

**WS**

**WASIMSHARIF**  
INDUSTRIES (PVT) LTD

27  
**ANNEXURE I**

RESOLUTION

Meeting of Board of Directors of M/S Wasim Sharif Industries (Pvt.) Ltd Ghawar Kally Road, Sharif Khan Village, Skha Kot, and District Malakand held on 26/03/2021 at the Registered Office of the Company.

The following attended the meeting

- |                           |                 |
|---------------------------|-----------------|
| 1. Mr. Hamid Waheed       | Chief Executive |
| 2. Mr. Muhammad Samin Jan | Director        |
| 3. Mst. Fatima Shoaib     | Director        |

Unanimously Resolved in pursuance of the resolution of the company, that Mr. Muhammad Samin Jan Director of the Firm, CNIC # ~~17301-1410719-7~~, be and is hereby authorized to institute, file, sign, verify, represent, appear, depose affidavit, written statement, Rejoinder, engage a counsel and to do all other acts ancillary or incidental thereto, the Writ Petition to be filed before the Peshawar High Court Mingora Bench Dar-ul-Qaza Swat to appear before the said Honourable Court on behalf of the Company in the matter of questioning the Customs General Order No 01/2021 dated 25/02/2021 in accordance with prevalent law.

Resolved that, the said Director further authorized to execute and submit any other documents as may be required time to time by the Hon'ble Court.

1. Mr. Hamid Waheed, Chief Executive
2. Mr. Muhammad Samin Jan, Director
3. Mst. Fatima Shoaib, Director

*M. Samin Jan*

*Fatima*

**WASIM SHARIF**  
**INDUSTRIES (PVT) LTD**  
**SAKHAKOT MALAKAND**

**Factory Address:**  
Ghawar Kally Road, Sharif Khan Village,  
Sakha Kot, Malakand Agency KPK

**Phone:** 0932-310039, 310139 & 311039  
**Fax:** 0932-312039

Book No.B 09210

Corporate Member

Serial No.B 920965

# MEMBERSHIP CERTIFICATE

Code No: 672/03



Name & address of Chamber **Mohmand Chamber of Commerce & Industry.**  
Association

Formerly Tribal Areas CC & I (FATA)

**ANNEXURE**

(Affiliated with the Federation of Pakistan Chambers of Commerce & Industry)

11

**CERTIFIED** that **M/S Wasim Sharif Industries (Pvt) Ltd.**

*(name and address of Member Firm / Company)*

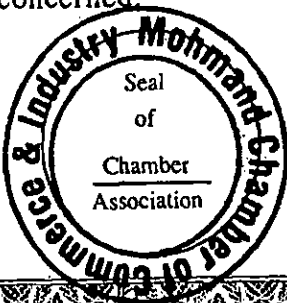
**Add: -Ghawar Kally Road, Sharif Khan Village Sakha Kot Dargai Malakand Agency.**

G.S.T. No. \_\_\_\_\_ N.T.N. No. \_\_\_\_\_

is a member of this Chamber **Mohmand Agency Chamber of Commerce & Industry (FATA)**  
Association

**THIS CERTIFICATE** shall be valid upto the **31<sup>st</sup> March, 2021** unless  
*(date)*

otherwise notified to the NTN / GST Registration authority / Scheduled Bank concerned.



Given on this 01 day of Apr 20 20

Signature of Secretary General Saeed Ahmad

Countersigned by (Signature)  
**(Ghulam Nabi Khan)**

**ATTACHED**

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CERTIFICATE OF INCORPORATION

[Under section 32 of the Companies Ordinance, 1984 (XLVII of 1984)]

Company Registration No.00000004118/20041201

I hereby certify that WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED

is this day incorporated under the Companies Ordinance, 1984 (XLVII of 1984) and that the company is limited by shares

Given under my hand at Islamabad this 13<sup>th</sup> day of December Two Thousand and Four.

Fee Rs.39,500/- (Rupees Thirty Nine Thousand Five Hundred Only)

(MUHAMMAD MUSHARRAF KHAN)  
Additional Registrar of Companies  
Islamabad.

ATTESTED

*M. Sharif*  
ATTESTED

*M. Ashraf*

ATTESTED

ANNEXURE

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III

THE COMPANIES ORDINANCE, 1984

COMPANY LIMITED BY SHARES

MEMORANDUM

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AND

ARTICLES

OF

ASSOCIATION

OF

WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED

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To Be True Copy

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Rec/-  
2-12-04 (1437)

Sharif Warsan



# THE COMPANIED ORDINANCE, 1984

(Private Company Limited by Shares)

## ARTICLES OF ASSOCIATION

of

*Sharif Warsan*

### WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED

#### PRELIMINARY

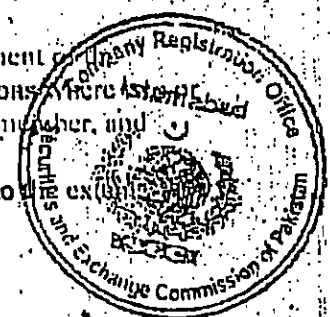
Subject as hereinafter provided the regulations contained in Table 'A' in the first Schedule to the Companies Ordinance, 1984 shall apply to company so far these are applicable to private companies.

Clauses 2, 3, 10, 19, 25, 38, 39, 40, 46, and 49 of the aforesaid Table 'A' shall not apply to the company but the Articles hereinafter contained and the modification hereinafter expressed, shall constitute the regulations of the company.

#### PRIVATE COMPANY

The company is a private within the meaning of Section-2(1) clause (28) of the Companies Ordinance, 1984 and accordingly:

- (a) No invitation shall be issued to the public to subscribe for any shares, or debentures of the company.
- (b) The number of members of the company (exclusive of the persons in employment of the Company) shall be limited to fifty provided that for the purpose of the provisions where more than one person hold one or more shares jointly they shall be treated as a single member, and
- (c) The right to transfer of shares in the company is restricted in the manner and to the extent hereinafter appearing.



#### CAPITAL AND SHARES

The capital of the Company is RS. 10,000,000/- (Rupees Ten Million Only) divided into 100,000 (One Hundred Thousand) ordinary shares of the Rs.100/- each with power to increase, reduce, consolidate or otherwise re-organize the share capital of the company in accordance with the provisions of the Ordinance.

Subject to the provisions of the Ordinance the share shall be under the control of the Directors who may allot or otherwise dispose off the same to such persons, firm or corporation on such terms and conditions, for such consideration and at such times as may be thought fit.

The shares in the capital of the company may be allotted or issued in payment or part payment of any land, machinery or goods supplied or any services.

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To Be True Copy

*Sharif Warsan*  
**ATTESTED**

*Sharif Warsan*

60/-  
2-12-84  
1437  
Sharif Wasim  
[Signature]

THE COMPANIES ORDINANCE, 1984  
(Private Company Limited by Shares)  
MEMORANDUM OF ASSOCIATION

OF Wasim

WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED



Wasim

I. The name of the company is "WASIM SHARIF INDUSTRIES (PVT) LTD."

II. The registered office of the company will be situated in Islamabad Capital Territory.

III. The object for which the company is established are all or any of the following:

- To establish an industrial undertaking to manufacture vegetable ghee, banaspali-cooking oil, allied products and by-products and to do all such things as are incidental or conducive to the attainment of the object of establishment and operation of such industrial unit.
- To borrow or raise funds for the business of the company by means of loans from the banks and other financial institutions against pledge of its machinery or hypothecation of assets as well as mortgage of its immovable property and other fixed assets, issue of debentures, debenture stocks, bonds, obligation and securities of all kinds to secure the same, as may seem expedient with full power to make the same transferable by delivery, or by instrument of transfer or otherwise on the undertaking of the company or upon any specific property and rights present and future of the company or otherwise, however, collaterally or to secure any securities of the company by a trust deed or any other assurance.
- To guarantee the performance of the contract and obligation of the company in relation to the payment of any loan, debenture stock, bonds obligations or securities issued by or in favour of the company or a loan advanced to any organization or company as may be considered necessary and to guarantee the performance or return of such investment.
- It is declared that notwithstanding anything contained in the foregoing objects clause of this Memorandum of Association nothing shall construe any power upon the company to indulge or undertake any business directly or indirectly, business of any investment company, insurance company, or managing agency business in Pakistan as restricted under the law and any other unlawful operation.



IV. The liability of the members is limited.

V. The authorized capital of the company is RS. 10,000,000/- (Ten Million Only) divided into 100,000 (One Hundred Thousand) ordinary shares of the RS. 100/- each with power to increase, reduce, consolidate or otherwise re-organize the share capital of the company in accordance with the provisions of the Companies Ordinance 1984.

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31. A balance-sheet, profit and loss account, income and expenditure account and other reports referred to in regulation 74 shall be made out in every year and laid before the company in the annual general meeting made up to a date no more than six months before such meeting. The balance-sheet and profit and loss account or income and expenditure account shall be accompanied by a report of the auditors of the company and the report of directors.

32. A copy of the balance sheet and profit and loss account or income and expenditure account and reports of directors and auditors shall, at least twenty one days preceding the meeting be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

33. The directors shall in all respect comply with the provisions of Sections 230 to 236.

34. Auditors shall be appointed and their duties regulated in accordance with Sections 252 to 255.

Notices:

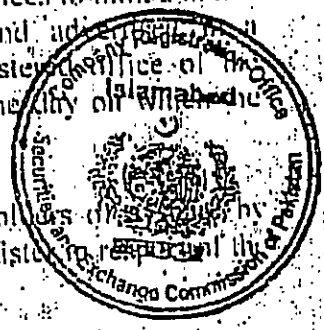
35. (1) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in Pakistan) to the address if any within Pakistan supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

36. If a member has no registered address in Pakistan, and has not supplied to the company and address within Pakistan for the giving of notices to him, a notice addressed to him or to the shareholders generally and advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly given to him if the advertisement appears.

37. A notice may be given by the company to the joint-holder of a share by giving the notice to the joint-holder named first in the register of members.

38. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in Pakistan supplied for the purpose by the



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“(THIRD SCHEDULE)”

(See section 130)

FORM A- ANNUAL RETURN OF COMPANY HAVING SHARE CAPITAL

1 Registration No. 0049055  
2 Name of the Company WADY SHARIF INDUSTRIES (PVT.) LIMITED

3 Form A made upto (Day/Month/Year) 31 10 2017  
4 Date of AGM (Day/Month/Year) 31 10 2017

PART/A

5 Registered office address: GHAWAR KALLY ROAD, SHARIF KHAN VILLAGE, SAKHA KOT, MALAKAND AGENCY KPK  
6 Email Address: ws\_ind2@yahoo.com  
7 Office Tel. No. 0333-5766738  
8 Office Fax No.  
9 Nature of Business: MANUFACTURING OF GHEE & COOKING OIL

10 Authorized Share Capital

Type of Shares	No. of Shares	Amount	Face Value
Ordinary Shares	400,000	40,000,000	100

11 Paid-up Share Capital

Type of Shares	No. of Shares	Amount	Issue Price
Ordinary Shares	288,053	28,805,300	100

12 Amount of indebtedness on the date upto which form A is made in respect of all Mortgages/Charges NIL

13 Particulars of the holding company  
Name NIL  
Registration No. % Shares Held

14 Chief Executive  
Name HAMID WAHEED CNIC 15000-1101766-3  
Address VILLAGE P/O CHAKDARA, TEHSIL ADEZAI, DISTT DIR

15 Chief Accountant  
Name NIL CNIC  
Address NIL

16 Secretary  
Name NIL CNIC  
Address NIL

17 Legal Adviser  
Name MUHAMMAD AKBAR KHAN CNIC 17301-6295993-7  
Address ADVOCATE HIGH COURT, PESHAWAR

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18 Auditors:															
Name: SHAHZAD QAZI & CO., CHARTERED ACCOUNTANTS															
Address: OFFICE NO. 12 TO 14, 1 <sup>ST</sup> FLOOR, AHMED CENTRE, 1-8, MERKAZ, ISLAMABAD															
19 List of Directors on the date of Form-A															
Name of Director	Address	Nationality	CNIC (Passport No. if foreigner)												
I. HAMID WAHEED	VILLAGE PO CHAKDARA, TEHSIL ADEZAI, DISTT DIR	PAKISTANI	1	5	0	0	0	1	1	0	1	7	6	6	3
MUHAMMAD SHOAB KHAN	VILLAGE PO CHAKDARA, TEHSIL ADEZAI, DISTT DIR	PAKISTANI	1	5	3	0	7	5	5	0	1	5	7	9	1
MUHAMMAD SAMIN JAN	ISLAM HOUSE OPPOSITE TO GCP GHEE MILLS, MIRDAY, TEHSIL DARGI, ZILLA MALAKAND	PAKISTANI	1	7	3	0	1	1	4	1	0	7	1	9	7

**PART-D**

20. List of members & debenture holders on the date upto which this Form A is made																	
Folio	Name	Address	Nationality	No. of shares	NIC (Passport No. if foreigner)												
	<b>Members</b>																
	HAMID WAHEED	VILLAGE PO CHAKDARA, TEHSIL ADEZAI, DISTT DIR	PAKISTANI	54,010	1	5	0	0	0	1	1	0	1	7	6	6	3
	MUHAMMAD SHOAB KHAN	VILLAGE PO CHAKDARA, TEHSIL ADEZAI, DISTT DIR	PAKISTANI	54,010	1	5	3	0	7	5	5	0	1	5	7	9	1
	MUHAMMAD SAMIN JAN	ISLAM HOUSE OPPOSITE TO GCP GHEE MILLS, MIRDAY, TEHSIL DARGI, ZILLA MALAKAND	PAKISTANI	72,013	1	7	3	0	1	1	4	1	0	7	1	9	7
	GUL SHAHZADA	V&P/CHAKDARA, TEHSIL ADEZAI, DISTT DIR	PAKISTANI	54,010	1	6	1	0	1	9	5	0	3	7	1	3	1
	MUHAMMAD AYAZ KHAN	MOHALLAH ISLAM HOUSE OPPOSITE TO GCP GHEE MILLS, DARGI, ZILLA MALAKAND	PAKISTANI	54,010	1	6	1	0	1	1	1	6	7	9	4	3	8
		TOTAL		288,053													
	<b>Debenture holders</b>																

\*\*\*Use separate sheet, if necessary\*\*\*

*on file*

*[Signature]*

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21. Transfer of shares (debentures) since last Form A was made

Name of Transferor	Name of Transferee	Number of shares transferred	Date of registration of transfer
Members			
Debenture holders			

\*\*\* Use separate sheet, if necessary \*\*\*

COMPANY REGISTRATION OFFICE

22. I certify that this return and the accompanying statements state the facts correctly and completely as on the date upto which this Form-A is made.

Date

31	10	2017	Signature	<i>[Signature]</i>
Designation (Please tick)			Chief Executive/Company Secretary	

"FREE OF COST COPY"  
Certified to be True Copy

(Muhammad) Nadeem Gul  
Deputy Registrar of Companies  
Securities and Exchange Commission of Pakistan  
CRO, Faisalabad 8/11/2017

*[Signature]*  
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14.5.06

FORM-29  
THE COMPANIES ORDINANCE, 1984  
(Section 205)

PARTICULARS OF DIRECTORS AND OFFICERS, INCLUDING THE CHIEF EXECUTIVE, MANAGING AGENT, SECRETARY, CHIEF ACCOUNTANT AUDITORS AND LEGAL ADVISERS, OR OF ANY CHANGE THEREIN

Please complete in typescript or in bold black capitals.

1 Incorporation Number: 0 4 1 1 8 - 2 0 0 4 1 2 0 1

2 Name of the Company: WASEEM SHARIF INDUSTRIES (PRIVATE) LIMITED

3 Fee Paid (Rs.): - - - - -

Name & Branch of the Bank: \_\_\_\_\_

4 Receipt Number: \_\_\_\_\_ Date: \_\_\_\_\_

Particulars	Present Name or surname in full	N.I.C. No. or Passport No. in case of Foreign	Father's / Husband's Name	Usual Residential Address	Designation	Nationality	(Nationality of origin) (If any other than present Nationality)	Other business occupation and description (if any)	Qualification (in case of Auditors' Legal Advisors)	Date of Present Appointment or change	Changes stating how appointed or changed	Remarks (State approval, if any, required under law)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Particulars of Directors / New Appointment / Election	Muhammad Ejaz	37405-4527583-1	Muhammad Sarwar	House # 4, Street # 4 New City Hous Schem Teda	Chief Executive / Director	Pakistani	Nil	Trading	NA	31.10.2005	Continuing	
	Muhammad Ishaq	15401-4003103-1	Abdul Qasim	Saqeen Kalay Post Office Sana Kal Ishaq Samran Zia Dist. Malakand	Director	Pakistani	Nil	Trading	NA	31.10.2005	Continuing	
	Naila Naveed	37405-0481723-1	W/o Muhammad Ejaz	House # 4, Street # 4 New City Hous Schem Teda	Director	Pakistani	Nil	House Wife	NA	31.10.2008	Elected	
Particulars of Chief Executive / New Appointment / Election	Muhammad Ejaz	37405-4527583-1	Muhammad Sarwar	House # 4, Street # 4 New City Hous Schem Teda	Chief Executive	Pakistani	Nil	Trading	NA	31.10.2005	Continuing	
Particulars of Chief Accountant												

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THE COMPANIES ORDINANCE, 1984  
(Section 205)

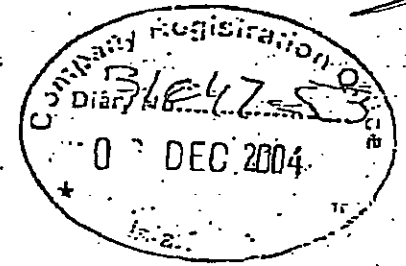
PARTICULARS OF DIRECTORS AND OFFICERS, INCLUDING THE CHIEF EXECUTIVE, MANAGING AGENT, SECRETARY, CHIEF ACCOUNTANT, AUDITORS AND LEGAL ADVISOR OR OF ANY CHANGE THEREIN

1 Incorporation Number

2 Name of the Company: **M/S WASIM SHARIF INDUSTRIES (PVT) LTD**

3 Fee Paid (Rs)  Name & Branch of The Bank: **HBL Corporate Branch Blue Area Islamabad**

4 Receipt No  Date Day  Month  Year



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5 Particulars: Present Name or Surname in full (a)	NIC No or passport No. In case of Foreign National (b)	Father's Husband's Name (c)	Usual residential address (d)	Designation (e)	Nationality (f)
5.1 New appointment / election					
Muhammad Ejaz	37406-4527583-3	Muhammad Sarwar	House No 4 Street No 4 New City Housing Scheme G.T Road Taxila Wahcant	Director	Pakistani
Muhammad Ishaq	15401-0701875-1	Abdul Qasim	Sadqeen Kalay Post Office SakhaKol Tehsil: Samranzal Dist: Malakand	Director	Pakistani
Shahid Imran Dar	34101-1003102-1	Muhammad Sharif Dar	GharWala, Talwandi Khajoor Wali, Tehsil Dist. Gujranwala	Director	Pakistani



ANNEXURE

*M. Wasim Sharif*

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We the several person whose names and addresses are subscribed below are desirous of being formed into a company in pursuance of these Articles of Association and we respectively agree to take the number of shares in the capital of the Company set opposite or respective names:

Name and Surname (Present & Former in full (In Block Letters)	Father's Husband's Name in full	Nationality	Occupation	Residential address in full	Number of Ordinary Shares Taken	Signature of Subscribers	Signature to witness. Name, Father's Name Occupation and full address.
1. Muhammad Ejaz 37406-1527583-3	S/O Muhammad Sarwar	Pakistani	Ghee Mills	New City Housing Scheme G.T Road House NO. 4, Street No 4, Taxila Wah cantt.	100 (Hundred)	<i>[Signature]</i>	<i>[Signature]</i> WASIM DAR S/O Mohmal SHAIR DAR H-34101553200-1 Property Cardullaizat Talwarali Khajoor Lahori Et-Dist Gujranwala.
2. Muhammad Ishaq 15401-0701875-1	S O Abdul Qasim	-do-	Ghee Mills	Sadqeen Kalay Post Office Sakhal Kot Tehsil: Samranizai Distt Malakand.	100 (Hundred)	<i>[Signature]</i>	<i>[Signature]</i>
3. Shahid Imran Dar 34101-4003102-1 <i>Basam m</i>	S O Muhammad Sharif Dar	-do-	Ghee Mills	Ghariwala Talwandi Kahjorwali Tehsil & Distt. Gujranwala.	100 (Hundred)	<i>[Signature]</i>	<i>[Signature]</i>
					300 (Three Hundred)		



Dated this 1<sup>st</sup> day of December 2004

CERTIFIED TO BE TRUE COPY

DEPUTY REGISTRAR  
Company Registration Office  
Islamabad.

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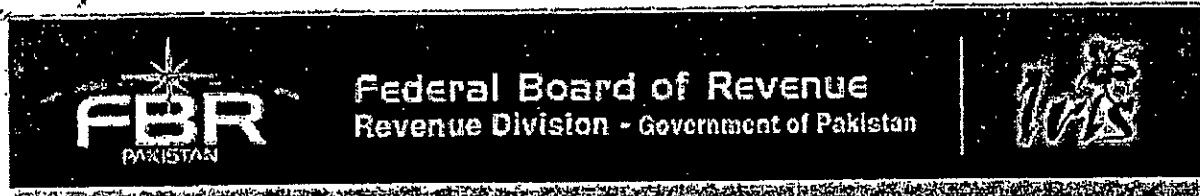
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# ANNEXURE IV



### 181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)

**Name:** WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED      **Registration No** 2577486  
**Address:** OFFICE NO 15-A PHASE 2 WAH MODEL TOWN G T ROAD WAH CANTT      **Tax Year :** 2016  
**Date :**  
**Period :** 01-Jul-2015 - 30-Jun-2016  
**Medium :** System  
**Due Date :** 29-Jan-2016



### 181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)

**Name:** WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED      **Registration No** 2577486  
**Address:** GAWAR KALAY ROAD, SHARIF KHAN VILLAGE, SAKHAKOT, MALAKAND AGENCY, Malakand Dargai      **Tax Year :** 2016  
**Date :**  
**Period :** 01-Jul-2015 - 30-Jun-2016  
**Medium :** System  
**Due Date :** 29-Jan-2016



#### Personal Info:

**Person :** Company  
**CNIC / CNICOP :** 2577486  
**Cell No. :** 00923232223939  
**Nationality :** Pakistan  
**Incorporation Date :** 13-Dec-2004  
**Registered Address**  
**STRN :** 0703040500191

**Type :** Company formed and registered under the Companies Ordinance, 1984 or any other law  
**Name :** WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
**Email :** admin@awgroup.com.pk  
**Accounting Period :** 01st July - 30th June  
**Liquidation Date :**

#### Addresses:

GAWAR KALAY ROAD, SHARIF KHAN VILLAGE, SAKHAKOT, MALAKAND AGENCY, Malakand Dargai			
Type :	Commercial Property	Capacity :	Owner
Form :	Office	% Share :	100
Owner Name :			Acquisition Date :
			Disposal Date :
			Owner CNIC :

#### Businesses:

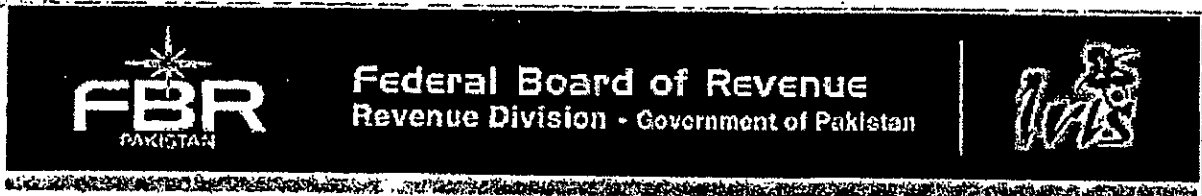
WASIM SHARIF INDUSTRIES (PVT.) LIMITED			
Capacity :	Owner	Acquisition Date :	31-Oct-2015
Disposal Date :			

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**181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)**

Name: WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
 Address: OFFICE NO 15-A PHASE 2 WAH MODEL TOWN G T ROAD WAH CANTT

Registration No 2577486  
 Tax Year : 2016  
 Date :  
 Period : 01-Jul-2015 - 30-Jun-2016  
 Medium : System  
 Due Date : 29-Jan-2016



**181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)**

Name: WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
 Address: GAWAR KALAY ROAD, SHARIF KHAN VILLAGE, SAKHAKOT, MALAKAND AGENCY, Malakand Dargai

Registration No 2577486  
 Tax Year : 2016  
 Date :  
 Period : 01-Jul-2015 - 30-Jun-2016  
 Medium : System  
 Due Date : 29-Jan-2016



**Businesses:**

WASIM SHARIF INDUSTRIES (PVT.) LIMITED					
Capacity :	Owner	Acquisition Date :	31-Oct-2015		
Disposal Date :					
Activities	Principle	ST	FED	Start Date	End Date
Manufacturing/Manufacture of vegetable and animals oils and fats/Manufacture of vegetable and animals oils and fats	Yes	No	No	31-Oct-2015	
Address	Capacity		Start Date	End Date	
GAWAR KALAY ROAD, SHARIF KHAN VILLAGE, SAKHAKOT, MALAKAND AGENCY, Malakand Dargai	Business Operated on		22-Jan-2016		

**Links:**

Registration No.	Name	Capacity	% Share	Link Start Date	Link End Date
1500011017663	HAMID WAHEED	Director	18.75	31-Oct-2015	
1730114107197	MUHAMMAD SAMIN JAN	Director	25.00	31-Oct-2015	
1730162959927	MUHAMMAD AKBAR KHAN	Advisor / Attorney / Consultant	01.00	31-Oct-2015	
1530755015791	MUHAMMAD SHOAIB	Principal Officer	18.75	22-Jan-2016	
1530755015791	MUHAMMAD SHOAIB	Director	18.75	31-Oct-2015	
1540107018751	MUHAMMAD ISHAQ	Director	00.00	13-Dec-2004	29-Jan-2016
3740604817234	NAILA NAVEED	Director	00.00	13-Dec-2004	29-Jan-2016
3740645275833	MUHAMMAD EJAZ	Director	00.00	13-Dec-2004	29-Jan-2016
3740645275833	MUHAMMAD EJAZ	Advisor / Attorney / Consultant		30-Oct-2009	29-Jan-2016
3740571471727	SHAHZAD QAZI	Advisor / Attorney / Consultant		23-Dec-2010	29-Jan-2016

**Attributes**

Attribute	Value
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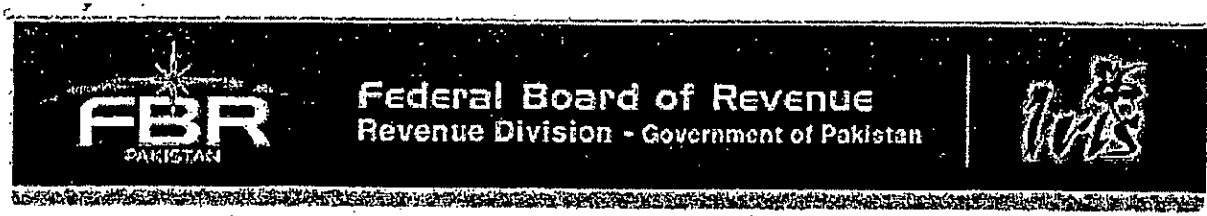
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ATTENTION

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*WAS*



**181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)**

Name: WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
 Address: OFFICE NO 15-A PHASE 2 WAH MODEL TOWN G T  
 ROAD WAH CANTT

Registration No 2577486  
 Tax Year : 2016  
 Date :  
 Period : 01-Jul-2015 - 30-Jun-2016  
 Medium : System  
 Due Date : 29-Jan-2016



**181 (ORDER TO GRANT / REFUSE MODIFICATION TO REGISTRATION ON APPLICATION)**

Name: WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
 Address: GAWAR KALAY ROAD, SHARIF KHAN VILLAGE,  
 SAKHAKOT, MALAKAND AGENCY, Malakand Dargai

Registration No 2577486  
 Tax Year : 2016  
 Date :  
 Period : 01-Jul-2015 - 30-Jun-2016  
 Medium : System  
 Due Date : 29-Jan-2016



**Attributes**

Attribute	Value
Decision	Granted / Accepted

**Attachments**

Description
Paid utility bill of business premises not older than 3 months
Evidence of tenancy / ownership of business premises

Zahid Iqbal  
 Assistant / Deputy Commissioner Inland Revenue  
 Enforcement & Collection-  
 Unit-I

**ATTESTED**

**ATTESTED**

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Details

Page 1 of 1



### Taxpayer Online Verification

Date : 30-01-2016  
Time : 10:35:09

**NTN/FTN** 2577486-7 **Category** COMPANY  
**Name** WASIM SHARIF INDUSTRIES (PRIVATE) LIMITED  
**CNIC/PP/REG/INC No.** 00000004118/20041201  
**House/Flat/Plot No.** --- **Street/Lane** ---  
**Block/Sector/Road** --- **City** ---

Business/Branches

Sl.	Business/Branch Name	Business/Branch Address	STRN
1.	WASIM SHARIF INDUSTRIES (PVT.) LIMITED	GAWAR KALAY ROAD, SHARIF KHAN VILLAGE, SAKHAKOT, MALAKAND AGENCY, Malakand Dargal	0703040500191

Principal Business Activity MANUFACTURING/MANUFACTURE OF VEGETABLE AND ANIMALS OILS AND FATS/MANUFACTURE OF VEGETABLE AND ANIMALS OILS AND FATS

**Business Nature**  
**Registered For** INCOME TAX w.e.f 25-Jan-2006, SALES TAX w.e.f 09-Mar-2007  
**Income Tax office** RTO ISLAMABAD  
**Sales Tax Office** RTO ISLAMABAD  
**Sales Tax Status** OPERATIVE

Print Back

~~ATTESTED~~

~~ATTESTED~~

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28-06/20

**GOODS DECLARATION. GD-1**

Custom File No.

