customs Appraisalment (East), Custom House, Karachi.



Ms. Shahzadi Hareem Fatima (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs, Hyderabad from Assistant Collector, Collectorate of Customs, Jinnah International Airport (JIAP), Karachi.

Mr. Rahat Naseem (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisement, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Assistant Collector, Collectorate of Customs Appraisement (East), Custom House, Karachi.

Mr. Farhad Ullah Khan (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs, Islamabad International Airport, Islamabad from Assistant Collector, Collectorate of Customs, Islamabad.

Ms. Sara Sarwar (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisement, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from Assistant Collector, Collectorate of Customs Appraisement (East), Custom House, Karachi.

Ms. Humera Javed (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisement (West), Custom House, Lahore from Assistant Collector, Collectorate of Customs Appraisement, Lahore.

Mr. Muhammad Usman Ashraf (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Enforcement, Sargodha from Assistant Collector, Collectorate of Customs Enforcement, Lahore.

Mr. Naeem Raza (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Enforcement, Sargodha from Assistant Collector, Collectorate of Customs Enforcement, Multan.

Ms. Urwah Til Wosqa (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisement (West), Custom House, Lahore from Assistant Collector (Prob), Collectorate of Customs Appraisement, Lahore.

Ms. Simrah Azhar (Pakistan Customs Service/BS-17) to Assistant Collector, Collectorate of Customs Appraisement (West), Custom House, Lahore from Assistant Collector (Prob), Collectorate of Customs Appraisement, Lahore.

Ms. Shazra Saeed (Pakistan Customs Service/BS-17) is moved to the office of Assistant Collector, Collectorate of Customs Appraisement, South Asia Pakistan Terminal (SAPT), Custom House, Karachi from the office of Assistant Collector (Prob), Collectorate of Customs Appraisement (East), Custom House, Karachi.

Mr. Muhammad Sarwar (Pakistan Customs Service/BS-17) is posted as Assistant Collector, Collectorate of Customs, Allama Iqbal International Airport, Lahore. He was transferred from the post of Assistant Collector, Collectorate of Customs Sambrial, Sialkot.

CN 4-2-2023

## **PRESIDENT DIRECTS FBR TO RECONSIDER APPOINTMENT OF REJECTED CANDIDATE**

**ISLAMABAD:** President Dr Arif Alvi on Friday directed FBR to reconsider the appointment of a candidate from Ex-FATA who had been denied employment, despite securing first position in the written exam.

The FBR rejected the candidate on the ground that his degree was issued to him late by his university due to the COVID-19 pandemic, and he was not in possession of the degree on the cut-off date.

The President observed that FBR had ignored the university's categorical statement on his degree stating that the complainant was eligible for admission in any university or job from June/July 2021 as his degree was issued late in June 2022 due to COVID-19 which was beyond human control, and it was not the fault of the student. He gave this decision in a case where Hamza Wazir (the complainant) had applied for the post of Assistant (BS-15) in FBR in October 2021, secured first position in the written test, and subsequently, was also called for an interview.

The FBR denied him the job opportunity by claiming that since the degree was issued to the complainant on June 02, 2022 after a lapse of more than eight months after the date of advertisement published on September 19, 2021, therefore, he did not meet the relevant criteria for the post.

Feeling aggrieved, the complainant approached the Wafaqi Mohtasib (WM) who gave the order that the selection and appointment of a person against an advertised post was the sole prerogative of the Agency, and the case was referred to Chairman FBR for consideration.

The complainant, then, filed a review petition with WM which was rejected on the ground that on the cut-off date, the complainant had no proof of being a Bachelor's Degree holder, therefore, he was not eligible for the said post, and that no maladministration was established on the part of FBR. Subsequently, Hamza Wazir filed a representation to the President, he added.

The President accepted his representation, and held that FBR had not considered the case of the complainant objectively by not providing him the opportunity to explain the matter and deprived him of his due right; that special relaxation, incentives and enticements were given at large due to epidemic of COVID-19, which was beyond human control. He further stated that nowadays, there was tough competition for each and every post and a large number of candidates were coming forward, and the obligation to act fairly on the part of administrative authorities had been evolved to ensure the due process of law, prevent the failure of justice and avoid any unfair treatment.

The President noted that earlier on 24-05-2021, the complainant had filed a complaint before WM with the plea that he got admission in the Associate Degree Program at Islamabad Postgraduate College, affiliated with the Quaid-e-Azam University, in 2019 and it had not declared the result of 1st and 2nd semester despite a lapse of two years, which would delay the completion of his degree and also affect his career prospects.

The case had been disposed of on the assurance of the University's representative before the President's Secretariat that the student's bachelor's degree might be considered from June/July 2021. He added that the act of FBR ran counter to this decision of the President; therefore, maladministration had been established on the part of FBR. President Alvi, therefore, set aside the orders of the Mohtasib and directed FBR to reconsider the appointment of the complainant against the post of the Assistant against the quota of Ex-FATA.

## **'NO PRIVATE CONSULTANCY, TAX PRACTICE': FBR EMPLOYEES ASKED TO SUBMIT UNDERTAKINGS**

**ISLAMABAD:** All Inland Revenue officials/ officers would submit undertakings/ declarations to the Federal Board of Revenue (FBR) that they are not indulged in any private consultancy/ tax practices for companies and other taxpayers.

In this regard, the FBR issued instructions to the field formations on Friday. According to the FBR's instructions to the heads of the field formations, all employees of the FBR were directed vide circular of 2022 to completely abstain themselves from private consultancy/tax practice. However, it has come to the notice that some employees of the FBR are still indulged in private consultancy/ tax practices.

Forgoing in view, the competent authority has directed that heads of Inland Revenue Offices of FBR should obtain an undertaking from all officers/ officials posted under their administrative control, that they are not indulged in any private consultancy/ tax practices. All Heads of Field Formations of FBR will provide a certificate within seven days to Board that undertaking from all officers/ officials posted under their administrative control have been obtained.

The FBR's circular of April 28, 2022, revealed that the Federal Tax Ombudsman (FTO) initiated an Own Motion Investigation regarding private practice by the employees of FBR, who joined local chambers or even opened their own law offices and rendered legal assistance to taxpayers in the evenings or even during office hours. Findings were recorded that many of the officers/ officials of FBR associate themselves with different taxpayers and provide legal assistance to them in various taxation matters in total disregard of the instructions under the Government Servants (Conduct) Rules, 1964 whereunder no government servant is allowed to engage in any trade or undertake any employment or work, other than his official duties, except with the previous sanction of the government. Furthermore, Establishment Division has issued clear prohibitions regarding undertaking of private work by government servants.

The FBR has already issued instructions on the matter and advised all its employees not to indulge in private consultancy/ tax practice. The chairman FBR has taken a serious view of the matter and all FBR employees are again advised to completely abstain themselves from private consultancy/ tax practice. Inland Revenue Operations Wing shall put in place a strong monitoring mechanism to ensure the compliance of FTO instructions. In future, if any officer/ official is found involved in such practice, strict disciplinary action shall be taken under Civil Servants (E&D) Rules, 2020, the FBR added.