BILL OF ENTRY     BILL OF EXPORT     BAGGAGE DECLARATION     TRANSSHIPMENT PERMIT



1. EXPORTER'S/CONSIGNOR'S NAME AND ADDRESS AMERITIN INTERNATIONAL CORPORATION 2222 W. 162ND STREET MARKHAM, IL 60428 REF #: 6088		2. DECLARATION TYPE EL	3. VALUATION METHOD 1	4. PREVIOUS REF INDEX 158	
10. IMPORTER'S/CONSIGNEE'S/PASSENGER NAME & ADDRESS WASIM SHARIF INDUSTRIES (PVT.) LIMITED Gawar Kalay Road, sharif Khan Village, Sekhakat, Malakand Agency, Dargi, Malakand Dargai.		5. PAGE 1 OF 1	6. CUSTOM OFFICE Port Qasim (Imports), Karachi	7. BANK CODE	
14. NTN 2577486		8. IGM/EGM NO & DT KPII-319-2020 Date: 11-08-2020		9. DRY PORT IGM/EGM NO & INDEX	
15. STR. No / PASSPORT NO & DATE 0703040500191		11. DECLARANT (OTHER THAN IMPORTER/EXPORTER) M/S SHIPPERS LAND OFFICE NO G 11 IBRAHIM BUILDING WEST WHARF ROAD 12. TEL 021-2318828		13. C.H.A.L. No 235    Job No	
18. DOCUMENTS ATTACHED <input type="checkbox"/> INV <input type="checkbox"/> BAG <input type="checkbox"/> BL/AWS <input type="checkbox"/> IT EXMP <input type="checkbox"/> CO <input type="checkbox"/> <input type="checkbox"/> PL <input type="checkbox"/>		E-Form No MBL-EIF-021344-04062020	Date 108894.3300	16. WAREHOUSE I/C NO	17. TRANSACTION TYPE False
22. VESSEL MODE OF MSC TOMOKO, 11/08/2020 13:00		23. BL AWL. CON. NO & DATE MEDUJ8487685 6/25/2020 12:00:00 AM		19. I.C/D.D. NO. & DATE 20INSU03020009564/2020 12:00:00 AM	
25. PORT OF SHIPMENT New York		24. EXCHANGE RATE 168.750000		20. COUNTRY OF DESTINATION Pakistan	
27. PORT OF DISCHARGE		26. PAYMENT TERMS With LC		30. MARKS/ CONTAINER NOS. CAIU2844779, CAIU6222590, CAXU31 OFSU1539294, MEDU2858167, MEDU MEDU3635643, MEDU5148101, MEDU MEDU6835186	
31. NUMBER OF PACKAGES 75.000		32. TYPE OF PACKAGE PACKAGES		21. CURRENCY NAME & CODE US\$ 840	
35. GENERAL DESCRIPTION OF GOODS		33. GR OSS WT 206.31800 MT		28. DELIVERY TERMS CFR	
		34. Volume M3			
		NET WT 205.46100MT			

35. IN THE CASE OF DANGEROUS GOODS INDICATE HAZARD CLASS AND FLASH						Containers detail as per attached sheet		
37. ITEM NO 1	38. QUANTITY (a) Unit Type KG	38(b). NO OF UNITS 205461.0000	39. CO CODE United States	40. SRO NO 6th schedule-151-30/08/2019 12th-2(1)-30/08/2019 Part II of First Schedule-2-01/07/2020	41. HS Code 7210.1210			
42. ITEM DESCRIPTION OF GOODS ETP SECONDARY QUALITY COILS						46. LEVY	47. RATE	48. SUM PAYABLE (PKR)
42(a)						CO	20.00 %	5960725.0000
42(a)						RD	5.00 %	1340161.0000
42(a)						ACD	7.00 %	1676254.0000
42(a)						ANT	12.27 %	3288905.0000
43. UNIT VALUE		44. TOTAL VALUE		45. CUSTOM VALUE (PKR)				
Declared	Assessed	Declared	Assessed	Declared	Assessed			
0.5300	0.7650	108894.3300	157177.665	16557824.0000	26803626.0000			
37. ITEM NO 2	38. QUANTITY (a) Unit Type	38(b). NO OF UNITS	39. CO CODE	40. SRO NO	41. HS Code			
42. ITEM DESCRIPTION OF GOODS						46. LEVY	47. RATE	48. SUM PAYABLE (PKR)
42(a)								
43. UNIT VALUE		44. TOTAL VALUE		45. CUSTOM VALUE (PKR)				
Declared	Assessed	Declared	Assessed	Declared	Assessed			

49. SRO / Test Report No & Dt		50. FOB VALUE 0.0000		54. LANDING CHARGES @ 1% 1.0000 %			
		51. FREIGHT 0.0000		55. OTHER CHARGES 0.0000			
		52. CFR VALUE 157177.6650		56. ASSESSED VALUE PKR 26803626.0000			
		53. INSURANCE 66.0000		57. TOTAL REBATE CLAIM/ PROV. ASSMNT US \$1			
58. MACHINE NO. & DATE KPPH-EL-13965-28-08-2020 168.780000 Appraiser: XXXXXX Examiner: XXXXXX						59. REVENUE RECOVER CODE LEVY CD 5360725.00 RD 1340161.00 ACD 1676254.00 ANT 3288905.00	
						60. AMOUNT (PKR) 5360725.00 1340161.00 1676254.00 3288905.00 Total: 11965965.0000	
						61. A.O's name, sig & stamp XXXXXX	
						62. P.A.s name, sig & stamp XXXXXX	
						63. Out of Charge Sig & Stamp	
						64. We declare that the above particulars are true & correct.  SIG & DATE	
						65. C/F/D NO & DATE C-KPPH-000020-26082020 Payment Received by WASIM SHARIF INDUSTRIES (PVT.) LIMITED	
						66. Bank Stamp	

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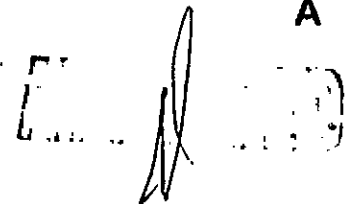
 <b>MEDITERRANEAN SHIPPING COMPANY S.A.</b> Website: www.msc.com SCAC Code : MSCU		<b>BILL OF LADING No. MEDUUB487665</b> <b>NON-NEGOTIABLE COPY</b> <small>Port-to-Port or "Combined Transport" (see Clause 1)</small>	
SHIPPER: AMERITIN INTERNATIONAL CORPORATION 2222 W. 162ND STREET MARKHAM, IL 60478 REF #: 6069		NO. & SEQUENCE OF ORIGINAL B/L's 0 OF THREE NO. OF RIDER PAGES 3	
CONSIGNEE: This B/L is not negotiable unless marked "To Order / To Order of..." here. TO THE ORDER OF MEEZAN BANK LIMITED MARKAZ 1-8 BRANCH ISLAMABAD, PAKISTAN		FORWARDING AGENT :  CARRIER'S AGENTS ENDORSEMENTS : (Include Agent(s) at POD) SECOND NOTIFY: MEEZAN BANK LTD LLOYD/MID NUMBER: 6399461	
NOTIFY PARTIES : (No responsibility shall attach to the Carrier or to his Agent for failure to notify - see Clause 20) WASIM SHARIF INDUSTRIES (PVT) LTD CHAWAR KALLY ROAD SHARIF KHAN VILLAGE, SAKKA NOT DASTGAJ MALAKAND AGENCY KPK PAKISTAN			
VESSEL & VOYAGE NO. (see Clauses 8 & 9) MSC TOMOKO - IU026R		PORT OF LOADING NEW YORK, NY PLACE OF RECEIPT: (Combined Transport ONLY - see Clauses 1 & 5.2) CHICAGO, IL	
BOOKING REF. 038CHI1712041		SERVICE CONTRACT NUMBER XXXXXXXXXXXXXXXXX PORT OF DISCHARGE KARACHI-MUHAMMAD BIN QASIM, PAKISTAN PLACE OF DELIVERY : (Combined Transport ONLY - see Clauses 1 & 5.2) XXXXXXXXXXXXXXXXX	
<b>PARTICULARS FURNISHED BY THE SHIPPER - NOT CHECKED BY CARRIER - CARRIER NOT RESPONSIBLE - See Clause 14</b>			
Container Numbers, Seal Numbers and Marks	Description of Packages and Goods <small>(Continued on attached Bill of Lading Rider page(s), if applicable)</small> PLEASE SEE ATTACHED RIDER PAGE(S) FOR DESCRIPTION OF PACKAGES AND GOODS	Gross Cargo Weight	Measurement
<small>If above commodities, technology or software were exported from the USA, the export administration regulations must be complied with by the Merchant. Otherwise, contrary to US law is prohibited.</small>			
FREIGHT & CHARGES Cargo shall not be delivered unless Freight & charges are paid (see Clause 16).		RECEIVED by the Carrier in apparent good order and condition (unless otherwise stated herein) the total number or quantity of Containers or other packages or units indicated in the box entitled Carrier's Receipt for carriage subject to all the terms and conditions hereof from the Place of Receipt or Port of Loading to the Port of Discharge or Place of Delivery, whichever is applicable. IN ACCEPTING THIS BILL OF LADING THE MERCHANT EXPRESSLY ACCEPTS AND AGREES TO ALL THE TERMS AND CONDITIONS, WHETHER PRINTED, STAMPED OR OTHERWISE INCORPORATED ON THIS SIDE AND ON THE REVERSE SIDE OF THIS BILL OF LADING AND THE TERMS AND CONDITIONS OF THE CARRIER'S APPLICABLE TARIFF AS IF THEY WERE ALL SIGNED BY THE MERCHANT.  If this is a negotiable (To Order / of) Bill of Lading, one original Bill of Lading, duly endorsed must be surrendered by the Merchant to the Carrier (together with outstanding Freight and charges) in exchange for the Goods or a Delivery Order. If this is a non-negotiable (straight) Bill of Lading, the Carrier shall deliver the Goods or issue a Delivery Order (after payment of outstanding Freight and charges) against the surrender of one original Bill of Lading or in accordance with the national law at the Port of Discharge or Place of Delivery whichever is applicable.  IN WITNESS WHEREOF the Carrier or their Agent has signed the number of Bills of Lading stated at the top, all of this tenor and date, and whenever one original Bill of Lading has been surrendered all other Bills of Lading shall be void.	
DECLARED VALUE (only applicable if Ad Valorem Charges paid - see Clause 7.3) XXXXXXXXXXXXXXXXX		CARRIER'S RECEIPT (No. of Conts or Pkgs received by Carrier - see Clause 14.1) 10 cnts	
PLACE AND DATE OF ISSUE CHICAGO - 26-JUNE-2020		SHIPPED ON BOARD DATE 25-JUNE-2020	
SIGNED By MSC (USA) Inc. as Agent on behalf of the Carrier MSC Mediterranean Shipping Company S.A.			

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TERMS CONTINUED ON REVERSE J


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	SCAC Code : MSCU Page 1 of 3

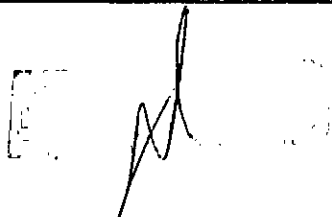
CONTINUATION OF PARTICULARS FURNISHED BY THE SHIPPER - NOT CHECKED BY CARRIER - CARRIER NOT RESPONSIBLE (see Clause 14)			
Container Numbers, Seal Numbers and Marks	Description of Packages and Goods (Continued on further Bill Of Lading Rider page(s), if applicable)	Gross Cargo Weight	Measurement
MEDU6458668 20' DRY VAN SEAL NUMBER: K200446	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	19,654.000 KGS.	
MEDU3635543 20' DRY VAN SEAL NUMBER: K200447	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	20,947.000 KGS.	
MEDU2380295 20' DRY VAN SEAL NUMBER: K200448	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	20,228.000 KGS.	
MEDU6833166 20' DRY VAN SEAL NUMBER: K200445	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	19,219.000 KGS.	
CAXU3159659 20' DRY VAN SEAL NUMBER: K200449	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	21,119.000 KGS.	
CAJU2844770 20' DRY VAN SEAL NUMBER: K200451	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS		

PLACE AND DATE OF ISSUE <b>CHICAGO - 25-JUNE-2020</b>	SHIPPED ON BOARD DATE <b>25-JUNE-2020</b>	SIGNED By MSC (USA) Inc. as Agent on behalf of the Carrier MSC Mediterranean Shipping Company S.A.
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 <b>MEDITERRANEAN SHIPPING COMPANY S.A.</b> Website: www.msc.com	<b>BILL OF LADING No. MEDUUB487665</b> <b>RIDER PAGE</b> SCAC Code : MSCU Page 2 of 3
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**CONTINUATION OF PARTICULARS FURNISHED BY THE SHIPPER - NOT CHECKED BY CARRIER - CARRIER NOT RESPONSIBLE (see Clause 14)**

Container Numbers, Seal Numbers and Marks	Description of Packages and Goods (Continued on further Bill Of Lading Rider page(s), if applicable)	Gross Cargo Weight	Measurement
MEDU2858157 20' DRY VAN SEAL NUMBER: K200450	11 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	21,632.000 KGS.	
DF3U1539284 20' DRY VAN SEAL NUMBER: K200452	12 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	20,630.000 KGS.	
MEDU5148101 20' DRY VAN SEAL NUMBER: K200453	9 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	21,373.000 KGS.	
CAU6222580 20' DRY VAN SEAL NUMBER: K200454	6 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS	21,065.000 KGS.	
CAU6222580 20' DRY VAN SEAL NUMBER: K200454	7 PACKAGE(S) OF ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS LC 20INSU0302-00095 HS CODE 7210.1210 NTN2577488-7 FREIGHT PREPAID 14 DAYS FREE TIME  AGENT AT DESTINATION MSC AGENCY PAKISTAN (PRIVATE) LTD. FAYSAL BANK BUILDING, 1ST FLOOR 18, ABDULLAH HAROON ROAD KARACHI - 74000 PAKISTAN PHONE+92 21 35632001 FAX2 21 35632014 EMAILPK532-MSCPAK@MSC.COM	20,453.000 KGS.	

PLACE AND DATE OF ISSUE CHICAGO - 25-JUNE-2020	SHIPPED ON BOARD DATE 25-JUNE-2020	SIGNED By MSC (USA) Inc. as Agent on behalf of the Carrier MSC Mediterranean Shipping Company S.A.
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**MEDITERRANEAN SHIPPING COMPANY S.A.**  
 Website: www.msc.com  
 SCAC Code : MSCU

**BILL OF LADING No.**  
 RIDER PAGE

**MEDUUB487665**

Page 3 of 3

CONTINUATION OF PARTICULARS FURNISHED BY THE SHIPPER - NOT CHECKED BY CARRIER - CARRIER NOT RESPONSIBLE (see Clause 14)

Container Numbers, Seal Numbers and Marks	Description of Packages and Goods (Continued on further Bill Of Lading Rider page(s), if applicable)	Gross Cargo Weight	Measurement																																																																								
	<p>X20200616432408</p> <p>SHIPPER'S LOAD, STOW, AND COUNT            THESE COMMODITIES, TECHNOLOGY, OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW PROHIBITED.            CARRIER HAS NO KNOWLEDGE WHATSOEVER OF THE LC, THE REFERENCE TO WHICH IS INCLUDED HERE SOLELY FOR THE MERCHANT'S CONVENIENCE: CLAUSE 14.5 OVERLEAF APPLIES</p> <p>TOTAL NUMBER OF PACKAGES: 75</p> <p>"The receiver and/or consignee must collect and return the container within the agreed Free Days, starting from the day of berthing of Vessel at port, failing which the receiver and/or consignee is jointly and severally liable to pay damages to the Carrier in accordance with the table set out below.            Applicable/agreed Liner Demurrage / Container detention as per below tariff:</p> <table border="1" data-bbox="352 955 964 1210"> <thead> <tr> <th colspan="6">Effective from 1st January 2020</th> </tr> <tr> <th>Container Type</th> <th>Size</th> <th>Standard Free Days</th> <th>8 to 14 Days after Discharge Rate/Diem</th> <th>15 to 21 Days after Discharge Rate/Diem</th> <th>Thereafter Rate/Diem</th> </tr> </thead> <tbody> <tr> <td>DU</td> <td>20</td> <td>7</td> <td>50</td> <td>50</td> <td>70</td> </tr> <tr> <td>DUV</td> <td>40</td> <td>7</td> <td>50</td> <td>70</td> <td>110</td> </tr> <tr> <td>High Cube</td> <td>40</td> <td>7</td> <td>50</td> <td>70</td> <td>110</td> </tr> <tr> <td>Special</td> <td>20</td> <td>7</td> <td>50</td> <td>50</td> <td>70</td> </tr> <tr> <td>Special</td> <td>40</td> <td>7</td> <td>50</td> <td>50</td> <td>70</td> </tr> <tr> <td>H3 High Cube</td> <td>40</td> <td>7</td> <td>50</td> <td>70</td> <td>110</td> </tr> </tbody> </table> <table border="1" data-bbox="352 1121 964 1210"> <thead> <tr> <th>Container Type</th> <th>Size</th> <th>Standard Free Days</th> <th>3 to 06 Days after Discharge Rate/Diem</th> <th>10 to 15 Days after Discharge Rate/Diem</th> <th>Thereafter Rate/Diem</th> </tr> </thead> <tbody> <tr> <td>RE</td> <td>20</td> <td>2</td> <td>80</td> <td>105</td> <td>130</td> </tr> <tr> <td>Reefer</td> <td>40</td> <td>2</td> <td>110</td> <td>145</td> <td>155</td> </tr> <tr> <td>Reefer High Cube</td> <td>40</td> <td>2</td> <td>110</td> <td>145</td> <td>155</td> </tr> </tbody> </table> <p>In addition, the receiver and consignee are jointly and severally liable to return the empty containers clean, in good state, without any marks and free of any fees to the empty depot designated by the local agent of the Carrier.</p> <p>Nothing in this clause whatsoever prevents the Carrier from also being able to recover damages from the Merchant, in particular claims for container demurrage/detention against the shipper, and the Carrier is not obliged to bring a claim against the consignee/receiver rather than the shipper."</p>	Effective from 1st January 2020						Container Type	Size	Standard Free Days	8 to 14 Days after Discharge Rate/Diem	15 to 21 Days after Discharge Rate/Diem	Thereafter Rate/Diem	DU	20	7	50	50	70	DUV	40	7	50	70	110	High Cube	40	7	50	70	110	Special	20	7	50	50	70	Special	40	7	50	50	70	H3 High Cube	40	7	50	70	110	Container Type	Size	Standard Free Days	3 to 06 Days after Discharge Rate/Diem	10 to 15 Days after Discharge Rate/Diem	Thereafter Rate/Diem	RE	20	2	80	105	130	Reefer	40	2	110	145	155	Reefer High Cube	40	2	110	145	155	<p>TOTAL: 206,318.000 KGS.</p>	
Effective from 1st January 2020																																																																											
Container Type	Size	Standard Free Days	8 to 14 Days after Discharge Rate/Diem	15 to 21 Days after Discharge Rate/Diem	Thereafter Rate/Diem																																																																						
DU	20	7	50	50	70																																																																						
DUV	40	7	50	70	110																																																																						
High Cube	40	7	50	70	110																																																																						
Special	20	7	50	50	70																																																																						
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Reefer	40	2	110	145	155																																																																						
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PLACE AND DATE OF ISSUE  
 CHICAGO -  
 25-JUNE-2020

SHIPPED ON BOARD DATE  
 25-JUNE-2020

SIGNED By MSC (USA) Inc. as Agent on behalf of the Carrier  
 MSC Mediterranean Shipping Company S.A.

U.S. Edition - 01/2017

038

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ORIGINAL

**AMERITIN INTERNATIONAL CORPORATION INVOICE**

2222 WEST 162ND STREET  
MARKHAM, IL 60428

**SOLD TO:**  
WASIM SHARIF INDUSTRIES (PVT) LTD  
GHAWAR KALLY ROAD  
SHARIF KHAN VILLAGE, SAKHA KOT, DARGAI  
MALAKAND AGENCY KPK PAKISTAN

INVOICE NUMBER | 20-5290  
INVOICE DATE | 6/26/2020  
OUR ORDER NO. | 6088  
TERMS | LC

**SHIPPED TO:**  
WASIM SHARIF INDUSTRIES (PVT) LTD  
GHAWAR KALLY ROAD  
SHARIF KHAN VILLAGE, SAKHA KOT, DARGAI  
MALAKAND AGENCY KPK PAKISTAN

**PRODUCT DESCRIPTION**

ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEIGHTS APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND QUALITY COILS

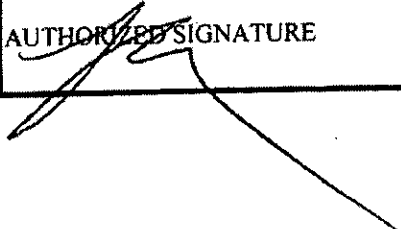
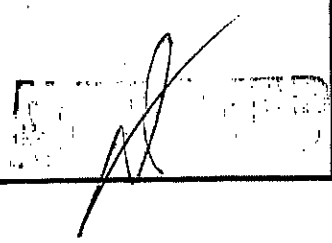
STRICTLY AS PER SALES ORDER NO. 6088 DATED 02.06.2020  
CFR KARACHI SEAPORT/PORT QASIM, PAKISTAN  
QUANTITY SHIPPED: 205.461 MT

205.461 MT AT USD 530 ..... \$108,894.33  
TOTAL CFR PORT KARACHI-MUHAMMAD ..... \$108,894.33

STEAMSHIP LINE: MEDITERRANEAN SHIPPING COMPANY S.A.  
VESSEL / VOYAGE: MSC TOMOKO IU026R  
PORT OF LOADING: NEW YORK, NY  
SAILING DATE: 6/26/2020  
PORT OF DISCHARGE: PORT KARACHI-MUHAMMAD BIN QASIM, PAKISTAN

SALES ORDER NO.: 6088  
BILL OF LADING NO.: MEDUUB487665  
L/C NO.20INSU030200095 DATED: 200604 REF#47041854  
MEEZAN BANK LTD  
HS CODE: 7210.1210  
NTN NO: 2577486-7

WE HEREBY CERTIFY THAT THIS INVOICE IS TRUE AND CORRECT AND THAT THE MERCHANDISE DESCRIBED HEREIN IS THE PRODUCT OF THE UNITED STATES OF AMERICA. THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW PROHIBITED.  
CERTIFIED TRUE AND CORRECT  
AMERITIN INTERNATIONAL CORPORATION

AUTHORIZED SIGNATURE  

50

MT700 95-20 AMERITIN

BIC :MT700 20INSU0302-00095 200604 USD: 116,600.00

TO : CITIBANK, NY, USA  
SWIFT: CITIUS33

FM : MEEZAN BANK LTD, 1-9 MARKAZ BRANCH ISLAMABAD

27: Sequence of Total  
1/1

40A: Form of Documentary Credit  
IRREVOCABLE

20: Documentary Credit Number  
20INSU0302-00095

31C: Date of Issue  
200604

31D: Date and Place of Expiry  
200729 USA

50: Applicant  
WASIM SHARIF INDUSTRIES PVT LTD  
GHAWAR KALLY ROAD, SHARIF KHAN VILLAGE,  
SAKHA KOT DARGAI, MALAKAND AGENCY, KPK, PAKISTAN.

59: Beneficiary - Name & Address  
AMERITIN INTERNATIONAL CORPORATION  
2222 W. 162ND STREET MARKHAM, IL 60428, USA  
TEL: 708-825-1719  
FAX: 708-825-1792

32B: Currency Code, Amount  
Currency : USD (US DOLLAR)  
Amount : #116,600.00#

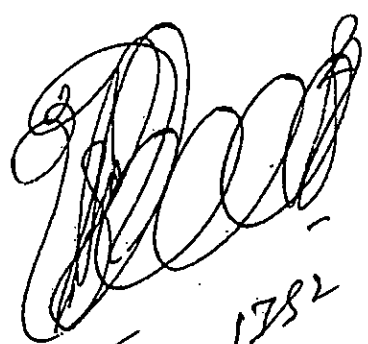
41D: Available With...By... - Name&Addr  
ANY BANK IN USA BY NEGOTIATION

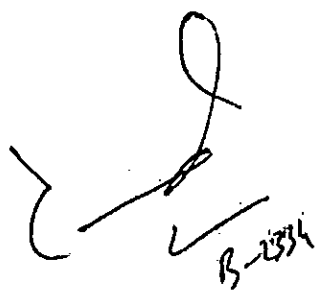
42C: Drafts at...  
SIGHT

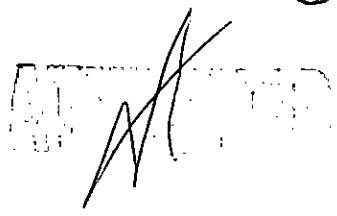
42D: Drawee - Name & Address  
MEEZAN BANK LTD,  
I-9 MARKAZ BRANCH ISLAMABAD

43P: Partial Shipments  
NOT ALLOWED

43T: Transhipment  
NOT ALLOWED

  
C-1782

  
B-2334



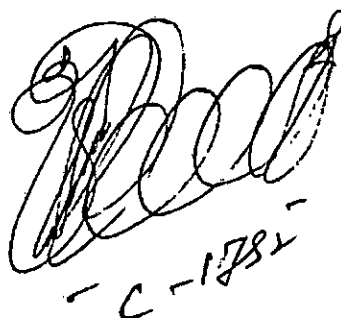
51

MT700 95-20 AMERITIN

44E: PORT OF LOADING  
ANY USA SEAPORT

44F: PORT OF DISCHARGE  
KARACHI SEAPORT/PORT QASIM, PAKISTAN

44C: Latest Date of Shipment  
200630



45A: Descriptn of Goods &/or Services  
220 MT ETP BUILT UP COILS, APRX80 PCT BRT AND 20 PCT MATTE COIL WEGHTS  
APRX3-4MT AND ETP DARK RING COILS, 20-32MM, MAX 20 PCT DARK, GOOD SHAPE AND  
QUALITY COILS.

AT UNIT PRICE USD 530.00 PER MT CFR KARACHI SEAPORT/PORT QASIM, PAKISTAN.  
TOTAL VALUE OF CREDIT USD 116,600.00 STRICTLY AS PER SALES ORDER NO. 6088 DATED  
02.06.2020 OF BENEFICIARY.

46A: Documents Required

1. BENEFICIARY'S MANUALLY SIGNED ORIGINAL COMMERCIAL INVOICES IN EIGHT FOLDS,  
SHOWING H.S. CODE NO. 7210.1210 AND CERTIFYING GOODS ARE OF USA ORIGIN.

2. FULL SET OF CLEAN SHIPPED ON BOARD MARINE ORIGINAL BILL OF LADING MADE OUT  
OR ENDORSED TO THE ORDER OF MEEZAN BANK LIMITED MARKAZ I-9 BRANCH ISLAMABAD,  
PAKISTAN SHOWING FREIGHT PREPAID AND MARK NOTIFY APPLICANT AND MEEZAN BANK LTD.  
BILL OF LADING MUST SHOW NAME AND ADDRESS PHONE FAX NO. OF LOCAL SHIPPING AGENT AT  
FINAL DESTINATION.

3. COPY OF DECLARATION DETAILING ALL SHIPMENTS SENT BY EMAIL DIRECT TO THE  
APPLICANT AT EMAIL imports(AT)awgroup.com.pk AND TO M/S ADAMJEE INSURANCE COMPANY  
LIMITED, 6TH FLOOR, ADAMJEE HOUSE, I.I. CHUNDRIGARH ROAD, KARACHI-74000, PAKISTAN  
EMAIL: MARINE.HO(AT)ADAMJEEINSURANCE.COM WITHIN THREE WORKING DAYS REFERRING TO  
THEIR OPEN POLICY NO: PL-0120-500503-M05-000001, DATED: 07.01.2020.

4. CERTIFICATE OF ORIGIN REQUIRED WITH SHIPPING DOCUMENTS.

5. Certificate from shipping company or their authorized agent certifying  
that the carrying vessel is

- I) Covered under institute classification clause
- II) Not an Israeli/Indian Flag vessel.

47A: Additional Conditions

1. DOCUMENTS DATED PRIOR TO THE DATE OF THIS L/C ARE NOT ACCEPTABLE.

2. NEGOTIATION UNDER RESERVE IS NOT ALLOWED.

3. ALL DOCUMENTS MUST MENTION THIS L/C NUMBER.

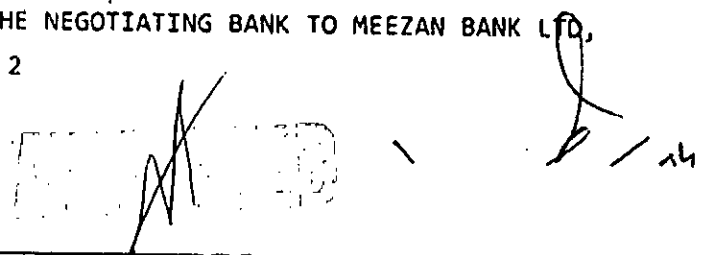
4. ALL SPELLING AND TYPING ERRORS IF NOT CHANGING THE MEANING ARE ACCEPTABLE.

5. ALL DOCUMENTS MUST BE PREPARED IN ENGLISH LANGUAGE.

6. SHORT FORM/BLANK BACK/FORWARDERS/CHARTER PARTY BILL OF LADING NOT  
ACCEPTABLE.

7. THIS L/C IS ISSUED SUBJECT TO COMPLIANCE WITH ALL INTERNATIONAL SANCTIONS  
PERTAINING TO ANTI-MONEY LAUNDERING, FINANCIAL TERRORISM AND ANY APPLICABLE US  
AND/OR EU SANCTION AND TRADE CONTROLS. IN THE EVENT ANY RELATIONSHIP EXISTS  
BETWEEN THE EXPORTER AND SANCTIONS AND TRADE CONTROLS THIS L/C SHALL BE  
IMMEDIATELY CANCELLED WITHOUT RECOURSE AND / OR LIABILITY ON PART OF OPENING  
BANK.

8. DOCUMENTS ARE TO BE DISPATCHED BY THE NEGOTIATING BANK TO MEEZAN BANK LTD,



52

MT700 95-20 AMERITIN

PLOT NO. 2/A, MARKAZ I-9, ISLAMABAD, PAKISTAN IN ORIGINAL BY COURIER.

9. All parties to this transaction are advised that banks may be unable to process a transaction that involves countries, regions, entities, vessels, or individuals sanctioned by the United Nations, The United States, The European Union, The United Kingdom or any other relevant Government and/or regulatory authority and that such authorities may require disclosure of information. Meezan Bank Ltd is not responsible & liable if it, or any other person, fails, loss or delays to perform the transaction or discloses information as a result of actual or potential breach of such sanctions.

71B: Charges

ALL BANK CHARGES OUTSIDE PAKISTAN ARE ON BENEFICIARY ACCOUNT.

48: Period for Presentation

30 DAYS FROM SHIPMENT DATE BUT WITHIN THE VALIDITY OF THIS L/C.

49: Confirmation Instructions

WITHOUT

78: Instr to Payg/Acceptg/Negotg Bank

1. UPON RECEIPT OF DOCUMENTS STRICTLY COMPLYING WITH TERMS OF THIS L/C, WE SHALL REMIT PROCEEDS AS PER INFORMATION GIVEN ON YOUR COVERING SCHEDULE.

2. AMOUNT OF EACH DRAWING MUST BE ENDORSED OVERLEAF OF THIS L/C.

3. THE NEGOTIATING BANK MUST NOT NEGOTIATE UNLESS THE BENEFICIARY PRESENTS THE ABOVE REQUIRED DOCUMENTS STRICTLY COMPLYING TO THE L/C.

4. DISCREPANT DOCUMENTS MUST BE SENT TO US ENTIRELY ON APPROVAL BASIS. USD 65.00 PLUS GOVERNMENT TAXES USD 10.00 WILL BE CHARGES AS DISCREPANCY HANDLING CHARGES.

72: Sender to Receiver Information

PLEASE ACKNOWLEDGE RECEIPT.

THIS L/C IS ISSUED SUBJECT TO UCP FOR L/C 2007 REVISION OF ICCP NO. 600. INCOTERMS ARE SUBJECT TO INCOTERMS 2010.

C-1782

53

40-08/20

GOODS DECLARATION, GD-1

Importers/Exporters Copy

Custom File No.

[X] BILL OF ENTRY [ ] BILL OF EXPORT [ ] BAGGAGE DECLARATION

[ ] TRANSSHIPMENT PERMIT

1. EXPORTER'S/CONSIGNOR'S NAME AND ADDRESS PT. TAUNJUNG SARANA LESTARI. INDONESIA				2. DECLARATION TYPE EB		3. VALUATION METHOD 1		4. PREVIOUS REF KPOLID-18212T 18 09 2020	
10. IMPORTER'S/CONSIGNEE'S/PASSENGER NAME & ADDRESS WASIM SHARIF INDUSTRIES (PVT.) LIMITED GAWAR KALAY ROAD SHARIF KHAN VILLAGE SAKHAKOT MALAKAND AGEMALAKAND AGENCY				5. PAGE 1 OF PAGE 1		6. CUSTOM OFFICE KPOI		7. BANK CODE	
14. NTN 01-01-2577486				15. STR.No / PASSPORT NO & DATE 55-55-5555-555-55		8. IGM/EGM NO & DT 738 14-09-2020		INDEX 20	
18. DOCUMENTS ATTACHED <input checked="" type="checkbox"/> INV <input type="checkbox"/> B/G <input checked="" type="checkbox"/> BL/AWB/ <input type="checkbox"/> IT EXMP <input type="checkbox"/> CO <input type="checkbox"/> PL				E-Form No & Date		9. DRY PORT IGM/EGM NO & DT		INDEX	
22. VESSEL MODE OF TRANSPORT M.T. "SONGA DIAMOND" [1]				23. BL.AWL.CON.NO & DATE TBK/PQM-PL-13 24-08-2020		11. DECLARANT (OTHER THAN IMPORTER/EXPORTER) M.R.SHIPPING AGENCY (PVT) LTD ROOM#5 MEZANINE FLOOR SUTLI PLAZA KHARADHAR KARACHI. 12. TEL 2313948		13. C.H.A.L No 1500 Job No 821 2020 821/2020	
27. PORT OF DISCHARGE KPOI				28. PLACE OF DELIVERY KPOI		16. WAREHOUSE LIC NO KPOI PB 01/2001 MQB		17. TRANSACTION TYPE U	
31. NUMBER OF PACKAGES 50000.00				32. TYPE OF PACKAGE KGS		33. GR OSS WT KG 250000.0000		34. Volume M3	
35. GENERAL DESCRIPTION OF GOODS RBD PALM OLEIN (IN BULK) REUTER PRICE US.635.50 + FRIGHT US.25 + TOTAL US.660.50 P.M.TONS.				36. IN THE CASE OF DANGEROUS GOODS INDICATE HAZARD CLASS/DIV.FLASH POINT		37. GR NET WT KG 250000.0000		38. NET WT KG 250000.0000	
37. ITEM NO. 1		38. QUANTITY (a) Unit Type KG		38(b). NO OF UNITS 250000.0000		39. CO CODE 360		40. SRO NO SRO6TH SRO572(I)/2020 240 SRO741(U)2013 0	
42. ITEM DESCRIPTION OF GOODS RBD-PALM OLEIN				46. LEVY 1 CD F 7.69 4 RD F .05 7 CED % 17.00		47. RATE 30-6-2020 28-8-2013		48. SUM PAYABLE (PKR) 1,923,125 12,500 5,046,231	
43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed		49. SRO / Test Report No & Dt C-322 30/9/20		50. FOB VALUE ST. FREIGHT	
0.6500 0.6605		162,500.0000 165,125.0000		27,306.973 27,748.086		52. CFR VALUE 165,125.0000 US \$		54. LANDING CHARGES @ 1%	
37. ITEM NO. 2				38. QUANTITY (a) Unit Type		38(b). NO OF UNITS		39. CO CODE	
42. ITEM DESCRIPTION OF GOODS INCOME TAX EXEMPTED VIDE HONORABLE HIGH COURT OF PESHAWAR WIRE PETITION NO.5314-P/2018				46. LEVY		47. RATE		48. SUM PAYABLE (PKR)	
43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed		53. INSURANCE 21,321.0000		55. OTHER CHARGES	
						56. ASSESSED VALUE PKR 27,748,086		57. TOTAL REBATE CLAIM/ PROV. ASSMNT US \$ 81	
58. MACHINE NO. & DATE KPOI-EB-625 DT: 22-SEP-2020 Exch Rt: 168.250000 US \$ Appraiser: 1502 SABIR ALI KHAN		59. REVENUE RECOVER CODE LEVY 1 CD 4 RD 7 CED		60. AMOUNT (PKR) 1,923,125 12,500 5,046,231 5049062		61. A.O's name, sig & stamp Appraising Officer MCC (PMBQ)		62. P.A.s name, sig & stamp	
Total:				6984691 6981858		63. Out of Charge Sig & Stamp		64. I/we declare that the above information is correct. M.R. SHIPPING AGENCY (PVT) LTD CHIEF EXECUTIVE DECLARANT'S NAME & DESIGNATION, PLACE, SIG & DATE 65. PORT NO & DATE 66. BANK Stamp 30 SEP 2020 RECEIVED CUSTOMS 67. AUTHORIZED SIGNATURE	

Handwritten notes and signatures at the bottom of the form.

54

# Tanker Bill of Lading

B/L NO. TBK/PQM-PL-13

Shipped in apparent good order and condition by

Shipper

PT. TANJUNG SARANA LESTARI  
JL. PULO AYANG RAYA BLOK OR.I KIP,  
JATINEGARA, CAKUNG, JAKARTA TIMUR, INDONESIA

Consignee/Order of

TO THE ORDER OF BANK AL HABIB LTD., PAKISTAN

Notify address

WASIM SHARIF INDUSTRIES (PVT) LTD., GHAWAR KALLY ROAD, SHARIF KHAN  
VILLAGE, SAKHA KOT DARGAI, MALAKAND, AGENCY, KPK, PAKISTAN AND  
BANK AL HABIB LTD. PAKISTAN

## FIRST ORIGINAL

On board the tanker

Flag

Master

MT SONGA DIAMOND VOY 20809

MARSHALL ISLANDS

Loaded at the port of

To be delivered to the port of

TANJUNG BAKAU, INDONESIA

PORT QASIM, PAKISTAN

A quantity in bulk said by the Shipper to be:

COMMODITY

(Name of Product)

RBD PALM OLEIN IN BULK  
VESSEL IMO NUMBER: 9460469; APPLICANT'S NTN NUMBER 2577486-7  
DOCUMENTARY CREDIT NUMBER: 0086LC41133/2020; DATE: 200728  
NAME OF L/C ISSUING BANK (BANK AL HABIB LTD., PAKISTAN)

QUANTITY

(lbs., tonnes, barrels, gallons)

250.00 M.TONS

CLEAN SHIPPED ON BOARD

FREIGHT PREPAID

DEAN CARRIAGE STOWAGE: 1S, 3P, 3S, 4P, 4S, 5P, 5S, 6P, 6S, 7P AND 7S

This shipment of

250.00

Metric tons was loaded on board the Vessel as part of one original lot of

12,499,860

Metric tons stowed in

1S, 3P, 3S, 4P, 4S, 5P, 5S, 6P, 6S, 7P AND 7S

with no segregation as to parcels. For the whole shipment

30

(THIRTY)

seals

Of Bill of Lading have been issued for which the Vessel is relieved from all responsibilities to the extent it would be if one set only would have been issued. The Vessel undertakes to deliver only that portion of the cargo actually boxed which is represented by the percentage that the total amount specified in the Bill(s) of Lading bears to the total of the commingling shipment delivered at destination. Neither the Vessel nor the owners assume any responsibility for the consequences of such commingling nor for the separation thereof at the time of delivery in respect of the quality, colour and specification of the cargo.

The quantity, measurement, weight, gauge, quality, nature and value and actual condition of the cargo unknown to the Vessel and the Master, to be delivered to the port of discharge or so near thereto as the Vessel can safely get, always aloft upon prior payment of freight as agreed. Cargo is warranted free of danger to Vessel except for the usual risks inherent in the carriage of the commodity as described.

This shipment is carried under and pursuant to the terms of the Charter dated

30 JULY 2020

Between

SONGA PRODUCT AND  
CHEMICAL TANKERS AS

As Disponent Owner and

ASTRA-KLK PTE LTD

As Charterers, and all conditions, Liberties

And exceptions whatsoever of the said Charter apply to and govern the rights of the parties concerned in this shipment. The Clause Paramount, New Jason Clause and Both to Blame Collision Clause as set out on the reverse of this Bill of Lading are hereby incorporated herein and shall remain in effect even if unenforceable in the United States of America. General Average payment according to the York-Antwerp Rules 1974, as amended 1994.

The Master is authorized to act for all interests in arranging for salvage assistance on terms of Lloyd's Open Form. The freight is payable and is earned concurrent with loading, ship and/or cargo lost or not lost or abandoned.

The Owners shall have an absolute lien on the cargo for all freight, Deadfreight, demurrage, damages for detention and all other monies due under the above mentioned Charter or under this Bill of Lading, together with the costs and expenses, including attorneys fees, of recovering same, and shall be entitled to sell or otherwise dispose of the property liened and apply the proceeds towards satisfaction of such liability.

The contract of carriage evidenced by this Bill of Lading is between the shipper, consignee and/or owner of the cargo and the owner or demise charterers of the Vessel named herein to carry the cargo described above.

It is understood and agreed that, other than said shipowner or demise charterer, no person, firm or corporation or other legal entity whatsoever, is or shall be deemed to be liable with respect to the shipment as carrier, bailee or otherwise in contract or in tort. If, however, it shall be adjudged that any other than said shipowner or demise charterer is carrier or bailee of said shipment or under any responsibility with respect thereto, all limitations of or exonerations from liability and all defences provided by law or by the terms of the contract of carriage shall be available to such other.

All of the provisions written, printed or stamped on either side hereof are part of this Bill of Lading Contract.

In Witness Whereof, the master has signed

THREE (3) ORIGINALS

Bills of Lading of this tenor and date, one of which being accomplished, the others will be void.

SINGAPORE AS AT TANJUNG

Dated at

BAKAU, INDONESIA

this

24<sup>TH</sup>

day of

AUGUST

2020

DISPORT AGENT:

ALPINE MARINE SERVICES PRIVATE LIMITED

38 A/5, BEACH HOTEL ROAD, LALAZAR DRIVE, OFF M T KHAN ROAD

KARACHI 74000, PAKISTAN

PIC: NAVEED FAROOQ

GM OPS TEAM 3 - YEGOILS AND DRY BULK

DIRECT: +92 21 35610 216 | CELL: +92 308 2222 809

PHONE: +92 21 35611 051 | FAX: +92 21 35611 081

E-MAIL: [Naveed.farooq@alpinemarine.com](mailto:Naveed.farooq@alpinemarine.com)

TEAM@: [Ops.T3@alpinemarine.com](mailto:Ops.T3@alpinemarine.com) | WEB: [www.alpinemarine.com](http://www.alpinemarine.com)

AS AGENTS FOR AND ON BEHALF OF THE

MASTER

CAPT. FEDOR MARICIC

55

# ASTRA-KLK Pte. Ltd.

Company Registration Number : 201318086K  
(Incorporated in the Republic of Singapore)

### BILL TO

WASIM SHARIF INDUSTRIES (PVT) LTD.  
GHAWAR KALLY ROAD, SHARIF KHAN VILLAGE, SAKHA  
KOT, MALAKAND AGENCY KPK, PAKISTAN.

Invoice Ref. : INVAR11675  
Invoice Date : 24/08/2020  
Basis : CFR Port Qasim, Pakistan

Vessel : MT SONGA DIAMOND VOY 20609  
BL No : TBK/PQM-PL-13  
BL Date : 24/08/2020  
Load Port : TANJUNG BAKAU, INDONESIA  
To : PORT QASIM, PAKISTAN

Description	Amount US Dollars
RBD PALM OLEIN IN BULK QUANTITY : 250.00 M.TONS AT THE RATE OF USD 650.00 PER M.TON FURTHER DETAILS ARE STRICTLY AS PER SALES CONTRACT NUMBER ASK/47669-S DATED JULY 16, 2020 CFR PORT QASIM - PAKISTAN (INCOTERMS: 2020) MERCHANDISE ARE OF INDONESIAN ORIGIN H.S.CODE NO.1511.9030 APPLICANT'S NTN NUMBER 2577486-7 DOCUMENTARY CREDIT NUMBER: 0086LC41133/2020; DATE: 200728 NAME OF L/C ISSUING BANK (BANK AL HABIB LTD., PAKISTAN) ASK/47669-S      250.000 @ USD 650.00 PER MT	162,500.00
<b>Total Amount Due To Us :</b>	<b>USD 162,500.00</b>
(USD: One Hundred Sixty-Two Thousand Five Hundred Only)	

Kindly Quote our invoice number

ASTRA-KLK PTE LTD



*[Handwritten signature]*

Bank Al Habib Limited  
 50457/20  
 298 Tiong Bahru Road #14-02/03, Central Plaza Singapore 169 80, Singapore  
 Phone: 65134560 Fax: 68360425  
 Control Processing Unit

29/07/20-10:42:43

0086-1465-014853

Possible duplicate delivery

Network : SWIFT  
Session Holder : BAHLPKKAAXXXF  
Session : 7585  
Sequence : 918156  
Delivery Status : Network Ack

----- Instance Type and Transmission -----  
Original received from APPLI  
Priority/Delivery : Normal  
Message Output Reference : 1850 200728IMPORT25389000001

----- Message Header -----  
Swift Input : FIN 700 Issue of a Documentary Credit  
Sender : BAHLPKKACFU  
BANK AL HABIB LIMITED  
(CENTRAL PROCESSING UNIT)  
KARACHI PK  
Receiver : SCBLSG22XXX  
STANDARD CHARTERED BANK (SINGAPORE) LIMITED  
SINGAPORE SG

MOR : EN349136

----- Message Text -----  
27: Sequence of Total  
1/1  
40A: Form of Documentary Credit  
IRREVOCABLE  
20: Documentary Credit Number  
0986LC41133/2020  
31C: Date of Issue  
200728  
40E: Applicable Rules  
UCP LATEST VERSION  
31D: Date and Place of Expiry  
200929 AT SINGAPORE  
50: Applicant  
NASIM SHARIF INDUSTRIES (PVT) LTD.,  
GHAWAR KALLY ROAD, SHARIF KHAN  
VILLAGE, SAKHA KOT DARGAI,  
MALAKAND, AGENCY, KPK, PAKISTAN  
59: Beneficiary - Name & Address  
ASTRA-KIK PTE. LTD.  
296 TIONG BAHRU ROAD  
NO. 14-02/03 CENTRAL PLAZA  
SINGAPORE 168730  
22B: Currency Code, Amount  
Currency : USD (US DOLLAR)  
Amount : \$161,500.00  
39A: Percentage Credit Amt Tolerance  
02/02  
41D: Available With...By... - Name&Addr  
ANY BANK IN SINGAPORE  
BY NEGOTIATION  
42C: Drafts at...  
SIGHT  
42D: Drawee - Name & Address  
BANK AL HABIB LIMITED,  
PAKISTAN  
43P: Partial Shipments  
NOT ALLOWED  
43T: Transhipment  
NOT ALLOWED  
44E: Port of Loading/Airport of Dep.  
ANY INDONESIAN OR MALAYSIAN PORT  
44F: Port of Discharge/Airport of Des  
PORT QASIM - PAKISTAN  
44C: Latest Date of Shipment  
200831

M

2016 P T D 203

[Peshawar High Court]

Before Yahya Afridi and Muhammad Daud Khan, JJ

Messrs TAJ PACKAGES COMPANY (PVT.) LTD. through Manager

Versus

The GOVERNMENT OF PAKISTAN through Federal Secretary Finance and Revenue Division and 6 others

Writ Petition No.916-P of 2013, decided on 30th April, 2015.

**(a) Constitution of Pakistan---**

---Arts. 247 & 258---Federally Administered Tribal Areas or Provincially Administered Tribal Areas---  
Applicability of law---Any law or principle laid down for Azad Jammu and Kashmir is not applicable to  
Federally Administered Tribal Areas or Provincially Administered Tribal Areas.

**(b) Sales Tax Act (VII of 1990)---**

---S. 3---Sales Tax---Scope---Sales tax is an indirect tax and when paid at import stage it is to be passed on  
to ultimate consumer through adjustments to be made in output taxes by each person in production and  
commercial chain leading to final consumer as provided under the enabling provisions of the Sales Tax Act,  
1990.

**(c) Income Tax Ordinance (XLIX of 2001)---**

---Ss. 4, 148(7) & 168(2)(b)---Advance Tax---Scope---Advance tax is declared as final tax but there are  
exceptions to the same which have been provided in proviso to S. 148(7) of Income Tax Ordinance, 2001,  
which keeps advance tax paid on imports including machinery and raw material, to be utilized by importer  
from being declared the final tax---Such advance tax paid by importer, is to be adjusted as tax credit within  
the contemplation of S. 168(2)(b) of Income Tax Ordinance, 2001---Although, advance tax collected under  
S. 148 of Income Tax Ordinance, 2001, has not been included in taxable income, as provided under S. 4 of  
Income Tax Ordinance, 2001, yet payments made thereunder have been expressly brought within the scope  
of charging section by its clear stipulation in S. 4(5) of Income Tax Ordinance, 2001.

**(d) Income Tax Ordinance (XLIX of 2001)---**

---S. 4---Sales Tax Act (VII of 1990), S. 3---"Income tax" and "sales tax"---Distinction---Though the two  
taxes are conceptually different taxes; under Income Tax Ordinance, 2001, being a direct tax, while sales tax  
under Sales Tax Act, 1990, being an indirect tax, yet the legislature in its wisdom had placed two taxes in  
respective enactments in a manner whereby scope and burden on the payer of the two taxes have a very  
striking similarity---Any legal finding on one is surely applicable upon the other.

**(e) Precedent---**

---Principle of following precedent---Scope---When precedent of High Court rendered by a Bench  
comprising of equal or more judges did not take into consideration the clear principle laid down by Supreme  
Court, then High Court has to follow ratio decidendi of the decision of Supreme Court.

Pak Turk Enterprises' case 2015 CLC 1 rel.

**(f) Sales Tax Act (VII of 1990)---**

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---S. 3---Income Tax Ordinance (XLIX of 2001), Ss. 4 & 148---Constitution of Pakistan, Arts. 199 & 247--- Constitutional petition---Taxes, exemption from---Petitioners were carrying on their business in Federally Administered Tribal Areas and Provincially Administered Tribal Areas and they were aggrieved of advance tax and sales tax levied upon imports made by them for consumption within the territorial jurisdictions of Federally Administered Tribal Areas and Provincially Administered Tribal Areas---Persons carrying on business in Federally Administered Tribal Areas or Provincially Administered Tribal Areas did not require specific exemption from Federal Government, through any subordinate legislation---Such persons were granted express immunity from those taxing enactments, such as the Income Tax Ordinance, 2001 and the Sales Tax Act, 1990, which had not been extended to those areas, under Art. 247(3) of the Constitution--- High Court declared that advance tax charged on import under S. 148 of the Income Tax Ordinance, 2001, was not payable by petitioners importing goods for its utilization or consumption in Federally Administered Tribal Areas or Provincially Administered Tribal Areas---High Court further declared that sales tax charged under S. 3(1)(b) of the Sales Tax Act, 1990, was not payable by petitioners importing goods for its utilization of consumption in Federally Administered Tribal Areas or Provincially Administered Tribal Areas; that the Federal Government to take appropriate steps to ensure that persons carrying on business in Federally Administered Tribal Areas or Provincially Administered Tribal Areas were rendered immunity from the payment of taxes under Income Tax Ordinance, 2001, and Sales Tax Act, 1990, as the said statutes had not been extended to said areas within the contemplation of Art. 247(3) of the Constitution; that the Federal Government to take necessary steps to formulate a uniform policy for seeking securities from the persons importing goods for its consumption and utilization in Federally Administered Tribal Areas and Provincially Administered Tribal Areas so that immunity provided under the Constitution would not be abused and in case imported goods were utilized or sold outside that areas then the revenue of the State would be recoverable from the security so provided; that till the decision was taken by Federal Government regarding security mechanism, the Federal Board of Revenue would obtain from petitioners postdated cheques for payment of taxes at import stage under Sales Tax Act, 1990, and Income Tax Ordinance, 2001, as security for goods destined for utilization and consumption in Federally Administered Tribal Areas or Provincially Administered Tribal Areas; that postdated cheques would be returned to petitioners upon production of consumption certificates duly issued by concerned authorities as specified in notification dated 28-2-2011 and liability was fixed upon petitioners to approach authorities for issuance of consumption certificates--- Constitutional petition was disposed of accordingly.

Gul Cooking Oils's case Writ Petition No.1278 of 1999; Gul Cooking Oil's case Civil Appeal No.1578 of 2000 (2003 PTD 1913); Master Foam's case PLD 2005 SC 373; Mahsud Ghee Industries' case CPLA No.307 of 2004; Gul Cooking Oil's case 2008 PTD 169; Mahsood Ghee Industries's case CRP 64/2007; Messrs Lal Ghee Oil Mills' case 2010 PTD 438; Excellence Plastic's case W.P. No.2212 of 2006; Roshni Mat's case W.P. No.1845 of 2005; Abdul Shakoor Proprietor's case Tax Reference No.15 of 2009 and Messrs Afridi Poly Propylene Industries' case W.P. No.453 of 2004 ref.

Isaac Ali Qazi for Petitioner.

Ishtiaq Ahmad (Junior), Shahid Raza Malik, Ghulam Shoaib Jally and Syed Muhammad Attique Shah, Additional Attorney General for Respondents.

Date of hearing: 7th April, 2015.

## JUDGMENT

**YAHYA AFRIDI, J.**---Through this single judgment, this Court proposes to dispose of fifteen writ petitions, as they all have common questions of law involved therein. The particulars of the said writ Petitions are as follows:--

- (1) Writ Petition No.916-P/2013 with I.R. & C.M No.344/2012. (M/s. Taj Packages Company (Pvt.) Ltd. Sakhakot Zarabad, Near Taj CNG, Malakand Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).
- (2) Writ Petition No.920-P/2013 with I.R. (M/s Taj Wood Board Mills (Pvt.) Ltd Main Road, Opposite Ali Flour Mills, Near Taj Ghee Mills, Sakhakot, Malakand Agency v. The Government of

**ATTESTED**

Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(3) Writ Petition No.1830-P/2014 with C.M No.204-P/2015. (M/s. Sher Steel Furnace & Re-Rolling Mills Main Road Dargai, Malakand Agency, PATA v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and eight others).

(4) Writ Petition No.190-P/2015 with C.M No.15-P/2015. (M/s. Universal Steel Mills Ghallanai, Mohmand Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(5) Writ Petition No.192-P/2015 with C.M No.18-P/2015. (M/s. AK Tariq Foundry Aka Khel, Alam Godhar, Bara Road, Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(6) Writ Petition No.194-P/2015 with C.M No.21-P/2015. (M/s Mohmand Moulding Works Shah Kas, Jamrud, Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(7) Writ Petition No.221-P/2015 with C.M No.24-P/2015. (M/s Alhaj Foundry, Shah Kas, Bara Road, Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(8) Writ Petition No.917-P/2013 with I.R & C.M No.345-P/2013. (M/s. Taj Packages Company (Pvt) Ltd Sakhakot Zarabad, Near Taj CNG, Malakand Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(9) Writ Petition No.919-P/2013 with I.R. (M/s Taj Wood Board Mills (Pvt) Ltd Main Road, Opposite Ali Flour Mills, Near Taj Ghee Mills, Sakhakot, Malakand Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(10) Writ Petition No.1644-P/2014 with I.R. (Umar Zada s/o Malak Zada Managing Partner of M/s Pearl White Packages v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and four others).

(11) Writ Petition No.1831-P/2014 with COC No.80-P/2015. (M/s Sher Steel Furnace & Re-Rolling Mills Main Road Dargai, Malakand Agency, PATA v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and eight others).

(12) Writ Petition No.191-P/2015 with C.M No.16-P/2015. (M/s Universal Steel Mills Ghallanai, Mohmand Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(13) Writ Petition No.193-P/2015. (M/s AK Tariq Foundry, Aka Khel, Alam Godhar, Bara Road, Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(14) Writ Petition No.195-P/2015 with C.M No.23-P/2015. (M/s Mohmand Moulding Steel Furnace Shah Kas, Jamrud Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

(15) Writ Petition No.222-P/2015 with C.M No.25-P/2015. (M/s Alhaj Foundry, Khyber Agency v. The Government of Pakistan through Federal Secretary Finance and Revenue Division Islamabad and six others).

2. There are two sets of petitions; in the first set of petitions, stated herein above at serial Nos.1 to 7, the petitioners seek to invoke the Constitutional jurisdiction of this Court, praying essentially that:--

"It is, therefore, respectfully prayed that on acceptance of this petition, an appropriate writ/order may kindly be issued declaring that petitioner's import to FATA or PATA are not liable to Income Tax."

**ATTESTED**

While, in the second set of petitions, listed hereinabove at serial Nos.8 to 15, the petitioners have essentially sought that:--

"It is therefore, respectfully prayed that on acceptance of this petition, an appropriate writ/order may kindly be issued declaring that petitioner import to FATA or PATA are not liable to Sales Tax. "

3. In essence, the petitioners have a common contention that they are carrying on business in Federally Administered Tribal Area ("FATA") or Provincially Administered Tribal Area ("PATA") and so the advance tax and sales tax levied upon imports being made by the petitioners for its consumption within the territorial jurisdiction of FATA or PATA are beyond the purview of levy and collection regimes provided in the Income Tax Ordinance, 2001 ("Ordinance"), and the Sales Tax Act, 1990 ("Act"), as the said enactments have not been extended to FATA or PATA in terms of the command of Article 247(3) of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"). Accordingly, the petitioners seek issuance of appropriate writ, declaring that the goods imported by petitioners and destined for consumption in FATA or PATA are not liable to advance Tax and Sales Tax under the relevant enactments.

4. The submissions of the worthy counsel for the petitioners can best be recaptured in the written arguments that he submitted, wherein it was, essentially contended that:--

"Petitioner has to import the aforesaid (i) raw material for consumption in their units and (ii) machinery for upgrading and updating of their units which import in view of Article 247(3) of the Constitution cannot be subject to Taxes leviable either under the Income Tax Ordinance, 2001 or under the Sales Tax Act, 1990.

2.1 That despite of prevalent sunshine legal position, the Customs authorities bent upon to charge payment of aforesaid taxes.

2.2 The petitioner explained to Customs authorities as being a unit of the FATA, their consignments are not liable to any income tax for being destined and to be consumed in FATA / PATA to which so far the aforesaid two statutes have not been extended yet, authorities refused to submit to the Constitution.

2.3 Hence, petitioners invoked the constitutional jurisdiction of this honourable Court to protect their constitutional immunity against payment of Sales Tax and Income Tax more precisely at import stage.

3. That in the following it is hereby demonstrated that how despite of immunity from the taxes leviable under the Income Tax Ordinance, 2001 because of its non-extension in terms of Article 247 ibid how the petitioners is being subjected to income tax specially at import stage.

3.1 That Income Tax Ordinance, 2001, is a DIRECT TAX where the incident of tax is to be borne by the tax payer.

3.2 That relevant to the case it is not the provisions of the Customs Act, 1969 per se rather it is section 148 of Income Tax Ordinance, 2001 which empowers the Collector Customs to collect income tax at import stage.

3.3 That the income tax collected at import stage is either final tax liability or adjustable / deductible against the final tax liability.

3.4 That in case of imports of industrial raw material or machinery under subsection (7) of Section 148 ibid these are final tax liability rather adjustable towards assessed liability.

3.5 Thus, tax paid by the industries of settled area at import stage on import of raw material or machinery are adjustable against the final tax liability assessed in their Return filed under section 114 ibid or against the Assessment Orders passed under sections 120, 121, 122 of the Ordinance.

3.6 That the final liability of income tax primarily to be discharged by filing Annual Return under section 114 ibid (base on profit and loss account) or Annual Statement under section 115 ibid in case of final tax liability.

3.7 That under section 209(3) ibid, the income tax assessee files their tax returns either before the Commissioner of Income Tax having jurisdiction either on his place of business or place of residence.

3.8 That petitioners being a resident of FATA at first place have (i) neither have a taxable income (ii) nor having Income Tax Authorities having jurisdiction either upon their place of business or residence, thus, (iii) stricto sensu no valid legal mechanism available through which tax paid at import stage be refundable to them.

3.9 That in view of the above, where the petitioners having no final taxable income collecting of tax at import stage is not only against the law but also in naked violation of the Constitution.

**ATTESTED**

3.10. Attention is invited, inter alia, to clause 72(B) of the Second Schedule *ibid*, if there is no likelihood of any tax payable at the end of the year then tax payable under section 148 *ibid* at import stage is exempted to him.

3.11 That on analogy of clause 72(B) *ibid* where the petitioners liability under the Income Tax Ordinance, 2011 in view of Article 247(3) of the Constitution can never arise, therefore, without prejudice of constitutional immunity, petitioners imports of raw material and machinery are like industrial importers of the settled areas are otherwise exempt from Income Tax at import stage.

3.12 That there are host of importers of different categories who enjoy exemption under various provisions of the Income Tax Ordinance, 2001 and their consignments are released without any payment of Income Tax without any apprehension and fear then the reluctance in case of industries of the Tribal Area smells mala fide, discrimination because of their place of business and residence which is a stark violation of fundamental rights as protected under Articles 18, 23, 24 and 25 of the Constitution.

3.13 That approach of the Revenue is against the letter and spirit of Article 37 of the Constitution which ordain that the state promote the down-trodden Areas and people vis a vis of the developed (settled) Areas.

4. That now tax leviable under the Sales Tax Act, 1990, which is an indirect tax, a final incident of tax is to be borne by the end consumers which is incidentally for the first instant is the petitioner who is an industrial consumer for importing of their consumption within their industries and in final analysis their buyers/end consumers of their products are also resident of FATA, who in view of Article 247(3) *ibid* cannot be charged for sales tax as delineated below:

4.1 That as the sales tax is based on Value Added Tax (VAT) System, therefore, it considers (i) the importer, (ii) the manufacturer, (iii) the dealer, (iv) the Distributor, (v) the whole seller and (vi) the retailer as intermediary, a mere collecting agent to transmit the incidence of tax from importer / manufacturer to the end consumers.

4.2 That the reading sections 3,4,6,7,8(A), 10,23 and 26 *ibid* provide a CHAIN as to how tax paid at import stage is to be finally transferred to or exacted from the end consumers.

4.3 That under the Sales Tax Act, 1990, there are two charging sections.

4.3.1 Section-3 whereby imports and local supplies are charged at varying rates say ad valorem 17% or at reduced rates or specific rates.

4.3.2 Section 4 whereby imports, local supplies and exports are charged subject to zero rate of sales tax.

4.4 That import stage again not the provisions of the Customs Act, 1969 per se rather it is section 6 *ibid*, empowers the Collector Customs to collect the sales tax leviable under the Sales Tax Act, 1990.

4.5 That in the instant case, the petitioners per se consumers (industrial consumer) and buyer of their finished product being resident of FATA/PATA are not liable to pay sales tax because of non-extension of Sales Tax Act, 1990 in terms of Article 247(3) of the Constitution as held by the three Members Bench of the apex Court headed by the honourable Chief Justice Mr. Justice Iftikhar Muhammad Chaudhry in C.As. Nos.811 to 818/2008 dated 24.6.2011.

4.6 That due to non-extension of Sales Tax Act, 1990 to FATA, the petitioners can neither issue a sales tax invoice under section 23 *ibid* nor can file Sales Tax Return under section 26 *ibid* so as to retrieve or recover the tax paid at import stage under section 7 *ibid* from the buyers/consumers incidentally resident of Tribal Areas.

4.7 That registered person under the Sales Tax Act, 1990 can file monthly sales tax return under section 26 *ibid* to the authority having jurisdiction over its place of business which authority is non-existent in case of the petitioners.

4.8 That under section 13 *ibid* there are lot of goods and a lot of importers of the Tariff Area whose imports are exempt and they are importing and transporting their exempted goods to their place of business without any conditions to and selling their finished product without any hindrance all over the country.

4.9 That Gadoon i.e is one of the examples where both imports and their subsequent supplies were exempt and is being supplied to all over the country.

4.10 That where petitioners imports are constitutionally immune from the tax leviable under the Sales Tax Act, 1990, therefore, the apprehension of the revenue merely on the basis of place of business is not only harsh, discriminative but also in violation of the Constitution.

5. In rebuttal, the worthy counsel for the Revenue has also submitted his written arguments, which are essentially in terms:

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"(a) That the instant writ petition is not acceptable as it should be filed in Darul Qaza and should not be filed at principal seat.

(b) That the adequate remedy is available to petitioners and can avail that remedy i.e petitioner can file application or presentation under different provisions of the Income Tax Ordinance, 2001, Sales Tax Act, 1990, Customs Act and Federal Excise Act, 2005. Furthermore, if even then the petitioner is aggrieved from concerned officer order on the application of the petitioner then appeal or revision or review provision is also available in hierarchy under the Income Tax Ordinance, 2001, Sales Tax Act, 1990, Customs Act and Federal Excise Act, 2005.

(c) That in every law exemption provision is also available and the petitioner can come under that provision and can seek exemption from the concerned quarters and if not satisfied from concerned quarters order then even can file writ petition but direct filing of writ petition is not appropriate.

(d) That similarly, the provision of the refund is also available to petitioner and if the petitioner thinks that any amount or tax or levy is wrongly collected so then he can apply for refund to respondents.

(e) That the matter is decided matter and this Honourable Court has already decided the matter in favour of respondent and this is golden principle of law that this being identical matter may also be decided in same way and the writ petition in hands may be dismissed with costs.

(f) That the import goods is raw material that there is no guarantee that these goods consume in an area where Income Tax has not been extended with an Art. 247(3) of the Constitution.

(g) That the petitioner can apply under section 159 of the Income Tax Ordinance, 2001, to concerned officer needless to mention that the respondents gave exemption to those persons who were not belonging to FATA but they establish the case and the respondents gave exemption without any delay.

(h) That if the petitioner is not satisfied over the order under section 159(4) then petitioner can apply very smoothly under section 122(B) for revision in Income Tax Ordinance, 2001.

(i) That the petitioner can also apply under section 193 of the Customs Act, 1969 if not satisfied from any assessment under section 80 or provisional assessment under 81 of the Customs Act, 1969.

(j) That there are certain provisions for exemption under different Income Tax Ordinance, 2001, Federal Excise Act, 2005 etc so the petitioner may apply under those provision for exemption.

(k) That similarly in past the worthy court declared that once the taxable events is import in to Pakistan then it is immaterial that these goods meant for consumption in an area where the tax has not been extended within the terms of Art.247(3) of the Constitution, 1973.

(l) That there are numerous judgments in which on the same point the petitions are dismissed i.e W.P. No.854 of 2006 M/S Lal Ghee v. Pakistan etc., W.P. No-589 Government of Pakistan, W.P. No.1845/11, M/S Roshni Mat v. Collector Customs etc, Review Petition No.44/11 M/S Star Plastic v. Collector Sales Tax etc., W.P No.3564/2010 decided on 12.6.2014 M/S Adil Corporation v. Government of Pakistan etc., W.P No.459/2010 decided on 18.10.2012 M/s. Waziristan Flour Mills v. Government of Pakistan etc, 2008 PTD 196 Commissioner Income Tax v. M/s Gul Cooking Oil and six others.

(m) That this is duty of respondents Nos.5 and 6 to collect duty and taxes from petitioner under section 81 and others provisions of the Customs Act and other laws.

6. Before this Court considers the contested contentions of the parties, it is essential to note that the Ordinance and Act have not been extended to FATA or to PATA, within the contemplation of Article 247(3) of the Constitution.

**ATTESTED**

7. It is a matter of record that, this High Court, and the august Supreme Court have in the past rendered their valuable findings on the extent of applicability of the provisions of Act and the Ordinance, to persons carrying on business in FATA and PATA. The review of the said decisions, reveal that the views of the superior Courts have evolved with time.

8. In the circumstances, it would be appropriate for this Court, to first trace the stages of evolution in the judicial views, so rendered by this Court, and that of the august Supreme Court. For clarity, the same are discussed, herein below in chronological order, as follows:--

**4.01.2000. Gul Cooking Oil's case  
(Writ Petition No. 1278 of 1999)**

The High Court accepted the petition and held that Income Tax Ordinance, 1979 ("Ordinance of 1979"), is not applicable to Malakand Division, within the contemplation of Article-247 of the Constitution. The notices issued to the company by the Revenue under sections 56 and 63 of the Ordinance of 1979, were declared illegal and without lawful authority. There was also direction to the Revenue to release the raw material of the petitioner-company without deducting 2% of withholding tax at import stage.

**25.04.2003. Gul Cooking Oil's case  
(Civil Appeal No.1578 of 2000)  
(2003 PTD 1913).  
(Three member Bench)**

The apex Court upheld the decision of the High Court, inter-alia, declaring that the company in the instant case being situated in the Tribal Area, where Ordinance of 1979 has not been extended within the meaning of Article 247(3) of the Constitution, as such, would stand exempted from payment of income tax.

**24.11.2004. Master Foam's case (PLD 2005 SC 373).  
(Five member Bench)**

Import destined to the petitioner-company carrying on business in Azad Jammu Kashmir, was made liable to payment of sales tax at Karachi Port at import stage, under section 3(1)(b) of the Act, in terms that:--

"15. Admitted facts in these cases are that the appellants operate manufacturing units in AJK, which is not part of Pakistan and that they import raw material for said manufacturing units through Karachi. The goods so imported arrive at the Port of Karachi, are unloaded there, sometimes even stored there for a while, and then re-loaded for AJK. It is significant to note that the Act of 1990 has been adopted by the AJK Government vide the Sales Tax (Adoption) Act, 1993 (Act No.IV of 1993) and its section 2(4) reads as follows:

"In determining the input tax under subsection (1) the amount paid as input tax at the import stage to the customs authority in Pakistan shall be deemed to have been paid in Azad Jammu and Kashmir for the purpose of adjustment against the tax liability on the finished goods."

16. It is also a fact that in Pakistan there is no exemption from sales tax on the goods imported by the appellants herein. AJK has not levied or collected any sales tax at the import stage on goods imported by the appellants into AJK from Pakistan. The appellants are aggrieved of the demand by the Tax Authorities in Pakistan that sales tax be paid on the raw material imported by them through Karachi .

27. From above it is clear that right from 1963 till date the Courts in Pakistan have consistently given the word 'import' its natural and ordinary meaning of 'bringing into' the country and have rejected the imposition of artificial constraints on it, such as those imposed by the American doctrine of original package. It being so, we are of the view that there is no scope that the word 'import' should be given a different meaning than what appears in section 3(1)(b) of the Act of 1990, especially when there is nothing in the statute to indicate that different meaning was intended by the legislature. It appears that the Legislature, by not defining the word 'import' in the Act of 1990 desired the interpretation of said word in accordance with the following principle:

"....when a Legislature uses in a statute a legal term, which has received a judicial interpretation, it is to be presumed that the term has been used in the sense in which it has been judicially interpreted, unless a contrary intention appears from the statute."

28. Thus, the goods were imported into Pakistan by the appellants when they entered the territory of Pakistan and became liable to taxation accordingly. It is immaterial that ultimately they were to be transported to AJK. This is for the reason that import into Pakistan is a distinct taxable event independent of any event following thereafter."

**19.02.2007. Mahsud Ghee Industries' case  
(CPLA No. 307 of 2004).  
(Two member Bench)**

**ATTESTED**

The apex Court upheld the decision rendered by this Court and dismissed the petition for leave to appeal of the Revenue. More importantly, the august Supreme Court rendered a clear finding that the decision in Master Foam's case (supra) would not be applicable to cases relating to FATA and PATA in terms that:--

"6. We are afraid, the principle laid down in Master Foam case (supra) can hardly be borrowed and extended to the facts of the present case when all the writ petitioner industries were set up and engaged in the manufacture of ghee in the non-taxable territory, to which the provisions of Ordinance, 1979 or 2001 Ordinance were neither applicable nor extended through any direction by the President or the Governor, NWFP within the meaning of Article 247 (3) of the Constitution. Any interpretation to the contrary, in our view, would appear to be repugnant to the spirit and clear mandate of the Constitution.

7. It was vehemently contended that on arrival of the raw material at the Port of Karachi, the goods became liable to payment of advance income tax irrespective of the declaration and ultimate destination of the goods to the territories, to which the Ordinance, 1979 or 2001 Ordinance was not applicable. It was also urged that notwithstanding the location of the industries in PATA and FATA, respondents-companies with registered offices in Islamabad under the provisions of Companies Ordinance, 1984 and the respondents ultimately selling some of the products in settled areas could not avoid the payment of advance tax. The argument, on the face of it, appears to be devoid of any merit and is fallacious, as irrespective of the fact of registration with the Registrar of Companies at Islamabad, writ petitioners had unequivocally declared before the High Court that they were permanent residents of Tribal Areas and carrying on business in such territories, therefore, they were not liable to pay income tax. Mr. Mumtaz Ahmad Sheikh, vehemently urged that the writ petitioners after the payment of advance tax could adjust and claim refund of the amount paid in advance after obtaining a certificate of exemption from the Commissioner, Income Tax, Peshawar, the fact remains that the respondents-industries' stance is that they do not derive any taxable income within the territory where they are permanently settled and where their business is carried on. Thus, irrespective of the defence, requiring in-depth factual enquiry and not at all controverted by the petitioners before the High Court and rather conceding to the acceptance of the writ petitions would hardly carry any weight. Indeed, in the face of a clear and elaborate enunciation of law on the subject involving liability for payment of income tax in Gul Cooking Oil (supra), very act of filing the petitions for leave to appeal was ill-advised, misconceived and uncalled for.

8. Lastly, a feeble attempt was made to persuade this Court to grant leave because in C.P.L.As Nos.1150 to 1154 of 2006, another Bench of this Court has granted leave to appeal on 15.1.2007. In the absence of the facts of such petitions, the judgments of the High Court and the precise questions of law arising out of such judgments, leave grant order can neither bind this Court nor has any persuasive value so as to grant leave without due consideration of the question of law involved in the instant petitions.

9. For the aforesaid facts, circumstances and reasons, we find no merit in these petitions, which are devoid of any force and accordingly dismissed."

(emphasis provided)

**05.03.2007. Gul Cooking Oil's case (2008 PTD 169).**

**(Five member Bench of the Apex Court)**

The Revenue sought review of the earlier decision of the Apex Court, the relevant findings regarding the facts leading to the case, and the legal discourse on the constitutional applicability of the levy on the persons carrying on business in PATA was discussed by the Apex Court, in its decision in review jurisdiction, in terms that:--

"2. The facts of the case in small compass leading to the filing of present review petition are that Deputy Commissioner Income Tax, Peshawar issued a notice to the respondent No.1, a Joint Stock Company under section 56 of the Income Tax Ordinance, 1979, for filing return of income tax for the assessment year 1998-99. The Company without filing return, raised an objection to the legality of the notice with the assertion that Income Tax Ordinance, 1979, was not applicable in the tribal area of Malakand Dargai where the factory of the Company with its registered office, is situated and is carrying its business. The Deputy Commissioner of Income Tax then served a notice under section 61 of the ibid Ordinance to the Company for production of books of accounts of its business, but the Company instead of contesting the notice before the department, challenged its legality before the Peshawar High Court, Peshawar, in a writ petition which was allowed by a learned Division Bench of the High Court vide judgment dated 4.1.2000. The petitioner assailed the judgment of the High Court before this Court in C.A No.157 of 2000, but failed and hence this review petition.

**ATTESTED**

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3. The case of the petitioner department is that Collector of Customs, Karachi insisted for recovery of withholding tax from the respondent under section 80(DD) read with section 50(5) of the Income Tax Ordinance, 1979 as under the law, he was obliged to collect the advance tax on imported goods, in the present case edible oils on the basis of the value as provided thereunder and since the company was carrying business of manufacturing and sale of its products not only in Malakand Dargai where its industry was set up and registered office was established but was also running its business in the settled areas in which Income Tax Ordinance, 1979, was applicable and consequently, the respondent Company was liable to pay income tax in respect of the income derived by it from the business being carried on in the taxable area."

"There is no cavil to the legal position that exemption under the law from payment of income tax is available to a person or company carrying its business in tribal areas and income tax cannot be collected from such person or company by the tax collecting authorities of the Government unless the law relating to the collection of Income Tax is extended to the tribal areas by virtue of Article 247 of the Constitution. However, the question whether a company or a person derives income from business being carried out in taxable or non-taxable area is a pure question of fact which cannot be decided without holding proper inquiry for determination of controversial facts regarding the tax liability. The business of a person or Company may or may not be confined to a particular place or are rather it may be expended beyond the local limits of the area in which Income Tax Ordinance is not applicable and thus if the income tax is derived from the sale or products which are manufactured in the factory situated in nontaxable area both from taxable and nontaxable area, the question relating to the tax liability of such a business concern cannot be determined only on the basis of location of factory or its registered office rather the requirement of law in such case is to hold a proper inquiry and ascertain the correct factual position for determination of tax liability. The exemption from payment of tax is certainly available on the business being carried in tribal area in which income tax law is not applicable but the real question for determination in the present case would be that a company with its manufacturing unit and registered office is non-taxable area, if is also carrying business in taxable area is exempted from payment of income tax on its income as a whole or only on the income being derived from non-taxable area.

The careful examination of the record would suggest that no material was brought before the High Court or this Court on the basis of which a positive opinion could be formed about the business activities of the company and its tax liability for the purpose of exemption of income tax. It is apparent on record that this essential aspect of the case escaped the notice of this Court and instead the question of taxability was decided only on the basis of consideration that the registered office of the company was situated in tribal areas in which the Income Tax Ordinance, 1979, was not applicable.

In the light of the factual position narrated above, the controversial question as to whether the company was carrying business only in the tribal area or it was also operating in the settled area and was liable to pay income tax, requiring determination has not been attended. It is thus manifest on the record that this essential aspect of the case was overlooked in the judgment, which has caused serious prejudice to the case of petitioner on merits. In view thereof, we are of the considered opinion that review of the judgment in the present case is fully justified as it is crystal clear that immunity from payment of Income Tax could not be claimed without establishing the fact that taxable income was not being derived from the area where the Income Tax Ordinance, 1979 is applicable.

The upshot of the above discussion is that this review petition succeeds and in consequence thereto the Income Tax Department is competent to proceed in the matter in accordance with law."

(Emphasis provided).

**18.11.2009. Mahsood Ghee Industries' case  
(CRP 64/2007).**

**(Two member Bench of the Apex Court)**

The Revenue also sought review of the judgment dated 19.2.1997 passed by the Apex Court, which was decided in terms of the principles settled by the Apex Court in its decision in review of its judgment in Gul Cooking Oil's case (supra) in terms that:

"Since notice was issued to the respondents in terms of the order dated 18.6.2007, reproduced above, it follows that the judgment in review dated 5.3.2007 is squarely attracted to this case. For the reasons noted in the aforesaid judgment in Civil Review Petition No.63 of 2003 in order dated 19.2.2007 is reviewed in terms of the judgment dated 5.3.2007. The Review Petitions are, therefore, allowed in view of the principle enunciated in the judgment dated 5.3.2007 reproduced above."

**ATTESTED**

18.12.2009. Messers Lal Ghee Oil Mills (2010 PTD 438).

This Court while deciding, whether the Revenue could levy and charge Federal Excise and Regulatory Duty on edible oil at the import stage, when the same was destined for consumption in the Tribal Area, where the Federal Excise Act had not been extended in view of Article 247(3) of the Constitution, went on to hold that:--

"Once the goods are imported into Pakistan, they are liable to be taxed under the acts mentioned above or the SROs issued there under regardless of altogether of the fact that those have been imported for being transported to be consumed in an area where neither of the enactments mentioned above or SROs issued there under are applicable ..

"The question with regard to refund of duty collected, thus, does not arise in this background, if at all there is a discrepancy in collection had been related to the factual controversy can well be urged in a proper forum. We, thus, would not hesitate to hold that the import of goods being within the regime of the acts mentioned above can not be exempted from the levy."

**24.2.2011. Excellence Plastic's case (W.P No.2212 of 2006 decided on 24.2.2011).**

This Court declared that levy of advance tax on import of goods to be consumed in manufacturing units situated in FATA was legal and valid.

**24.2.2011. Roshni Mat's case (W.P No. 1845 of 2005 decided on 24.2.2011).**

This Court held that the Sales Tax on import of goods was valid, as taxable event is import of goods, which has nothing to do with its onward transportation to an area, which is outside the applicability of the Act.

**27.5.2014. Abdul Shakoor Proprietor's case  
(Tax Reference No. 15 of 2009.)**

This Court while rendering its opinion, held that the Income Tax Appellate Tribunal was not justified to accept the claim of the taxpayer regarding exemption from advance tax under section 148 of the Ordinance, without carrying out a definite inquiry, as to whether the respondent taxpayer has been carrying on business in non taxable area or otherwise, as was directed by the apex Court in Gul Cooking Oil's case (supra),

9. On reviewing the valuable legal discourse rendered by the superior Courts in the aforementioned judgments, the summary of the judicial pronouncements on core issues rendered, are as follows:

**Supreme Court.**

(I) That the Ordinance and the Act have not been extended to FATA or PATA within the contemplation envisaged under Article 247 (3) of the Constitution.

(II) Persons carrying on business and deriving income within FATA or PATA would not be liable to payment of Sales Tax and Income Tax under the Act and the Ordinance, respectively.

(III) The principle laid down in Master Foam's case (supra) cannot be borrowed and extended to a person carrying on business in FATA or PATA, as the Ordinance has not been extended to FATA or PATA.

(IV) The only exception to the general rule of exemption from payment of Income Tax under the Ordinance to a person carrying on business in FATA or PATA is when the said person extends its business beyond the territorial limits of FATA or PATA into the settled areas.

(V) The Revenue has the authority under the Ordinance to carry out an inquiry to ascertain whether the person is carrying on business in FATA or PATA or has extended the scope of its business or commercial activities beyond the territorial limits of the said area into the settled area.

(VI) The final judgment in the field, which is to determine the applicability of the Ordinance, would be adjudged on the principles laid down in the judgment of the Apex Court in review of its decision in Gul Cooking Oil's case, which was also confirmed in the decision of the Apex Court in Review of its decision in Mahsood Ghee Industries' case.

**High Court.**

(I) Sales Tax and Advance Income Tax is leviable at import stage from persons carrying on business in FATA or PATA.

**ATTESTED**

(II) Sales Tax paid at import stage is nonrefundable to a person carrying on business in FATA or PATA.

10. In view of the above, it is striking to note that this Court, while rendering its decisions in M/s Lal Ghee Oil Mill's case (supra), Excellence Plastic's case (supra) and Roshni Mat's case (supra), has not taken into consideration, the clear findings of the Apex Court rendered in Mahsood Ghee Industries' case, regarding the non-applicability of the principle laid down in Master Foam's case concerning persons carrying on business in FATA, in view of the command of Article 247(3) of the Constitution.

11. When the worthy counsel for the Revenue was confronted with the above position, he responded by contending that the above mentioned decisions of this Court had correctly applied the principles laid down in Master Foam's case for the following two reasons:

First, that the principles laid down by a five members Bench of the Apex Court in Master Foam's case (supra) had a precedence over the decision rendered in Mahsood Ghee Industries' case, by a worthy Bench of two eminent learned Justices of the august Court.

This Court is in complete consonance with the general principle relating to precedents that, the decision of the larger Bench of the Apex Court is to be given precedence over its other decisions. However, in the peculiar circumstances, the Apex Court, while deciding Mahsood Ghee Industries' case, rendered a specific finding that, the principle laid down in Master Foam's case related to Azad Jammu Kashmir and could not be made applicable to cases relating to FATA, mainly for the reason, that the Ordinance of 1979 and the Ordinance of 2001

"were neither applicable nor extended through any direction by the President or the Governor, NWFP within the meaning of Article 247 (3) of the Constitution. Any interpretation to the contrary, in our view, would appear to be repugnant to the spirit and clear mandate of the Constitution."

Once, such a pronouncement was made by the Apex Court, even if it is of a worthy Bench comprising of two esteemed Justices, it would not be legally appropriate for the High Court to ignore such a specific finding. Moreso, when the decision of the Apex Court in Gul Cooking Oil's case and Mahsood Ghee Industries' case, in its review jurisdiction, were subsequent in time to the decision in Master Foam's case and the specific finding stated hereinabove, in the decision of Mahsood Ghee Industries case was not disturbed by the Apex Court in the said subsequent decision.

Furthermore, there is a stark difference in the constitutional command relating to applicability of law to FATA/PATA (Article 247) and Azad Jammu and Kashmir (Article 258). The intention of the legislature is evident from the bare reading of the said provisions of the Constitution. Thus, any law or principle laid down for Azad Jammu Kashmir, would not be applicable to FATA or PATA. Moreover, even the facts leading to the decision of the Apex Court, in Master Foam's case are reviewed, it would be apparent that the same are contrary to the peculiar circumstances of the present cases, and hence the ratio of the decision would not be applicable to the present cases. The said judgment dealt with the adjustment of the input tax paid at the import stage to the custom authorities in Pakistan, against the tax liability on the finished goods payable in Azad Jammu Kashmir. The Sales Tax paid at the import stage was adjustable by the importer in the final output tax payable in Azad Jammu Kashmir under Azad Jammu Kashmir Sales Tax (Adoption) Act, 1993. This facility of adjustment sales tax paid at import stage is not available to the petitioners carrying on business in FATA or PATA. Hence, the ratio of Master Foam's case cannot be applied to the circumstances of the present cases.

Secondly, the worthy counsel contended that without prejudice to the earlier submissions and also without conceding, the decisions of the Apex Court in Gul Cooking Oil's case and Mahsood Ghee Industries' case, would not apply to the cases relating to sales tax payable at import stage under the Act, as the Apex Court, while deciding the two cases only dealt with advance tax under the Ordinance. He further contended that the principle laid down in Master Foam's case, which was in relation to sales tax payable at import stage under the Act should be applied and followed to at least the cases relating to the second set of cases (Serial No.9 to 15) challenging the levy of Sales Tax at import stage under the Act.

In order to address this issue, it would be important to first revisit the facts of the two sets of cases; Master Foam's case on the one hand, and Gul Cooking Oil's case and Mahsood Ghee Industries' case on the other hand. As far as the former case is concerned, the worthy counsel is correct in stating that, it related to the levy of Sales Tax under the Act, on goods imported into Pakistan but destined for Azad Jammu Kashmir. While the other two cases, related to advance Tax being charged under the Ordinance on goods imported into Pakistan, but destined for FATA. Having noted the facts, now this Court has to see whether a finding on

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advance tax on imports under the Ordinance, can be applied to sales tax on imports under the Act. Comparing the scope of sales tax and advance tax at import stage under the two enactments; it is noted as follows:--

**Sales Tax Act, 1990.**

The provisions of the Act, in its charging section 3(1)(b) provides in express term, a levy of Sales Tax on goods being imported, at the import stage, the same reads as under:-

**"3. Scope of tax:**

(1) Subject to the provisions of this Act; there shall be charged, levied and paid a tax known as sales tax at the rate of 17% of the value of:

(a) Taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him; and

(b) Goods imported into Pakistan, "  
(Emphasis provided)

What is also important to note is that the incidence of the sales tax being an indirect tax and when paid at import stage is to be passed on to the ultimate consumer through the adjustments to be made in the output taxes by each person in the production and commercial chain leading to the final consumer, as provided under the enabling provisions of the Act.

**Income Tax Ordinance, 2001.**

On the other hand, when we glance through the provisions of the Ordinance, we note that section 148 of the Ordinance, requires the payment of an Advance Tax on goods being imported. The said section provides as under:--

**"148. Imports.**

(1) The Collector of Customs shall collect advance tax from every importer of goods on the value of the goods at the rate specified in Part-II of the First Schedule.

(2) Nothing contained in subsection (1) shall apply to any goods or class of goods or persons or class of persons importing such goods or class of goods as may be specified by the Board."

(5) Advance tax shall be collected in the same manner and at the same time as the customs duty payable in respect of the import or, if the goods are exempt from customs duty, at the time customs-duty would be payable if the goods were dutiable.

(6) The provisions of the Customs Act, 1969 (IV of 1969), in so far as relevant shall apply to the collection of tax under this section.

(7) The tax collected under this section shall be a final tax except as provided under subsection (8) on the income of the importer arising from the imports subject to subsection (1) and this subsection shall not apply in the case of import of:

(a) raw material, plant, machinery, equipment and parts by an industrial undertaking for its own use;

(b) fertilizer by manufacturer of fertilizer, and

(c) motor vehicles in CBU condition by manufacturer of motor vehicles.  
(emphasis provided)

The bare reading of the above provision of the Ordinance, clearly stipulates payment of advance tax at the time of importation. It would be also pertinent to mention that the said advance tax is declared as the final tax, but there are exceptions to the same, which are clearly provided in the proviso to subsection (7) of Section 148 of the Ordinance. The said proviso keeps advance tax paid on imports including machinery and raw material, to be utilized by the importer, as in the present cases, from being declared the final tax. The said advance tax, so paid by the importer, is to be adjusted, as Tax Credit, within the contemplation of clause (b) of subsection (2) of Section 168 of the Ordinance, while computing the final tax payable by the said person. The said provisions read as:

**"Section 168.**

**Credit for tax collected or deducted.**

**ATTESTED**

(1) For the purposes of this Ordinance,

(a) .

(b) the amount of any tax collected under Division II of this Part or Chapter XII or deducted under Division III of this Part or Chapter XII shall be treated as tax paid by the person from whom the tax was collected or deducted.

(2) Subject to subsections (3) and (4), where an amount of tax has been collected from a person under Division II of this Part or Chapter XII or deducted from a payment made to a person under Division III of this Part or Chapter XII the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted."

(emphasis provided)

In fact, the legislature has through legal fiction, included the advance tax payable under section 148 of the Ordinance, as part of the income defined under subsection (29) of Section 2 *ibid*, and also brought the same payable within the purview of the charging section of tax on taxable income under subsection (b) of Section 4 *ibid*. The said provisions read as under:

**"Section-2 (29)**

"Income" includes any amount chargeable to tax under this Ordinance, any amount subject to collection or deduction of tax under sections 148, 150, 152(1), 153, 154, 156, 156A, 233, 233A, subsection (5) of sections 234 and 236M, any amount treated as income under any provision of this Ordinance, and any loss of income.

**Section 4.**

**Tax on taxable income.**

(1) Subject to this Ordinance, income tax shall be imposed for each tax year, at the rate or rates specified in (Division 1, IB or II) of Part 1 of the First Schedule, as the case may be, on every person who has taxable income for the year.

(1) The income tax payable by a taxpayer for a tax year shall be computed by applying the rate or rates of tax applicable to the taxpayer under this Ordinance to the taxable income of the taxpayer for the year, and from the resulting amount shall be subtracted any tax credits allowed to the taxpayer for the year.

(2) Where a taxpayer is allowed more than one tax credit for a tax year, the credits shall be applied in the following order.

(a) Any foreign tax credit allowed under section 103; then

(b) Any tax credit allowed under Part X of Chapter III; and then

(c) Any tax credit allowed under sections 147 and 168.

(3) Certain classes of income including the income of certain classes of persons may be subject to:

(a) Separate taxation as provided in sections 5,6 and 7; or

(b) Collection of tax under Division II of Part V of Chapter X or deduction of tax under Division III of Part V of Chapter X as a final tax on the income of the person.

(4) Income referred to in subsection (4) shall be subject to tax as provided for in sections 5,6 or 7 or Part V of Chapter X, as the case may be, and shall not be included in the computation of taxable income in accordance with section 8 or 169, as the case may be.

(5) Where, by virtue of any provision of this Ordinance, income tax is to be deducted at source or collected or paid in advance, it shall, as the case may be, be so deducted, collected or paid, accordingly."

**ATTESTED**

(emphasis provided)

What is also important to note is that, the scheme of taxation envisaged under the Ordinance, provides for "tax"; on Taxable Income (Section 4), on Dividends (Section 5), on certain Payments to Non-Residents (Section 6), and on Shipping and Air Transport Income of a Non-Resident Person (Section 7), all provided under Chapter-II *ibid*. When reviewed together, it is clear that although advance tax collected under section 148 of the Ordinance, has not been included in taxable income, as provided under section 4 of the Ordinance, yet the payments made thereunder have been expressly brought within the scope of the charging section by its clear stipulation in subsection (5) of section 4 of the Ordinance.

In the circumstances, it would be safe to state that;

(i) The legislature has provided equal emphasis and force behind both the taxes to be collected at import stage under the relevant enactments.

(ii) both the taxes are to be adjusted by the importers; the advance tax as tax credit under section 168 of the Ordinance and sales tax as input tax adjusted in the output tax under section 13 of the Act.

In view of the above, it is noted that though the two taxes are conceptually different; Tax under the Ordinance being a direct tax, while Sales Tax under the Act being an indirect tax, yet the legislature in its wisdom has placed the two taxes in the respective enactments in a manner, whereby the scope and burden on the payer of the two taxes have a very striking similarity. Thus, a legal finding on one would surely be applicable upon the other.

12. It is by now settled principle of safe administration of justice that, when precedents of the High Court rendered by a worthy Bench comprising of equal or more worthy Justices, did not take into consideration, the clear principle laid down by the Apex Court, then the High Court has to follow the ratio decidendi of the decision of the Supreme Court and there is no legal requirement to refer the case in hand to a larger Bench for its deliberation and decision, as is the case in the present petitions. In similar circumstances, the Sindh High Court in a recent decision in *Pak Turk Enterprises' case (2015 CLC 1)* has very eloquently described this aspect of *Stare Decies* in terms that:

"In my respectful view, the foregoing observations correctly lay down an exception to the rules of precedent as they apply in this country as well. I am bound first and foremost by decisions of the Supreme Court. If a decision of a larger Bench of this Court is on any point "manifestly inconsistent" with a prior decision of the Supreme Court on account of having misunderstood or misapplied it, then that which binds me is the latter and not the former. Of course, this exception to the rules of precedent would only apply in rare circumstances and only where the inconsistency is clear and direct, and no other conclusion is reasonably possible. It is after a very careful consideration of what the learned Division Bench said in *United Bank* that, with the utmost respect, I have come to the conclusion that it is manifestly inconsistent with the Supreme Court decisions in *Australasia Bank (and Central Bank of India)* and *Khan of Mamdot*. I am bound to apply the latter and therefore, I have respectfully ventured to differ from the learned Division Bench."

13. Another very crucial issue to note and deliberate is that, the rate of Advance Tax and Sales Tax on import of goods is determined by the Parliament and incorporated in the Ordinance and Act, respectively. But the authority to exempt a person or class of persons or good or classes of goods from the payment thereof is, *inter alia*, vested in the Federal Government, which it may exercise through delegated legislation. The crucial issue remaining, that the exemption from payment of taxes, under both the taxing statutes, rests with the Federal Government. What is most vital to understand is that, persons carrying on business in FATA or PATA do not require a specific exemption from the Federal Government, through any subordinate legislation, as they have been granted an express immunity from those taxing enactments, such as the Ordinance and the Act, which have not been extended to the said areas, under Article 247(3) of the Constitution.

14. Similarly, it is also striking to note that, goods being imported into Pakistan for their onward transit to Afghanistan, are exempt from payment of duties and taxes at the import stage. Moreover, exemptions are also provided to goods being imported for its utilization in Export Processes Zones, situated in the settled areas of Pakistan. This Court has also been informed that similar exemptions have been granted by the Federal Government to persons carrying on business in certain areas for encouraging industrialization. While granting exemptions, the Federal Government stipulates conditions to be fulfilled by its beneficiaries, in order to secure the revenue and prevent the abuse of such exemption. For the purpose of clarity and illustration, some of the relevant prescribed rules, and notification are enumerated herein below:--

**ATTESTED**

Notification	Nature of Exemption	Condition for ensuring consumption
<p>SRO 450(I)/2001 dated 18.6.2001. The Customs Rules, 2001 Customs Rules, 2001 are general in nature, the below are various regimes which are in practice whereby goods clearing, forwarding and transporting from Port of Entry say at Karachi to upcountry warehousing or consumption without payment of duties and taxes and any of the regimes with suitable amendments / adjustment can be adopted by the Revenue to ensure tax enforcement of the constitutional immunity under Article 247(3) of the Constitution from taxes leviable under the Sales Tax Act, 1990 and Income Tax Ordinance, 2001 to the residential and consumer of Tribal Area.</p>		
<p>1. Warehousing Rules 342 to 363 ibid Sections 86 to 115 of the Customs Act, 1969.</p>	<p>In warehousing duties and taxes are DEFERRED under section 80 ibid at the port of entry and finally, the duties and taxes are paid at the place of manufacturer at the time of clearance of consumption under section 104 ibid..</p>	<p>The person must be licensee of bonded warehouse granted by the Collector Customs of its jurisdiction under section 13 ibid. Goods are transported under Bond which released on reaching the goods at warehouse.</p>
<p>2. Public Bonded Warehouse</p>	<p>Do</p>	<p>Do</p>

**ATTESTED**

<p>3. Transshipment Rules 236 to 338 ibid sections 121 to 126 ibid</p>	<p>Is the facility from allowing transporting of goods from one Customs Station to the other generally from the port of entry to the other Dry Ports elsewhere in the Country without payment of Duties and Taxes.</p>	<p>The goods are allowed to be transporting from one custom station to the other only by license bonded career which are Pakistan Railway, NLC and other licensee private bonded career who are responsible for carrying the goods.</p>
<p>Export Related Regime: Export related regime are closely akin to the requirement of Tribal Area, the consume good imported for consumption in foreign Territory or non-tariff territory.</p>		
<p>4. Export-Processing Zone Rules 225 to 236 ibid</p>	<p>Export Processing Zone ("EPZ") is a non-tariff area established within the Tariff Area separated by clear demarcation. The raw material or machinery are imported free of duties and taxes and goods manufactured out of it mostly exported from Pakistan or exported to Pakistan.</p>	<p>It is a kind of Customs Station where the goods are transshipped from the port of entry to the EPZ and finished goods to exporting customs port. Imports are made against Bond.</p>
<p>5. Manufacturing into Bond Rules 237 to 263 ibid</p>	<p>This is again carrying the same feature as of bonded warehouse which facility is normally extended to the export oriented industries with only differentiating feature is that it carrying a concept of no payment of duties and taxes at import and no duty drawback or refund at export.</p>	<p>The conditions of transportation are same as of warehousing. The rest of the features are same of the DTRE Rules which are delineated in the next section. Imports are made against Bond.</p>
<p>6. Duty and Taxes Remission Rules 296 to 307 ibid</p>	<p>It is more liberal regime of manufacturing into bond, its features are delineated in the next column.</p>	<p>The person entitled for availing DTRE facility should be a sales tax registered person and should make at least 15% value addition and have a valid export contract. The exporter is allowed to make imports and acquire</p>

**ATTESTED**

		<p>locally manufacture goods without payment of duty and taxes used in this finished product to be exported against postdated cheques/ corporate guarantee. The goods imported or locally acquired shall be utilized in manufacturer of the goods to be exported within 12 months or in such extended period as approved by the competent authority. The person entitled shall apply to the Regulatory Collector of Customs in whose jurisdiction its manufacturing facility is located. That on satisfaction, the Regulatory Collector against the security in form of bond and bank / corporate guarantee to grant license. Prior to approval, Regulatory Collector shall verify manufacturing facility requested for the goods intended to be exported. That on receipt of Application within 3 days issue the Provisional DTRE Approval subject to final determination of the input output ratios to the "Input Out Coefficient Organization (IOCO) or Engineering Development Board (EDB)". The Regulatory on receipt of the Application within 7 days refer the Application to either IOCO or EDB which has to finally determine the ratios within 30 days. That where after the Regulatory shall issue final approval of DTRE to the Applicant. That no DTRE Application shall be rejected without affording opportunity to the Applicant.</p>
7. Common-Bonded Rules Warehouse	It is carrying all the features of the manufacturing into	Goods are imported under Bond or Postdated cheques.

**ATTESTED**

<p>(conventional) Rules 279 to 295 ibid</p>	<p>bond license for export oriented industries, however, it is deferred in because like public bonded warehouse, it can be used by many industries together.</p>	
<p>SRO 108(I)/1995 dated 12.02.1995 In exercise of powers conferred by Section 19 of the Customs Act, 1969 and subsection (1) of Section of the Sales Tax Act, 1990 exemption of quantity of equal to one-fourth is exempted from whole of Customs Duty and Sales Tax leviable for a period of five years.</p>	<p>Exemption from Customs Duties and components as are imported for the exclusive manufacturers of goods by recognized industrial units located in approved industrial estate of Gadoon Amazai, NWFP.</p>	<p>i. Suitable in-house capacity to manufacture the goods. ii. Manufacturer shall furnish the list of items that he is manufacturing along with the details of raw material. iii. To prepare a deletion program spreading over a maximum period of five years within which period he shall achieve a minimum deletion target to the extent of 75 percent of the C&amp;F value of the inputs of manufacturer item. (2)</p> <hr/> <p>iv. Declaration by the manufacturer to the effect that raw materials and components have been imported in accordance with his entitlement in terms and conditions. v. Bank Guarantee equivalent to the customs duty and sales tax in respect of which exemption is sought. vi. Maintenance of the record of raw materials and components and items manufactured out of them. vii. Apply for discharging of bank guarantee within one year of date of importation. viii. Maintain record of the sales of the items manufactured under this Notification.</p>
<p>SRO 71(I)/1995 dated 19.01.1995 (a) The industries excluding those specified in the table in this SRO which commence commercial operation upto the 31st December,</p>	<p>Exemption from twenty-five percent of the Customs Duty leviable under first schedule of Customs Act, 1969 on import of such raw materials which are not produced locally for the manufacture of their</p>	<p>i. The project shall cost more than US\$ ten million and should employ minimum one hundred person. ii. Suitable in-house facilities for manufacture of goods. iii. Furnish list of goods he is manufacturing or intends to manufacturing to the</p>

**ATTESTED**

<p>2002 in Special Industrial Zone and whose letter of credit are opened upto 31st January 1996. (b) All industries that are not already existing till the date of this notification in Pakistan and are setup in special Industrial Zones shall be exempt for a period of ten years from whole of customs duty and sales tax on import of raw materials which are not produced locally provided the letter of credit for their plant and machinery are opened upto the 31st of January and commercial operations are commenced upto the 30th June, 1999.</p>	<p>goods. Exemption of whole Custom Duty and Sales Tax on import of raw materials which are not produced locally.</p>	<p>person authorized. iv. Written declaration of the Bill of entry that raw materials imported according to conditions. v. undertaking to collector customs to abide by the conditions given in this notification. vi. To maintain record of raw materials and components manufactured as prescribed by CBR. ix. Shall maintain a record of the sale of manufactured goods and machinery and shall produce the same on demand of competent authority. x. To communicate the consumption of imported goods within one month of consumption. If not consumed within 180 days than custom duty and taxes to be paid and plausible reason shall be given and seek extension for a reasonable period.</p>
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<p>S.R.O. 530(I)/89 dated 03.06.1989</p>	<p>Exemption from customs duty and sales tax on Plant and machinery.</p>	<p>The importer shall, at the time of importation, by documents in his possession, satisfy the Collector of Customs that the plant and machinery have been imported for projects located in the areas specified in the Table and shall furnish an indemnity bond in the FORM set out below to the extent of customs duties and sales tax exempted under this Notification. The said indemnity bond will be discharged subsequently on production of a certificate from the Assistant Collector, Customs and Central Excise, the Secretary Kashmir Affairs Division, or an officer authorized by him in this behalf or the Resident</p>
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**ATTESTED**

		<p>Commissioner for Northern Areas, as the case may be, the effect that the plant and machinery as declared to the customs have been duly installed in an area specified in the Table and such other evidence as the Collector of Customs may require and after such enquiry as he deems fit, in order to establish such installation; the importer shall, at the time of importation of the plant and machinery, furnish a bond to the Collector of Customs to abide by the conditions laid down in this Notification failing which he would pay the amount of customs duties and sales tax due and make payment of any penalties that may be imposed in this behalf. The certificate of installation referred to in such paragraph (2) shall be submitted to the Collector of Customs not later than one year from the date of importation of such plant and machinery and if the plant and machinery are removed to an area other than that for which these have been imported within a period of ten years from the date of installation; the amount of customs duties and sales tax exempted under this notification and any penalties that may be imposed in this behalf shall be recovered under section 202 of the Customs Act, 1969 (IV of 1969).</p>
<p>SRO 1125(I)/2011 dated 31.12.2011 It is zero rated regime under the Sales Tax Act, 1990 for 128 Article for five sectors for being export oriented</p>	<p>The benefit of this notification shall be available to every such person doing business in textile (including jute), carpets, leather, sports and surgical goods sectors, who is registered as:- (a) manufacturer; (b)</p>	<p>On import by registered manufacturers of five zero-rated sectors mentioned in condition (i) above, sales tax shall be charged at the rate of zero per cent on goods useable as industrial inputs; The goods imported by, or supplies made to manufacturers,</p>

**ATTESTED**

	<p>importer; (c) exporter; and (d) wholesaler;</p>	<p>other than manufacturers mentioned in condition (i) above, shall be charged , sales tax at the rate of five per cent; The commercial importers, on import of goods useable as industrial inputs, shall be charged sales tax at the rate of two per cent along with one per cent value addition tax at the import stage, which will be accountable against their subsequent liabilities arising against supply of these goods to the zero-rated sector at the rate of zero per cent or to non-zero-rated sectors or unregistered persons at the rate of five per cent as the case may be. The balance amount shall be paid with the monthly sales tax return or in case of excess payment shall be carried forward to the next tax period;</p>
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15. Reviewing the aforementioned provisions contained in the Rules and the SROs, relating to the concessions, benefits and exemptions from payment of duties and taxes on import of goods, reveals that the Federal Government has allowed the release of goods at the time of import, on securing the deferred payment of taxes and duties through securities including postdated cheques.

16. It would be pertinent to mention, that this Court, faced with circumstances as in the present cases, where payment of duties and taxes were challenged by persons carrying on business in FATA or PATA, have allowed release of goods, without payment of duties and taxes, securing the said payments through postdated cheques. The particulars and the directions in some of the said cases are as follows:

**W.P NO.453/2004** (M/s. Afridi Poly Propylene Industries' case), wherein it was directed that:

"We would, therefore allow this writ petition and hold that the petitioner is not liable to pay sales tax and withholding income tax on raw material imported for consumption in its industrial unit set up at Bara, Khyber Agency. To ensure that the raw material is consumed by such unit, the petitioner shall inform the respondents, namely, the Departments of Sales Tax and Income Tax of the arrival of consignments of raw material and at a point before the same are taken into Tribal area, upon verifying the consignment from the bill of entry, the same shall be taken under the supervision of the staff of the Departments to the site of the petitioner's industry. Simultaneously, the petitioner shall issue postdated cheques, good for payment on presentation, in favour of the Departments of the amount of tax otherwise leviable thereon. The postdated cheques shall be returned to the petitioner upon production of consumption certificate duly issued by the Departments. It will be the liability of the petitioner to approach the respondents for the issuance of certificates."

Similarly, other such cases, where petitioners are still availing the facility of releasing goods on furnishing postdated cheques, as provided in the case stated herein above, are reported as follows:

- (i) **Writ Petition No.1443-P of 2003**  
(Messrs Malakand Ghee Industries' case),
- (ii) **Writ Petition No.1826 of 2004**  
(M/s Taj Vegetable Oil's case)

**ATTESTED**

(iii) Writ Petition No.453 of 2001  
(Messrs Afridi Polypropylene Industries' case).

(iv) Writ Petition No.264 of 2004  
(Gul Shazada Enterprises' case).

(v) Writ Petition No.1669 of 2005.  
(Roshni Mat's case).

(vi) Writ Petition No.53 of 2006.  
(Nafees Plastic's case).

(vii) W.P No.1008/2003  
(M/s Inamullah Khan Afridi's case)

This Court is alive to the fact that, the directions for seeking postdated cheques, as security were rendered prior to the decision of the Apex Court in Gul Cooking Oil's case, in its review jurisdiction. However, what is important to note is that the petitioners in the said cases are still availing the benefits, as decided by this Court and highlighted hereinabove. There has to be parity between all, who are carrying on business in FATA or PATA, and that too without any discrimination. Accordingly, it would be fair to state that till the final decision is taken by the Federal Government, all persons carrying on business in FATA or PATA and requiring raw material or machinery for the furtherance and consumption in the said area should be allowed to import without payment of advance tax or Sales Tax subject to furnishing securities. This would secure the revenue till an inquiry is carried out by the Taxation officers, as directed by the Apex Court in its decision in review of Gul Cooking Oil's case.

17. Considering the legal discourse rendered hereinabove, this Court finds that, any specific directions by this Court to the Federal Government on what exact steps to take, would surely tread on the delicate balance of trichotomy of powers, as envisaged in the Constitution. However, it would be pertinent to suggest to the Federal Government certain issues, which warrant immediate policy decisions to ensure;

**First**, that the persons carrying on business in FATA or PATA are rendered the immunity from the application of those taxing statutes, which have not been extended within the contemplation of Article 247(3) of the Constitution, and

**Secondly**, the relevant security mechanism is put in place to ensure that the immunity, so provided under the Constitution, is not abused by the persons carrying on business in FATA or PATA. In this regard, the attention of the Court was drawn to the steps already taken by the Federal Bureau of Revenue in specifying the jurisdiction of Revenue Officers under the various taxing enactments, including the Act and the Ordinance, to matters arising in FATA and PATA. The same is embodied in Notification of 28.2.2011, which reads:

**"NOTIFICATION**

(Inland Revenue Wing, FBR)

**Subject: JURISDICTION OF COMMISSIONERS INLAND REVENUE, REGIONAL TAX OFFICE, PESHAWAR.**

In exercise of the powers conferred under subsection (1) of section 209 of the Income Tax Ordinance, 2001 (hereinafter read as 'Ordinance'), subsection (1) of section 30 and section 31 of the Sales Tax Act, 1990, subsection (1) of section 29 of the Federal Excise Act, 2005, and in supersession of the all earlier orders or notifications of the Board in respect of jurisdiction of RTO, Peshawar, (except the jurisdiction of Chief Commissioner Inland Revenue, RTO, Peshawar) the Federal Board of Revenue is pleased to direct that the Commissioners of Inland Revenue specified in column (2), shall exercise the powers and functions, as specified in column (3), in respect of the persons or classes of persons or cases or classes of cases or areas as specified in column (4) of the Table below (excluding cases or classes of cases or persons or classes of persons assigned to other RTOs/LTUs).

2. This notification shall take effect from 1st March, 2011.

**TABLE**

S.	Commissioner	Powers and Functions	Jurisdiction
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**ATTESTED**

No.	Inland Revenue		
(1)	(2)	(3)	(4)
1.	Commissioner Inland Revenue (Zone-1), RTO, Peshawar	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a) Income Tax Ordinance, 2001, and Rules thereunder; (b) Sales Tax Act, 1990 and Rules thereunder. (c) Federal Excise Act, 2005 and Rules thereunder; (d) Wealth Tax Act, 1963 (repealed); and (e) Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	.. . (d) All cases of persons falling in the civil district of Peshawar, Khyber Agency and FR Peshawar not assigned to any other Commissioner Inland Revenue.
2.	Commissioner Inland Revenue (Zone-II), RTO, Peshawar	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a) Income Tax Ordinance, 2001, and Rules thereunder; (b) Sales Tax Act, 1990 and Rules thereunder. (c) Federal Excise Act, 2005 and Rules thereunder; (d) Wealth Tax Act, 1963 (repealed); and (e) Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	.. . d) All cases of persons falling in the civil District of Mardan, Nowshera, Swabi, Charsadda, Malakand Division, Bajor Agency and Mohmand Agency not assigned to any other Commissioner Inland Revenue.
3.	Commissioner Inland Revenue (Zone-III), RTO, Peshawar	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a) Income Tax Ordinance, 2001, and Rules thereunder; (b) Sales Tax Act, 1990 and Rules thereunder. (c) Federal Excise Act, 2005 and Rules thereunder; (d) Wealth Tax Act, 1963 (repealed); and (e) Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	.. . d) All cases of persons falling in the civil districts of D.I.Khan, Tank, FR Tank, South Waziristan Agency, Lakki Marwat, FR Lakki Marwat, Bannu, FR Bannu, North Waziristan Agency, Karak, Kohat, FR Kohat, Hangu, Kurram Agency and Orakzai Agency not assigned to any other Commissioner Inland Revenue"

**ATTESTED**

18. Needless to state that, the authority of the Revenue Officers under the Ordinance or the Act, as vested vide the aforementioned notification of 28.2.2011, cannot be extended beyond the "inquiry" envisaged by the Apex Court, in Gul Cooking Oil's case. Moreover, the essential steps are yet to be taken by the Federal Government to ensure that the security mechanism for the purpose of securing revenue and preventing abuse of the Constitutional immunity by the persons carrying on business in FATA and PATA are effective and meaningful.

19. Before parting with this judgment, it would be appropriate to address the first preliminary objection raised by the worthy counsel for the Revenue regarding the jurisdiction of this Court, to entertain the present petitions at the principal seat. The contention of the worthy counsel for the Revenue was that, as some of the petitions related to persons carrying on business in PATA, the competent jurisdiction to entertain the said petitions, was the Bench at Darul Qaza and not at the principal seat. This Court is not in consonance with the contention of the worthy counsel for the Revenue, as identical challenge had already been made by persons carrying on business in FATA and the said petitions were pending adjudication at the principal seat, propriety demanded that all cases relating to common question of law be dealt with together at the principal seat. Moreover, public policy also demanded that there should be consistency in judgments on common question of law. Accordingly, this Court repels the said objection taken by the worthy counsel for the Revenue.

20. Now moving on to the other preliminary objection taken by the worthy counsel for the Revenue regarding the alternative remedy provided to the petitioners in the relevant enactments. This Court is not in accord with this line of argument, as the very issue before this Court in the instant petitions is the applicability of the enactments to the petitioners in view of the command of the Constitution contemplated in Article 247(3) of the Constitution. Hence, it would not be legally correct to declare the petitioners to have an alternative remedy for this Court to refrain from exercising its jurisdiction as is provided under Article 199 of the Constitution. This contention of the worthy counsel for the Revenue is also repelled.

21. Accordingly, for the reasons stated hereinabove, this Court would hold and:--

(i) Declare that advance tax charged on import under section 148 of the Income Tax Ordinance, 2001, is not payable by petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;

(ii) Declare that Sales Tax charged under section 3(1)(b) of the Sales Tax Act, 1990, is not payable by the petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;

(iii) Direct the Federal Government to take appropriate steps to ensure that persons carrying on business in FATA or PATA are rendered immunity from the payment of taxes under Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, as the said statutes have not been extended to the said areas within the contemplation of Article 247(3) of the Constitution;

(iv) Direct the Federal Government to take necessary steps to formulate a uniform policy for seeking securities from the persons importing goods for its consumption and utilization in FATA or PATA, so that the immunity provided under the Constitution is not abused and in case the imported goods are utilized or sold out side the said area, then the revenue of the State is recoverable from the securities, so provided.

(v) Direct that till the decision is taken by the Federal Government regarding the security mechanism stated hereinabove, the Board shall obtain from the petitioners postdated cheques for the payment of taxes at import stage under the Act and the Ordinance, as security, for goods destined for utilization and consumption in FATA or PATA. The postdated cheques shall be returned to the petitioners upon production of consumption certificates duly issued by the concerned commissioners, as specified in Notification dated 28.2.2011. It will be the liability of the petitioners to approach the respondents for the issuance of consumption certificates.

These petitions are disposed of in the above terms.

MH/227/P Order accordingly.

**ATTESTED**

APPELLANTS  
VII

2018 S C M R 939

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar, C.J., Umar Ata Bandial and Ijaz ul Ahsan, JJ

PAKISTAN through Chairman FBR and others---Appellants

Versus

HAZRAT HUSSAIN and others---Respondents

Civil Appeals Nos. 633 to 637 of 2007, 130 to 145 of 2009, 68-70 of 2011, 1229 of 2013, 158 to 160, 983 to 999, 1025-1026 of 2015, 1337, 1353-1356 of 2016, 172-174 of 2017 and Civil Petitions Nos. 261-P to 265-P of 2011, 3697 and 3698 of 2016, decided on 14th December, 2017.

(On appeal from the judgments/orders dated 19.10.2006, 21.02.2002, 03.06.2002, 3-7-2002, 17-7-2003, 25.11.2004, 3-2-2005, 23-12-2005, 28-4-2006, 25-2-2003, 9-10-2003, 3-9-2003, 10-3-2004, 18-12-2009, 30.5.2013, 04.02.2016, 30.04.2015, 14.05.2015, 27.05.2015, 28.01.2016, 14.01.2016, 20.07.2016, 24.02.2011, 13.10.2016 of the Peshawar High Court, Peshawar passed in W.Ps. Nos.1669/2004, 53/2006, 154, 1846, 2023/2005, 988/2001, 226/2002, 594/2003, W.P.1443/2003, 1826, 453, 453/2004, 589/2005, 657/2002, 662/2002, 1148/2002, 118/2003, 872/2003, 796/2003, 1008/2003, 1824/2004, 1134/2004, 1191/2004, 1246/2004, 1506/2001, 157 and 158/2005, 854-P/2006, 1830-P /2014, 192-P,195-P, 194-P, 221-P/2015, 916-P to 917-P, 919-P, 920-P/2013, 1644-P/2014, 190-P/2015, 2195-P, 2196-P/2012, 1831-P/2014, 191-P/2015, 193-P, 222-P/2015, 3643-P/2012, 3644-P/12, 220-P/2016, 3525-P, 3526-P/2015, 5-P/2016, R.P.8/2016 in W.P. 3526-P/2015, 2751-P, 2752-P, 3776-P/2015, 1845/05, 2212/06, 2213/06, 535, 536/07, 2952-P and 2953-P/2016)

**(a) Income Tax Ordinance (XLIX of 2001)---**

---Ss. 148(1) & 148(5)---Constitution of Pakistan, Art. 247(3)---Provincially Administered Tribal Areas ("PATA")---Advance income tax on import of raw material/machinery meant for "PATA"---Non-applicability of Income Tax Ordinance, 2001---Constitution itself granted complete immunity for, and in relation to income tax in "PATA"---Tax department, thus, lacked the jurisdiction to collect advance income tax on goods meant and intended for "PATA" under S. 148 of the Income Tax Ordinance, 2001.

Commissioner of Income Tax, Peshawar v. Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd. 2008 PTD 169 distinguished.

**(b) Sales Tax Act (VII of 1990)---**

---Ss. 3(1)(b) & 6---Constitution of Pakistan, Art. 247(3)---Plant located in Provincially Administered Tribal Areas---Sales tax on import of raw material/machinery meant for "PATA"---Non-applicability of Sales Tax Act, 1990---Constitution itself granted complete immunity for, and in relation to sales tax in "PATA", therefore, provisions of the Sales Tax Act, 1990 did not justify the levy and collection of sales tax on goods meant and intended for "PATA".

Master Foam Pvt. Ltd. v. Government of Pakistan PLD 2008 SC 373 distinguished.

**(c) Appeal---**

---Government department---Appeals should not be filed as a matter of routine or because a decision has been rendered against the (Government) department---Decisions should be taken on a reasonable basis and it was not advisable for government departments to waste public time and money by filing appeals routinely.

**(d) Interpretation of statutes---**

---Provision of a statute in conflict with the Constitution---Such provision must yield to the superior mandate of the basic law (i.e. the Constitution) which conferred on Parliament the power to enact laws.

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**(e) Exemption---**

---Discretion of Government to allow an exemption---Scope---Policies in relation to grant of exemptions should be applied on a uniform and a non-discriminatory basis---While the power of granting exemptions was discretionary, it was equally true that the said power could not be exercised in a discriminatory manner--Exemptions were to be granted and regulated in terms of consistent policies for sound reasons---Exemptions should not be granted or refused arbitrarily or on the ipse dixit of the concerned officials---Power to grant an exemption or to decline to grant an exemption, must be exercised in accordance with the general principles relating to good governance.

Abid Hassan v. PHC 2005 SCMR 25 ref.

Khalid Abbas Khan, Advocate Supreme Court for Appellant/Petitioners (in C.A. 633/07).

Hafiz Ahsan Ahmad Khokhar, Advocate Supreme Court for Appellants/Petitioners (in C.As. 633-637/07 and 130-136, 138-140/09).

Issac Ali Qazi, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellants/Petitioners (in C.As. 68-70/11 and 158-160/15)

Dr. Farhat Zafar, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellants/Petitioners (in C.As. 1229/13).

Ghulam Shoaib Jally, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Appellants/Petitioners (in C.As. 983-999/15, 1025, 1026/15, 1337/16, 1353-1356/16, C.Ps. 3697 and 3698/16).

Rehmanullah, Advocate Supreme Court for Appellants/ Petitioners (in C.As. 172-174/17).

Raja M. Iqbal, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Appellants/Petitioners (in C.As. 135, 136/09).

Shumail Butt, Advocate Supreme Court and Tariq Aziz, Advocate-on-Record for Appellants/Petitioner (in C.A. 137/09).

Ahmed Raza Kasuri, Senior Advocate Supreme Court for Appellants/Petitioners (in C.A. 141/09).

Nemo for Appellants/Petitioners (in C.Ps. 261-265/11).

Khalid Anwar, Senior Advocate Supreme Court for Respondents (in C.As. 983, 996/15).

Issac Ali Qazi, Advocate Supreme Court and Raja M. Iqbal, Advocate Supreme Court for Respondents (in C.As. 984-999/15, 1025-1026/15 and 1229/13) (also in C.A. 134/09).

Dr. Farhad Zafar, Advocate Supreme Court for Respondents (in C.Ps. 263-P, 265-P/11).

Shumail Butt, Advocate Supreme Court for Respondents (in C.Ps. 1353-1356/16).

Ghulam Shoaib Jally, Advocate Supreme Court, Raja M. Iqbal, Advocate Supreme Court, Farhat Nawaz Lodhi, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Respondents (in C.As. 158-160/15).

Raja M. Iqbal, Advocate Supreme Court for Respondents (in C.A. 137/09).

Nemo for Respondents (in C.As. 633, 634, 636, 637/07 and 130-133/09).

Shumail Butt, Advocate Supreme Court for Respondents (in C.As. 635/07 and 137/09).

Habib Qureshi, Advocate Supreme Court for Respondents (in C.As. 68-70/2011).

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M. Waqar Rana, Additional, A.-G.P. on Court's Notice.

Date of hearing: 14th December, 2017.

## JUDGMENT

**MIAN SAQIB NISAR, C.J.**---All these appeals with leave of the Court vide orders dated 15.1.2007 and 27.1.2009 involve akin questions of law, thus are being disposed of together. The facts relating to the present controversy can be set out within a brief compass by making reference to one appeal. The respondent No.1 in Civil Appeal No.983/2015 (the respondent) is carrying on the business of operating a steel furnace and re-rolling mill. Pursuant to the said business it imports iron and steel remeltable scrap from time to time as also machinery and plant. The importation takes place through the port of Karachi. At the time of importation, the respondent files the appropriate goods declaration along with each consignment (Goods Declaration). In terms thereof, the respondent claims an exemption in relation to both advance income tax as well as sales tax on the ground that its plant is located in Dargai, Malakand Agency which is part of the Provincially Administered Tribal Areas (PATA). The respondent does not dispute its liability to pay Customs duty and thus there is no controversy regarding the same. The Goods Declarations filed in the present case clearly show that the customs duty has been duly paid. However, insofar as the advance income tax and sales tax are concerned, the same are strongly contested on the anvil of Article 247(3) of the Constitution of the Islamic Republic of Pakistan (the Constitution) which is reproduced below:-

"247. (3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of Majlis-e-Shoora (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction."

2. The Customs Department, however, refused to accede to the request of the respondent. Its stance was that both advance income tax and sales tax were payable under the Customs Act, 1969 (Customs Act) and accordingly the respondent, having no other effective, efficacious and expeditious remedy available to it, invoked the jurisdiction of the learned Peshawar High Court. The petition filed by it was ultimately succeeded, as further explained hereinafter. The Chief Commissioner, Inland Revenue (appellant) challenged this decision by filing petition for leave to appeal before this Court, which (leave to appeal) was granted and pursuant thereto the case has come up before us for final decision.

3. The case of the appellant is best set out in terms of the parawise comments filed by it before this Court and the opening ground contains the following passage:-

"That the petitioner (i.e. the Respondent herein) cannot claim territorial/constitutional exemption of sales tax on imports of raw materials/machinery as the activity "taxable imports" is taking place in the area to which tax laws are fully applicable irrespective of its transportation to taxable or non-taxable areas. Besides, the ruling of the Supreme Court of Pakistan in the judgment passed in the case of Master Foam (Pvt.) Ltd. as well as the ratio decided in Review Order dated 5.3.2007 in the case of Gul Cooking Oil this Honourable Court has also settled the matter in question, therefore, re-agitating the same at this stage and before this Honourable Court is extremely unwarranted. Consequently, the demand of sales tax at import stage is based upon the interpretation of apex court in the respective and concurrent decisions and the constitution as well. The charging and collection of sales tax on imports is not discriminatory or confiscatory as the petitioner had to add the element of sales tax being an indirect levy in the cost of finished products on its sales depending upon the market conditions."

4. As against the above argument the contention of the respondent is that the immunity granted to it under Article 247(3) of the Constitution cannot be taken away by the Department. This is the critical area of dispute between the parties which we have to decide.

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5. We begin with the admitted position that the Customs Act applies in the matter. This is because, irrespective of the question as to whether the Customs Act applies to PATA or not, there can be no doubt about the fact that it applies in Karachi which is the port of the importation of the goods. The above being the admitted position we now have to determine on what basis income tax and sales tax can be demanded from the respondent under the Customs Act. The applicable section in this regard of the Income Tax Ordinance, 2001 (Income Tax Ordinance) is section 148 and the relevant provisions thereof are reproduced below:-

"148. Imports (1) The Collector of Customs shall collect Advance Tax from every importer of goods on the value of the goods at the rates specified in Part-II of the First Schedule.

(5) Advance Tax shall be collected in the same manner and at the same time as the customs-duty payable in respect of import or, if the goods are exempt from customs duty, at the time customs-duty would be payable if the goods were dutiable."

The above provisions prima facie create the jurisdiction entitling the Customs Department to demand advance income tax from the importers.

6. Subsection (1) thereof makes it clear beyond any iota of doubt that what is being collected by the Collector of Customs is advance income tax and not customs duty. This is a point of critical importance. Subsection (5) ibid further clarifies that the role of the Customs Department is essentially that of a collecting agency. It has been statutorily conferred the power to collect advance income tax for and on behalf of the Income Tax Department. It is here that the appellant comes up against a constitutional barrier. It is not denied that the income tax law does not apply for, and in relation to PATA. Section 148 is an integral part of the Income Tax Ordinance. Since the Income Tax Ordinance does not apply in toto it necessarily follows that section 148 thereof will also not apply for, and in relation to, PATA. Thus, ex facie, the Department lacks the jurisdiction to collect advance income tax under the said section.

7. We now turn to the issue of demand for sales tax. The applicable provision of the Sales Tax Act, 1990 (Sales Tax Act) is section 3 and the relevant part thereof is reproduced below:-

"Scope of Tax. (1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of 17% of the value of-

(a) taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him;

(b) goods imported into Pakistan."

Section 3 (ibid.) has to be read in juxtaposition with section 6 of the Sales Tax Act and the relevant part thereof is reproduced below:-

"6. Time and manner of payment. (1) The tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act 1969 and the provisions of the said Act including section 31A thereof, shall, so far as they relate to collection, payment and enforcement including recovery of tax under this Act on such goods where no specific provision exists in this Act, apply."

It may be observed that this section is a parallel section to the provisions contained in section 148(1) and (5) of the Income Tax Ordinance. What is important to note here, once again, is that what has to be collected under section 3(1)(b) is not customs duty; it is, and throughout remains, sales tax which is leviable on the imports of goods into Pakistan. It is merely that the machinery provisions of the Customs Act, insofar as they relate to the payment and recovery of tax under the said Act, have been made applicable.

8. Thus, in brief, both the Income Tax Ordinance and the Sales Tax Act contain provisions which enable the machinery of the Customs Act to be made applicable and also create jurisdiction in the Collector of Customs for the purpose of recovery of both advance income tax as well as sales tax. Both laws are clear beyond any

**ATTESTED**

dispute on the point that by so doing what is being collected is not customs duty but respectively income tax and sales tax.

It follows that by a parallel set of reasoning, as has been set out hereinabove, in relation to income tax, that the provisions of the Sales Tax Act will also not justify the levy and collection of sales tax on goods meant and intended for PATA. There is no dispute, as pointed out above that neither the Sales Tax Act nor the Income Tax Ordinance applies in relation thereto.

9. The above is the constitutional and legal background of the matter. The principle is clear, beyond any doubt. However, what has still to be resolved is the modality in terms of which this principle is to be applied. On the one hand the appellant claims that since the goods are being imported through Karachi, they are entitled to recover not merely the customs duty but also the income tax and the sales tax, since it is not known as to whether the goods will actually be delivered to PATA and processed and sold therein or not. That is a pure question of fact. No interpretation of law is involved therein. The mere fact that a question of fact arises will not create a non-existent jurisdiction in the Revenue. As against this the stance of the respondent is that it is, as a matter of fact, transporting the imported scrap from Karachi to PATA, utilizing it therein for the purposes of manufacture of the goods made by it and thereafter the same are being sold in PATA.

10. We have to resolve this dilemma. While the entitlement of the respondent is clear, on the constitutional plane, there is also no doubt about the fact that the Department is entitled to conduct an investigation on the factual plane to determine whether the goods are indeed intended for PATA and whether thereafter these are processed and sold also in PATA. Bearing in mind the conflicting stands of the parties, the learned Peshawar High Court, by means of the impugned judgment, set out a mechanism for resolving the factual dispute. In essence, it provided that the respondent shall initially prepare and deposit a post-dated cheque in favour of the Department. Thereafter, on receipt of the cheque the Department releases the goods without insisting on payment of the claimed amnesty of tax. An elaborate procedure of checking and verification is carried out. This is illustrated by a set of documents which has been made part of the record and is available in C.M.A. No.752 of 2015. The basic document is a letter addressed by the respondent to the Commissioner Inland Revenue bearing the heading "Request for issuance of consumption certificate." The letter sets out the details of the raw materials which have been imported for utilization in the factory located in PATA. It ends with a request to the Commissioner Inland Revenue that he should verify the arrival of the above consignment at the factory, as well as its consumption therein, and issue consumption certificates. Attached to the letter are a set of documents. These include the Goods Declaration filed with the Customs Department, the documents showing the production and consumption of material, the stock report of raw material, the stock report of finished goods, the statement of production and the statement of sale. The list of dealers is also shown to whom the sales have been made. Then follow up details in relation to the abovementioned transactions. The documents include the names of the firms to which the goods are sold and the amount recovered therefrom. There is also a date-wise statement showing the opening balance of raw materials, a receipt of raw material including the transportation documents, and the gate passes along with the quantities. Further particulars which are contained therein are the waste percentage, the quantity of goods in process, the quantity of material actually consumed, the quantity of goods produced/manufactured with the number of packages and the closing balance. The final document is a certificate issued by the Commissioner of Inland Revenue in response to the above mentioned documents which have been received by him and duly processed. It states that the arrival and consumption of the material was verified from the record by the audit staff of the Department, who has confirmed that the goods have arrived at the factory premises and have been processed therein. It is further certified that the imported goods have been consumed in the production of finished goods in the premises of the respondent in Dargai, Malakand Agency. This consumption certificate is, it is important to note, only issued after the sale has taken place to the buyers whose names and details of sales have been set out in the accompanying documents, which we have already referred to hereinabove. It is a significant fact of the utmost importance that throughout the period in which the respondent was carrying on business, this process and procedure was carried out smoothly and at no point of time, including up until now, was there any discrepancy found in the documents and, indeed, it is not the case of the Commissioner Inland Revenue, that the raw materials imported have not been consumed at the factory at PATA and sold again in PATA, as evidenced by the documentation referred to hereinabove.

11. In the above circumstances, we are at a loss to understand why and how, on the factual plane, the present appeal has been filed. The learned counsel appearing on behalf of the respondent has raised a strong

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objection in relation thereto. On the face of it we are inclined to agree with him. It is to be noted that appeals should not be filed as a matter of routine or because a decision has been rendered against the Department. Decisions should be taken on a reasonable basis. It is not advisable for government departments to waste public time and money by filing appeals routinely. In the present case we have been informed that the respondent has suffered substantial financial loss since the factory was shut down for over a year as a consequence of the ex parte stay order obtained by the Department. This must have had serious consequences for the workers who lost gainful employment. The position would have been different if the respondent had been engaged in an illegal activity but that is not the case pleaded by the Department. The net result is that citizens of Pakistan have suffered substantial financial losses with no corresponding benefit to the Revenue Department. This can only be described as an undesirable status of affairs. When we raised these questions the only response given on behalf of the Department was that the legal issues were involved especially those reported in the two main judgments, namely Commissioner of Income Tax, Peshawar v. Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd. (2008 PTD 169 Supreme Court) and the case of Master Foam Pvt. Ltd. v. Government of Pakistan (PLD 2005 SC 373). Accordingly, it is necessary that we should set out our views in relation thereto. Prior to doing so, it is imperative to summarize concisely the principle of law which is applicable on the conceptual plane. The Department lacks the jurisdiction in relation to an activity taking place in PATA. It does, however, have jurisdiction to carry out an enquiry in the settled areas of Pakistan where the tax laws apply. Thus the initial burden of proof rests on the importer to establish that the goods are intended for PATA and once that has been discharged, the burden shifts to the Department to establish that a fraud has been committed and the goods have, in fact, been processed or sold in the areas where the tax does apply. Unless it discharges that burden, it cannot raise demands against the importers. This principle safeguards the interests of both sides.

12. We now propose to discuss the case law. Before that, however, we would like to express our appreciation for the judgment of the Peshawar High Court (authored by Yahya Afridi, J.) which has not only set out the factual and legal contentions raised by both parties but has also summarized the applicable case law in the body of the judgment. This has saved us a great deal of time.

13. The Gul Cooking Oil's case (supra) went through three stages. The first was before the Peshawar High Court. The case pertained to a factory located in the Malakand Division and the question was about recovery of advance income tax at the stage of importation of the goods into Pakistan. The notices issued to the company by the Department under sections 56 and 61 of the Income Tax Ordinance were declared illegal and a direction was given that the raw material of the company should be released without deducting withholding tax at the import stage. The second stage was when an appeal was lodged before the Supreme Court. The judgment in this case is reported in (2003 PTD 1913 = PLD 2003 SC 614), whereby the judgment of the High Court was maintained. This judgment was delivered on 25.4.2003. The final stage was when a review petition was filed and for purposes of disposal of the matter a larger bench of five members was constituted. This judgment is reported in (2008 PTD 169) and was strongly relied upon by the Department.

14. In our opinion, the judgment does not support the stance adopted by the Department in the present case. In the first place it should be noted that the judgment expressly accepts the legal position as stated by the High Court and as also stated hereinabove. This is so clear from the following extract of the judgment:

"16. There is no cavil to the legal position that exemption under the law from payment of income tax is available to a person or company carrying its business in tribal areas and income tax cannot be collected from such person or company by the tax collecting authorities of the Government unless the law relating to the collection of income tax is extended to the tribal areas by virtue of Article 247 of the constitution "

Secondly, the judgment goes on to state what it considered to be the real question which was to be decided in that case. The following extract indicates the said question:-

"16 The exemption from payment of tax is certainly available on the business being carried in the tribal area in which income tax law is not applicable but the real question for determination in the present case would be that a company with its manufacturing unit and registered office in non-taxable area, if is also carrying business in taxable area, is exempted from payment of Income Tax of its income as a whole or only on the income being derived from the non-taxable areas." [Emphasis supplied]

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In the above circumstances, the case was remanded to the Department to determine this question of fact. The findings on the legal aspect of the case were left untouched. We may note, in passing, at this point, that the facts of the present case are different. As the sequence of the events which has been set out hereinabove makes clear, the business in the present case was being carried on exclusively in PATA where both the factories are located and also where the sales take place. This case therefore is of no help to the Department.

15. The second main case on which reliance is placed is Master Foam's case (supra). (We may note that the High Court judgment under appeal incorrectly identifies the Master Foam judgment as having been delivered by a five members Bench. It was in fact a three members Bench.)

16. The facts of Master Foam's case are clearly distinguishable since in that case the business was being carried on in Azad Jammu and Kashmir (AJK) which is, of course, technically an independent state with its own laws which is partially administered by Pakistan (as per Article 31(3) of the Azad Jammu and Kashmir Interim Constitution Act, 1974). The question in dispute related to the payment of sales tax at Karachi Port at the import stage. The demand was made in terms of section 3(1)(b) of the Sales Tax Act. At this point of time it is necessary to refer to a significant feature of the laws of AJK. In terms of the Sales Tax (Adoption) Act, 1993 (Sales Tax (Adoption) Act) it is provided in terms of section 2(4) as follows:-

"In determining the input tax under subsection (1) the amount paid as input tax at the import stage to the Customs authority in Pakistan shall be deemed to have been paid in Azad Jammu and Kashmir for the purpose of adjustment against the tax liability on the finished goods."

In our opinion there can be little doubt about the fact that this provision of law is both significant and detrimental to the case pleaded on behalf of the company. The grievance being made was that sales tax should not be charged on the goods since they were merely in transit through Pakistan. However, the feature which now emerges is that since the goods were intended for AJK the consequence of the above section 2(4) is that the amount paid to the Pakistan Customs would be deemed to have been paid to the AJK Government under the Sales Tax Act applicable therein. It would seem to follow that the company would not have a genuine cause of action in relation to the levy of the sales tax in Pakistan since in fact that tax would be deemed to have been paid to the AJK Government. Admittedly, the company was subject to the jurisdiction of the AJK Government and the provisions of the Sales Tax (Adoption) Act applied to it. The question as to whether or not the company would be entitled or able to claim a refund from the AJK Government relates only incidentally to Pakistan. The Company relied on an exemption notification issued by the AJK Government and contended that it would be nullified if sales tax were levied on its goods by the Government of Pakistan. However, this by no means follows as a logical consequence. In fact, the finding on this point in the judgment is to the contrary: "The appellants have been granted sales tax exemption in AJK on the goods manufactured by them there. There is no exemption on import of raw material. In other words, they have been granted exemption only on the value addition they made to the raw material." Thus theoretically it was possible for the matter to have been decided on this point. However, the reasoning in the judgment traverses a much wider field of enquiry. It relates to legal issues as well as to the question of constitutional interpretation.

17. The legal issue which was primarily raised on behalf of the company was as to the true meaning of the word "import". Does the word import mean simply the passing of the goods into the territories of Pakistan i.e. by crossing the frontier, or, does it has a more extended meaning as was contended on behalf of the company i.e. that import means not merely the physical crossing of the goods but the entire legal procedure of importation including compliance with all the requisite formalities and excludes goods in transit. The specific contention which was raised was that goods which are in transit should not be considered as having been imported into Pakistan. After considering the matter in some depth, eventually the Court rejected the contention. Instead of giving a wider meaning to the term import it relied on the narrower interpretation in terms of which import merely means the bringing of the goods into the country. For this purpose reliance was placed on an earlier decision of this court reported as Pakistan Textile Mills Owners Association Karachi v. Administrator of Karachi (PLD 1963 SC 137). A number of decisions from the Indian jurisdiction were also considered and the contention raised on behalf of the company was rejected. The case law emanating from the United States was also taken into consideration while doing so. In our opinion the decision taken as to the meaning and concept of import in the Master Foam's case is correct and is to be followed. However, this does not end the matter. The Court then decided to embark upon the wider constitutional issue which perhaps it was not essential to do in the facts of that case.

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18. In this connection, the Attorney General appearing on behalf of the Government referred to the case reported as WAPDA v. Collector of Central Excise and Sales Tax (2002 PTD 2077 at 2082). Paragraph 11 thereof is reproduced below:-

"11. The subject of sales tax was on the Provincial Legislative List at Serial No.48 in the Government of India Act, 1935 and was described as "Taxes on sales of goods and on advertising". In the Constitution, 1956, "tax on sales and purchases" was mentioned at Serial No.26 of the Federal Legislative List, and therefore, for the first time it became a Federal subject. The position was maintained in 1962 Constitution, which mentioned "tax on sales and purchases" on the Federal Legislative List as clause (j) at Serial No.43 in the Third-Schedule. In 1973 Constitution as originally adopted 'tax on sales and purchases' was kept on Federal Legislative List at Serial No.49 of Part I of the Federal Legislative List given in the Fourth Schedule. The item was, however, completely substituted by Constitution 5th Amendment Act, 1976 with effect from September 13, 1976 to read "Taxes on sales and purchases of goods imported, exported, produced, manufactured or consumed". The second half of the amended entry appears to have been taken from the amendment made in Sales Tax Act, 1951 by Finance Ordinance, 1960. Through that amendment the words "consumption of goods" in the preamble were substituted by "importation, exportation, production, manufacture or consumption"."

19. The finding of the Court thereon is set out in para 20 of the Master Foam's case which is reproduced below:-

"20. The Act of 1990 was introduced as an amendment to the Act of 1950 vide section 13 of the Finance Act, 1990 which substituted chapters 1 to 16 of the Sales Tax Act, 1951 with the chapters set out in the Third Schedule to the Finance Act, 1990. Further, the preamble to the Sales Tax Act, 1951 was not substituted and was retained as the preamble to the Act of 1990. Relevant part of section 3 of the Act of 1951 reads as follows:-

3.(1) There shall be levied and collected a tax on the value of---

- (a) All goods produced or manufactured in Pakistan payable by the manufacturer or producer;
- (b) All goods imported into Pakistan payable by the importer ."

It is noted that anomaly in the law with reference to tax was rectified by replacing the original Entry 49 with the present one quoted above and this intent was noted in the case reported as 2002 PTD 2077. Now as a result, import, export, production, manufacture and consumption are distinct taxable events independent and irrespective of sales of goods. It is thus clear that the purpose of substituting of original Entry 49 with the present one was to expand its scope so as to include, inter alia, import as a separate taxable event as had been the position under the Act of 1951." (Emphasis supplied).

20. The legislative history of the constitutional status of sales tax and the meaning to be applied thereto has been set out in the above. Thereafter, the further history of the constitutional amendments for, and in relation to, sales tax have been discussed. It has been noted that by means of the Finance Act, 1990 a thorough revision of the law was carried out in the Sales Tax Act, 1951. The argument was thereafter further developed in the following terms:-

"29. Close scrutiny of Entry 49 and other laws referred to above reveal that acceptance of appellants' argument that Entry 49 authorizes tax on import only when it is followed by sale or purchase in Pakistan, will render the words 'imported, exported, produced, manufactured or consumed' redundant and also frustrate the whole purpose of substituting present entry for the original Entry 49, and the amendment inconsequential. If sale and purchase alone was taxable events, as argued by the learned counsel for the appellants, then there was no point in adding the words 'imported, exported, produced, manufactured or consumed'. Clearly, no redundancy can be attributed to the Legislature and on this ground the argument of the appellants is repelled. It is also to be noted that, if above argument of the appellants is accepted, a situation would arise where import into Pakistan may not be taxed at all. Besides, while examining the validity of a statute, the principle is that there is a presumption of constitutionality of a statute and that every explanation in favour of a statute must be found. Keeping

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in view the complexity of economic problems, great latitude is shown in favour of fiscal statutes." [Emphasis supplied]

21. It will be perceived that the central argument which was developed was that if we accept the proposition that sales tax on imports can only be levied when it is followed by sale or purchase in Pakistan the result will be to render the words "imported, exported, produced, manufactured or consumed," redundant. It was further urged that this would frustrate the whole purpose of substituting the present entry for the original entry 49 and make the amendment inconsequential and irrelevant.

22. The argument needs to be examined closely. To make the point clearer let us re-visit for a moment the earlier paragraph reproduced in para 17 above which essentially makes the point that the original entry in the constitution which was "tax on sales and purchases" would, in effect, be restored if the interpretation being advanced on behalf of the Company was accepted. In other words, the argument was based on the concept of redundancy.

23. But is this contention correct? A critically important aspect which has been missed in the above interpretation needs to be examined. What the Court, with all due respect, failed to notice was that the original Entry "taxes on sales and purchases" had one very important implication which seems to have completely eluded it. "Taxes on sales and purchases", as the Entry originally stood, has a wider connotation. Sales and purchases may not be merely of goods but also of services. Thus, prior to the making of the 5th Amendment to the Constitution in 1976, Entry 49, being open ended was wide enough to comprehend both the sales of goods and also sales of services. The fact that sales tax on services was, or was not, imposed by the Legislature at that time is not relevant. The Entry was wide enough to cover both classes of sales. However, after the 5th Amendment, the scope of the Entry was narrowed down to goods and only goods. There is, therefore, no redundancy. With profound respect, the finding of the Court cannot be sustained on the plane of principle.

24. We can develop the principle further. The new Entry, as introduced in 1976, can now be analyzed further. It can be perceived that the Entry falls, broadly speaking, into two parts:

- (i) The first part is the opening phrase "Taxes on the sales and purchases of goods". This phrase controls the ensuing second part.
- (ii) The second part essentially answers the question as to which categories of goods are subject to the levy of sales tax. The answer is (a) goods which are imported, (b) goods which are exported, (c) goods which are produced, (d) goods which are manufactured, and finally, (e) goods which are consumed. In other words, the entire range of goods is covered. There is no redundancy.

25. The point can be re-stated from a different perspective by clarifying that the words "imported, exported manufactured, produced or consumed" qualify the word "goods". The goods are those which fall in the categories set out in the above, which are all covered. Neither the rules of syntax nor of grammar justify any other interpretation. The use of these words, does not, and cannot, alter the basic fact that the levy is, and remains, on the sales and purchases of goods. This is the essence of what a sales tax is, as is obvious from the lexical meaning of the term. It is not a tax on import of goods, per se - that is levied by Entry 43 i.e. customs duty. Nor is it a tax on the manufacture or production of goods per se - that is excise duty, which is levied under Entry 44. If the discussion is to centre around the doctrine of redundancy then this over-broad interpretation of sales tax leads to Entry 43 and Entry 44 becoming redundant which surely is a consequence which cannot be countenanced. Can it seriously be contended that those words were added to Entry 49 so as to lead to the implied removal of the need for Entry 43 and 44. The question answers itself. The import of goods always has been, and is still, subject to customs duty. This is the normal structure of the Constitution of Pakistan and it is a normal structure of other constitutions also. Duties on import are called customs duty. They have been levied over the centuries in different Countries around the world. They have always been one of the principle modes of collection of revenue. Their importance cannot be underestimated.

The allied concept which requires consideration relates to duties on production or manufacture. These are covered by Entry 44 which deals with duties of excise. Excise duties have traditionally been duties which have been imposed on the act of manufacture or production. This has been true for a long period of time and reference may be made, by way of illustration, to the Central Excises and Salt Act, 1944, as well as its legislative predecessors. Thus the structure of the Constitution now becomes clear in relation to the all

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important fiscal entries. Entry 43 primarily relates to customs duty i.e. duties on importation, Entry 44 relates to excise duty or duties on manufacture or production and Entry 49 relates to duties on sales. Each entry has its own separate and clearly demarcated role and scope. The interpretation given to Entry 49 in terms of the judgment unfortunately renders entry 43 and entry 44 virtually redundant. Thus the argument relating to redundancy which has been advanced in the judgment, in fact operates in the opposite direction. We are therefore regretfully unable to concur with the views expressed in the judgment.

26. The matter does not end here. There is yet another way of analyzing the status of the Entry which reinforces the above interpretation. Entry 49, as it existed prior to the 18th Amendment (i.e. when the judgment was delivered) reads as follows:-

"Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed."

In effect, the Court has interpreted the Entry as if the words in square brackets were omitted i.e. as if the Entry read as "Taxes on goods imported, exported, produced, manufactured or consumed". If the Entry read as set out above then the interpretation placed by the court thereon would be correct. The act of importation would constitute an independent source of taxation, and the same would be the position in relation to each of the other categories of goods. But that is not so, if the words in square brackets are restored. Indeed they are vitally important words which encapsulate the central premise. This is indubitably a tax which is primarily on the sale of goods, irrespective of the category into which the goods in question fall. Surely no known, or accepted, principle of interpretation justifies the omission of the central part of an Entry. Therefore, with profound respect to the Court, we find ourselves unable to accede to the interpretation placed by it on Entry 49.

27. A consequential error in para 29 follows clearly on the basis of the above. It has been observed therein that if above argument of the appellant is accepted, a situation would arise where import into Pakistan may not be taxed at all. "With respect, surely that is a complete non-sequitur. The existence of Entry 43, which seems to have been lost sight of, enables all imports to be taxed by way of customs duty.

28. Finally, there is a reference in the judgment to the well known principle of the presumption of constitutionality of a statute. The principle is indeed well established. But an equally well established principle is that, if there is a conflict between the provisions of a statute and that of the Constitution, then it is the statute which must yield to the superior mandate of the basic law, which confers on parliament the power to enact laws. The offspring must necessarily be subservient to the parent and the lesser power must surrender before the greater one. There is no greater power known to any civilized polity than that which flows directly from the constitution.

In the above connection reference may be made to the following judgments:

(i) Abdul Aziz v. Province of West Pakistan (PLD 1958 SC 499 at 506)

"They (i.e. the High Court) went on to observe that "Courts should normally lean in favour of constitutionality of statutes and if two interpretations of a constitutional provision are possible, one of which would invalidate a statute while the other would support its validity, the second interpretation should be preferred". That observation appears to us, speaking with due respect, to call for comment. If what is meant is that constitutional provisions may be stretched by interpretation with the object of saving the validity of statutes, which ex facie contravene the Constitution, it must be said at once that this view cannot be accepted. The correct view is that a constitutional provision must be interpreted, as befits an organic instrument, in the widest possible sense. It is not permissible to place narrow constructions upon provisions contained in a Constitution, if the result be that thereby the validity of a statute is prejudiced. In all circumstances, the full scope and extent of the constitutional provision must first be determined, and if the statute in question is capable of a construction which is conformable to the true meaning of the relevant constitutional provision, then that construction should be accepted. It is possible that the learned Judges meant to convey this impression by the words which they have employed, and we have only found it necessary to comment upon these words to ensure that they should not be interpreted as allowing Courts to adapt the Constitution for the purpose of saving a statute when in fact the requirement is that all statutes and more generally, all sub-constitutional laws should conform to the Constitution. [Emphasis supplied]"

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(ii) Inamur Rehman v. Federation of Pakistan (1992 SCMR 563 at 589)

"He has relied on the proposition that one of the cardinal principles of interpretation is that law should be saved rather than destroyed and the Court must lean in favour of upholding the Constitutionality of a legislation. (Mehreen Zaibun Nisa v. Land Commissioner, Multan PLD 1975 SC 397). There can be no cavil against this proposition as it is a well recognized rule of Constitutional interpretation that there is a presumption in favour of the Constitutionality of a legislative enactment but if there is on the face of a statute no classification at all and no visible differentia, with reference to the object of the enactment as regards the person or persons subjected to its provisions, then the presumption is displaced. We cannot be asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for, in that case we will be making a travesty of the fundamental right of equality before law enshrined in the Constitution."

29. At the time of hearing of this case it was not our intention to delve into the constitutional issues referred to above. However, when we came to writing this judgment we concluded that it was necessary to deal with the judgment in Master Foam's case (supra) because of the importance attached to it by the appellant's counsel. In the circumstances, we have arrived at the conclusion that this judgment may have to be considered either per incuriam, or, at the very least, be confined to the facts of the case which were linked with AJK.

30. We next take up the issue relating to the security mechanism to be placed in position by the Government so as to ensure that the facility is not misused by unscrupulous importers. In the judgment under appeal, we have noticed that in paragraph 14 the learned High Court has set out a large number of exemption notifications issued, from time to time, by the Government/Federal Board of Revenue granting exemptions as well as the conditions for ensuring that the facility is not misused. By way of illustration we may refer to Entry 5 contained therein. It relates to manufacturing in bond. In this case the condition for exemption laid down is that the imports are to be made against a bond. Similarly, in entry No.6 of the said table a reference has been made to the duty and tax remission for exporters under Rules 296 and 297 of the Customs Rules 2001, in terms whereof exporters are allowed the facility not to pay duty in advance but furnish post-dated cheques. The same facility has been granted under Entry No.7 which relates to common Bonded Warehouses. In this case too, goods can be imported under bond or post-dated cheques.

31. The point we make is that since the above relate to exemptions granted by the Government in its discretion, from time to time, the case for granting the facility of not demanding advance payment in the present case rests on a much stronger foundation. The Constitution itself grants a complete immunity for, and in relation to, sales tax and income tax in FATA/PATA. Obviously persons carrying on business in these areas cannot be subjected to discriminatory treatment. The High Court, after reviewing the facts and circumstances of the case, was, in our opinion, completely justified in allowing the release of goods without prior payment of tax/duty against deposit of post-dated cheques. It has also been found, as a matter of fact, that the facility was not misused or abused by the importers of the raw materials. The High Court has recommended that the Federal Government should lay down a uniform policy.

32. We are unable to understand what possible objection can be raised by the Federal Government in this behalf. In fact, it is worth noting that no appeal has been filed against the judgment by the Federal Government and it is only the Chief Commissioner of Inland Revenue who has preferred the present appeal. Prima facie, this appears to be a case of being more loyal than the King. We have no hesitation in deciding that, in the above facts and circumstances, the Federal Government should lay down a uniform policy in terms whereof the facility for importation against post-dated cheques is extended to all the manufacturers in FATA/PATA. It does not require any argument to establish that the policies in relation to grant of exemptions should be applied on a uniform and a non-discriminatory basis. While it is perfectly true that the power of granting exemptions is discretionary, it is equally true that the said power cannot be exercised in a discriminatory manner. Exemptions are to be granted and regulated in terms of consistent policies for sound reasons. There is no justification for granting or refusing exemptions arbitrarily or on the ipse dixit of the concerned officials. The power to grant an exemption or to decline to grant an exemption, must be exercised in accordance with the general principles relating to good governance. In this connection, reference may be made to the following well known judgment pertaining to the exercise of discretionary powers:-

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Abid Hassan v. PHC (2005 SCMR 25 at 35)

"14. In his Treatise 'Discretionary Powers' which is Legal Study of Official Discretion D.J. Galligan has acknowledged that "the general principles that discretionary decisions should be made according to rational reasons means; (a) that there be findings of primary facts based on good evidence, and (b) that decisions about the facts be made for reasons which serve the purposes of the statute in an intelligible and reasonable manner". According to the celebrated author, the actions which do not meet these threshold requirements are arbitrary, and may be considered a misuse of powers. (Emphasis provided)."

15. In Amanullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others PLD 1990 SC 1092 Shafiur Rehman, J. who was sitting in the Full Bench has very ably propounded the well-known doctrine of 'Structuring the discretion' in the report at page 1147 "Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Text by Kenneth Clup Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure (Emphasis provided). Somehow, in our context, the wide-worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it by Rules, or policy statements or precedents, the Courts have to intervene more often than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times. "Government of N.W.F.P. v. Mejee Flour and General Mills (Pvt.) Ltd. 1997 SCMR 1804.

16. The judicial consensus seems to be that the functionaries of any organization or establishment cannot be allowed to exercise discretion at their whims, sweet-will or in an arbitrary manner; rather they are bound to act fairly, evenly and justly. Aman Ullah Khan v. Federal Government of Pakistan PLD 1990 SC 1092, Chairman R.T.A. v. Pakistan Mutual Insurance Company PLD 1991 SC 14, Pacific Multinational (Pvt.) Ltd. v. I.G. of Police PLD 1992 Kar. 283, Presson Manufacturing Ltd. v. Secretary, Ministry of Petroleum and Natural Resources 1995 MLD 15, Ramana v. I.A. Authority of India AIR 1979 SC 1628, Dwarka Nath Prasad Atal v. Ram Rati Devi AIR 1980 SC 1992, Ram and Shyam Company v. State of Haryana AIR 1985 SC 1147 and Nizamuddin v. Civil Aviation Authority 1999 SCMR 467."

33. At the conclusion of the hearing we dismissed Civil Appeals Nos.633 to 637 of 2007, 130 to 136 and 138 to 145 of 2009, 1229 of 2013, 983 to 999 and 1025 and 1026 of 2015, 1337 and 1353 to 1356 of 2016, 172 to 174 of 2017 and Civil Petitions Nos. 3697 and 3698 of 2016 (filed by the department); whereas, Civil Appeals Nos. 137 of 2009, 68 to 70 of 2011 and 158 to 160 of 2015 (filed by the private parties) were allowed. As regards Civil Petitions Nos. 261-P to 265-P of 2011 (filed by the private parties), the same were converted into appeals and allowed.

34. The above are the reasons of our short order of even date.

MWA/P-3/SC Order accordingly.

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VIII

Government of Pakistan  
Revenue Division  
Federal Board of Revenue  
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Islamabad, the 23<sup>rd</sup> July, 2018.

**NOTIFICATION**  
**(Income Tax)**

**S.R.O. 887(I)/2018.-** In exercise of the powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the said Ordinance, namely:—

In the aforesaid Schedule—

- (a) in Part I, after clause (143), the following new clauses shall be added, namely:-

"(144) Profits and gains derived by individuals from any source in the districts of Chitral, Dir and Swat (which includes Kalam), the former Tribal Area in Kohistan district, Malakand former Protected Areas the former Tribal Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and former Bugti Tribal territories of Sibi district, former Tribal Areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as former Tribal Areas i.e. Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurram Agency, North Waziristan Agency and South Waziristan Agency, provided that existing business set ups register themselves with field offices of FBR by 30<sup>th</sup> September, 2018.

ATTESTED

(145) Profits and gains of existing businesses conducted by association of persons and companies from any source in the districts of Chitral, Dir and Swat (which includes Kalam), the former Tribal Area in Kohistan district, Malakand former Protected Areas the former Tribal Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and former Bugti Tribal territories of Sibi district, former Tribal Areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as former Tribal Areas i.e. Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurram Agency, North Waziristan Agency and South Waziristan Agency, provided that existing business set ups register themselves with field offices of FBR by 30<sup>th</sup> September, 2018.

Provided further that the exemption under this clause shall be restricted to the association of persons and companies whose registered offices are in the aforesaid Areas.

(b) in Part IV, after clause (105), the following new clause shall be added, namely:—

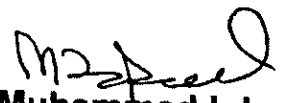
“(106) The provisions of sections in Division III of Part V of Chapter X and Chapter XII of the Ordinance for deduction or collection of tax shall not apply in the districts of Chitral, Dir and Swat (which includes Kalam), the former Tribal Area in Kohistan district, Malakand former Protected Areas the former Tribal

ATTESTED

Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai district and Marri and former Bugti Tribal territories of Sibi district, former Tribal Areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as former Tribal Areas i.e. Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurram Agency, North Waziristan Agency and South Waziristan Agency, if the payer and the recipient are residents of the aforesaid areas.

Provided the provision of section 149 shall not apply in respect of persons working in the aforesaid areas even if the payer resides outside the aforesaid areas."

[F.No. 1(79) Secy (ITP) / 2018]

  
(Dr. Muhammad Iqbal)  
Additional Secretary

**ATTESTED**

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IX

**GOVERNMENT OF PAKISTAN**  
**REVENUE DIVISION**  
**(FEDERAL BOARD OF REVENUE)**  
\*\*\*\*\*

Islamabad, the 23<sup>rd</sup> July, 2018.

**NOTIFICATION**  
**(SALES TAX)**


**S.R.O. 888(I)/2018.**— In exercise of the powers conferred by clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, the Federal Government is pleased to exempt, from whole of sales tax including extra tax chargeable under Chapter IVA of Sales Tax Special Procedure Rules, 2007, on supply of electricity to domestic, commercial and industrial consumers including retailers of districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district, Tribal areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurram Agency North Waziristan Agency and South Waziristan Agency:

Provided that exemption from sales tax including extra tax chargeable under Chapter IVA of Sales Tax Special Procedure Rules, 2007 on supply of electricity shall be available to those industrial consumers who have set up of industries prior to 31<sup>st</sup> May, 2018 and industrial production has been started on or before the said date:

Provided further that no refund and adjustment of sales tax charged on supply of electricity from the date of assent given by the President, Islamic Republic of Pakistan, to the Constitution (Twenty fifth Amendment) Act, 2018 (XXXVII of 2018) shall be admissible to consumers exempted under this Notification.

02. This Notification shall take effect from the date of assent given by the President, Islamic Republic of Pakistan, to the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018).

[C. No. 5/94-STB/2018]

  
**(Dr. Muhammad Iqbal)**  
Additional Secretary

**ATTESTED**

SECRETARY  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

**GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
(FEDERAL BOARD OF REVENUE)  
\*\*\*\*\***

Islamabad, the 23<sup>rd</sup> July, 2018.

**NOTIFICATION  
(SALES TAX)**

**S.R.O. 889(I)/2018.**— In exercise of the powers conferred by clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, the Federal Government is pleased to exempt whole of sales tax chargeable under sub-section (1) of section 3 read with sub-section (9) of section 3 of the Sales Tax Act, 1990 on supply of goods by retailers and sales tax payable under sub-section (9A) of section 3 of the Sales Tax Act, 1990 by retailers located in districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district, Tribal areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurrum Agency North Waziristan Agency and South Waziristan Agency:

Provided that no refund and adjustment of sales tax charged on supply of electricity from the date of assent given by the President, Islamic Republic of Pakistan, to the Constitution (Twenty fifth Amendment) Act, 2018 (XXXVII of 2018) shall be admissible in respect of sales tax charged under sub-section (9) of section 3 of the Sales Tax Act, 1990 to retailers exempted under this Notification.

02. This Notification shall take effect from the date of assent given by the President, Islamic Republic of Pakistan, to the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018).

[C. No. 5/94-STB/2018]

*M. Iqbal*  
**(Dr. Muhammad Iqbal)**  
Additional Secretary

**ATTESTED**

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REVENUE DIVISION  
FEDERAL BOARD OF REVENUE  
XI

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
(FEDERAL BOARD OF REVENUE)  
\*\*\*\*\*

Islamabad, the 23<sup>rd</sup> July, 2018.

NOTIFICATION  
(SALES TAX)

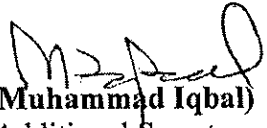
**S.R.O. 890(I)/2018.**— In exercise of the powers conferred by clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, the Federal Government is pleased to exempt whole of sales tax on goods produced and supplied by industrial units located in districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district, the former State of Amb, Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district, Tribal areas adjoining the districts of Peshawar, Kohat, Bannu, Lakki Marwat, Dera Ismail Khan, Tank as well as Bajaur Agency, Orakzai Agency, Mohmand Agency, Khyber Agency, Kurrum Agency North Waziristan Agency and South Waziristan Agency:

Provided that exemption under this notification shall be available only to those industrial units which have been set up on or before 31<sup>st</sup> May, 2018 and industrial production and supplies have been commenced on or before the said date:

Provided further that no refund and adjustment of sales tax shall be admissible in respect of sales tax charged on supplies.

02. This Notification shall take effect from the date of assent given by the President, Islamic Republic of Pakistan, to the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018).

IC. No. 5/94-STB/2018

  
(Dr. Muhammad Iqbal)  
Additional Secretary

**ATTESTED**

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XII

**GOVERNMENT OF PAKISTAN**  
**REVENUE DIVISION**  
**(FEDERAL BOARD OF REVENUE)**  
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Islamabad, the 5<sup>th</sup> October, 2018.

**NOTIFICATION**  
**(SALES TAX)**

**S.R.O. 1212(I)/2018.**— WHEREAS prior to commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018), the Sales Tax Act, 1990, was not in force in the Tribal Areas as defined in Article 246 of the Constitution of the Islamic Republic of Pakistan, hereinafter called as the Constitution, and the levy of sales tax was not attracted to the supply transactions made in the said Tribal Areas;

AND WHEREAS Article 247 of the Constitution stood omitted on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) with effect from the 31<sup>st</sup> day of May, 2018 and the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) stood merged in the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution;

AND WHEREAS on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018), the Sales Tax Act, 1990 is in force in the said Provinces including the erstwhile Tribal Areas forming part thereof;

AND WHEREAS a phased approach was needed for the full application of fiscal laws to the said erstwhile Tribal Areas, a decision was made to exempt all those supplies and transactions from levy of federal taxes which were not applicable to the said areas by virtue of said Article 247 and accordingly three sales tax Notifications No. S.R.O. 888(I)/2018, No. S.R.O. 889(I)/2018 and No. S.R.O. 890(I)/2018, all dated the 23<sup>rd</sup> July, 2018, were issued by the Federal Government granting exemption from sales tax to the supplies specified therein;

AND WHEREAS concerns were raised by the trading community of the said erstwhile Tribal Areas to the effect that the three aforesaid Notifications did not restore the position as

**ATTESTED**

existed prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018);


NOW, THEREFORE, in order to address the concerns so raised and to restore the position in relation to levy of sales tax to the said erstwhile Tribal Areas, the Federal Government, in exercise of the powers conferred by clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990, is pleased to—

- (a) *ab-initio* rescind its Notifications No. S.R.O. 888(I)/2018, No. S.R.O. 889(I)/2018 and No. S.R.O. 890(I)/2018, all dated the 23rd July, 2018; and
- (b) exempt from whole of sales tax, by whatever name called, as levied under the Sales Tax Act, 1990, or notifications issued thereunder, on supplies made till the 30<sup>th</sup> June 2023, to which the provisions of the said Act of 1990 or the notifications issued thereunder, would have not been applied had Article 247 of the Constitution not been omitted under the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018).

2. This Notification shall take effect on and from the date the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) received assent of the President of the Islamic Republic of Pakistan.

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[C. No. 5/94-STB/2018]

  
(Dr. Muhammad Iqbal)  
Additional Secretary

**ATTESTED**

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE  
XIII

Government of Pakistan  
Revenue Division  
Federal Board of Revenue  
\*\*\*\*\*

Islamabad, the 5<sup>th</sup> October, 2018.

**NOTIFICATION  
(Income Tax)**

**S.R.O.1213(I)/2018.-** WHEREAS prior to the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018), the Income Tax Ordinance, 2001 (XLIX of 2001) was not in force in the Tribal Areas as defined in Article 246 of the Constitution of the Islamic Republic of Pakistan, hereinafter called as the Constitution, and the levy of income tax was not attracted to the said Tribal Areas;

AND WHEREAS Article 247 of the Constitution stood omitted on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) with effect from 31<sup>st</sup> day of May, 2018 and the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) stood merged in the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution;

AND WHEREAS on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018), the Income Tax Ordinance, 2001 (XLIX of 2001) is in force in the said Provinces including the erstwhile Tribal Areas forming part thereof;

AND WHEREAS a phased approach was needed for the full application of fiscal laws to the said erstwhile Tribal Areas, a decision was made to exempt all persons from levy of income tax which was not applicable to the said areas by virtue of said Article 247 and accordingly Notification No. S.R.O 887(I)/2018, dated the 23<sup>rd</sup> July, 2018, was issued by the Federal Government granting exemption from income tax as aforesaid;

**ATTESTED**

AND WHEREAS concerns were raised by the trading community of the said erstwhile Tribal Areas to the effect that the aforesaid Notification did not restore the position as existed prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018);

NOW THEREFORE in order to address the concerns so raised and to restore the position in relation to levy of income tax to the said erstwhile Tribal Areas, and in exercise of the powers conferred by sub-section (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the said Ordinance, namely: —

In the aforesaid Schedule—

(a) In Part I,—

- (i) clauses (144) and (145) shall be omitted; and
- (ii) after clause (145), omitted as aforesaid, the following new clause shall be added, namely:—

“(146) Any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution with effect from the 1<sup>st</sup> day of June, 2018 to the 30<sup>th</sup> day of June, 2023 (both days inclusive); and

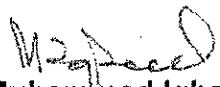
**ATTESTED**

(b) In Part IV,—

- (i) clause (106) shall be omitted;
- (ii) after clause (109), the following new clause shall be added, namely;—

“(110) The provisions of sections in Division III of Part V of Chapter X and Chapter XII of the Ordinance for deduction or collection of withholding tax which were not applicable prior to commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) shall not apply to individual domiciled or company and association of person resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution with effect from the 1<sup>st</sup> day of June, 2018 to the 30th day of June, 2023 (both days inclusive).

[F.No.1(79)Secy(ITP)/2018]

  
(Dr. Muhammad Iqbal)  
Additional Secretary

**ATTESTED**

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**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR**

(Judicial Department)

**W.P.No.5356-P of 2018.**

ANNEXURE

XIV

Date of hearing: 13.11.2019.

Mr.Abdur Rahim Jadoon, advocate for the petitioner.

M/s Rahmanullah, Ishtiaq Ahmad (Junior) and Abbas Mukhtiar, advocates for the respondents.

Mr.Muhammad Habib Qureshi, Additional Attorney General for the Federation.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** Through this judgment, we shall also decide the connected writ petitions bearing Nos. 4802-P, 4803-P, 5314-P, 5355-P, 5453-P, 5503-P, 5504-P, 5626-P, 5636-P, 5641-P, 5642-P, 5929-P, 6091-P of 2018, 351-P, 352-P, 594-P, 1315-P, 2239-P, 2628-P, 5518-P and 5766-P of 2019 as common questions of law and facts are involved in all the writ petitions.

Gain

2. Petitioner's prayer in writ petition No.5356-P of 2018 is as under:-

"It is therefore very humbly prayed that on acceptance of this writ petition, this Honourable Court may

ATTESTED

very magnanimously hold, declare and order:

- i. That the petitioner is not amenable to pay Income Tax and Sales Tax by way of advance tax/minimum tax or otherwise upon the consignments meant for its industrial unit situated in the defunct PATA in light of dispensation provided/ promised at the time of 25<sup>th</sup> amendment and any demand raised by the respondents irrespective of the recent Notification No.S.R.O. 1213(1)/2018 dated 05.10.2018 for the Income Tax and Notification No.S.R.O. 1212(1)/2018 dated 05.10.2018 for the Sales Tax and any adverse action taken by the respondents in this respect is illegal, unlawful, without lawful authority and thus of no legal effect.
- ii. That respondents are bound to clear the consignment(s) of the petitioner without charging any Income Tax and Sales Tax on import of raw material or ghee material and its business in PATA.
- iii. The refusal on part of the respondents in granting exemption from income tax

*Gain*

**ATTESTED**

and sales at import stage or otherwise for consignment exclusively meant for exempted areas through due to impugned Notification No.S.R.O. 1213(1)/2018 dated 05.10.2018 for the Income Tax and Notification No.S.R.O. 1212 (1)/2018 dated 05.10.2018 for the Sales Tax are illegal, unlawful, without lawful authority and thus of no legal effect”.

3. Facts of the case need no reiteration as the issue raised in the petition in hand and the connected petitions has already been laid to rest by this court through a judgment dated 03.04.2019 delivered in writ petition No.1881-P of 2019. Operative part of the judgment *ibid* is reproduced as herein below:-

*Gain*

“The upshot of the above discussion is that the petitioners are not liable to pay any tax which was applicable prior to the Constitution (Twenty-fifth Amendment) Act, 2018. Consequently, collection of advance tax on the amount of electricity bills of Industrial Units of the petitioners, being in violaion of SROs No.1213 and 1212 dated 05.10.2018, is

**ATTESTED**

hereby declared illegal. The petitioners are not required to obtain any Exemption Certificate as contemplated under section 159 of the Income Tax Ordinance.”

4. It is worth to mention that the petitioner's case is quite identical and at par with writ petition No.1881-P of 2019. When there is commonality in both the petitions, then on no count this court can take a view different than what has already been taken in judgment referred above.

5. For what has been discussed above, this and the connected petitions are allowed in light of the judgment delivered on 03.04.2019 in writ petition No.1881-P of 2019.

  
JUDGE

  
JUDGE

**Announced.**

**13.11.2019.**

Sadiq Shah PS (DB) Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice  
Abdul Shakoor.

**ATTESTED**

2019 P T D 1652

[Peshawar High Court]

Before Rooh-ul-Amin Khan and Muhammad Nasir Mehfooz, JJ

Messrs ABID FOUNDRY through authorized representative and another

Versus

PAKISTAN through Federal Secretary, Finance and Revenue Division, Islamabad and 5 others

Writ Petition No. 1881-P of 2019, decided on 3rd April, 2019.

**(a) Income Tax Ordinance (XLIX of 2001)---**

---Ss. 53, 159 & Second Sched.---Constitution of Pakistan, Art. 246---S.R.O. No. 1213(I)/2018 dated 05.10.2018---SRO No. 887(I)/2018, 23.07.2018---Merger of Federally Administered Tribal Areas ( FATA ) into Province of Khyber Pakhtunkhwa (KPK)---Tax exemption provided to residents of said area by Federal Government for a period of five years---Exemption from payment of tax and exemption from applicability of tax ---Distinction---Deduction of withholding taxes and advance tax on utility bills for residents of former FATA---Requirement of Tax Exemption Certificate ---Scope---Petitioners, which were industrial units operating in erstwhile FATA impugned demands for payment of sales tax and income tax as well as deduction of withholding and advance tax on electricity bills and other utilities---Question before High Court was related to interpretation exemption from payment of tax and exemption from certain provisions of tax , provided to individuals, association of persons and companies, located in erstwhile FATA as defined by Art. 246 of the Constitution and such exemptions, inter alia, were provided by S.R.O. No. 1213(I)/2018 dated 05.10.2018 and S.R.O. No. 887(I)/2018, 23.07.2018---Held, that after amendment in the Constitution immunity from taxes allowed to inhabitants of erstwhile FATA no longer existed, however Federal Government decided to continue concession to resident of said area in shape of exemption from all taxes for period of five years which were granted by issuing SROs---Such exemptions was not simple exemptions regulated under S. 53(1) of Income Tax Ordinance, 2001, rather Federal Government intended to keep the situation as it existed prior to the Constitutional amendment---Section 53(2) of Income Tax Ordinance, 2001 not only empowered Federal Board of Revenue to exempt any class or classes of persons from payment of tax, but also empowered Federal Government to exempt any person from the operation of any provision of Income Tax Ordinance, 2001---Petitioners, in the present case, had not been exempted from tax payable under but rather been exempted from applicability of such provisions--- Exemption from payment of tax was a concession while exemption from applicability of provision of Income Tax Ordinance, 2001 was absolute immunity---Taxpayer, in case of exemption, required an Exemption Certificate under S.159 Income Tax Ordinance, 2001 while in case of immunity from provision of Income Tax Ordinance, 2001, it shall be deemed that Income Tax Ordinance, 2001 was not applicable to taxpayer---Deduction or collection of withholding tax, which were not applicable prior to Constitutional amendment would therefore not apply to residents of former FATA under the said SROs---High Court held that petitioners were not liable to pay any tax which was not applicable prior to Constitutional amendment and collection of advance tax on the amount of electricity bills of industrial units of petitioners was declared illegal---High Court further held that petitioners were not required to obtain any Exemption Certificate as contemplated under S. 159 of the Income Tax Ordinance, 2001---Constitutional petitions were disposed of accordingly.

**(b) Interpretation of statutes---**

---Principles---Statutes and enactments were intentions of Legislature, which enacted them after having regard to various facts and circumstances prevailing at the time of such Legislation.---Interpretation of statutes by Courts shall be done in such a way that intention of Legislature shall prevail and no injustice was accrued to a party and such interpretation which made an enactment a consistent whole should be the aim of a Court.

Shumail Ahmad Butt for Petitioners

Rehman Ullah and Ishtiaq Ahmad for Respondents.

Date of hearing: 3rd April, 2019.

**ATTESTED**

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Through this common judgment, we propose to decide this and the following connected writ petitions, as identical question of law and fact is involved therein. Particulars of the connected writ petitions are given below:-

1. Writ Petition No.1997-P/2019  
Messrs Universal Steel Mill v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
2. Writ Petition No. 1998-P/2019  
Messrs Umer Stell v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
3. Writ Petition No. 1999-P/2019  
Messrs Steel Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
4. Writ Petition No.2000-P/2019  
Messrs Muslim Steel Mills v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
5. Writ Petition No.2001-P/2019  
Messrs Lillah Steel Mills v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
6. Writ Petition No.2002-P/2019  
Messrs Malik Steel Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
7. Writ Petition No.2003-P/2019  
Messrs Mustafa Steel v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
8. Writ Petition No.2004-P/2019  
Messrs A. K. Tariq Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
9. Writ Petition No.2005-P/2019  
Messrs Al Raziq Steel Mills v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
10. Writ Petition No.2006-P/2019  
Messrs Dua Stell Furance v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
11. Writ Petition No.2007-P/2019  
Messrs Royal Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
12. Writ Petition No.2008-P/2019  
Messrs Khyber Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
13. Writ Petition No.2009-P/2019  
Messrs MK Steel Mills v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
14. Writ Petition No.2010-P/2019  
Messrs Shahid Iqbal Steel v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.

**ATTESTED**

15. Writ Petition No.2011-P/2019  
Messrs Makka Steel Furnace v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
16. Writ Petition No.2012-P/2019  
Messrs MR Steel Mill v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
17. Writ Petition No.2014-P/2019  
Messrs Al Falah Steel Mill v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
18. Writ Petition No.2015-P/2019  
Messrs Mohmand Moulding Workers v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
19. Writ Petition No.2016-P/2019  
Messrs Naseeb Steel Furnace v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
20. Writ Petition No.2017-P/2019  
Messrs MZ Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
21. Writ Petition No.2018-P/2019  
Messrs Al Haj Foundry v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
22. Writ Petition No.2019-P/2019  
Messrs New Mohmand Steel Mills v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
23. Writ Petition No.2020-P/2019  
Messrs Gul Badshah Steel Furnace v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.
24. Writ Petition No.2021-P/2019  
Messrs Daud Steel Fabrication Factory v. Pakistan through Federal Secretary Finance and Revenue Division, Islamabad and others.

2. Petitioners, who are proprietorship concerns, having manufacturing Units of Steel Products in the erstwhile Federally Administrated Tribal Area ("FATA") now District Khyber, seek issuance of the following writ:-

"To declare that the petitioners are not amenable to pay the impugned taxes, levies and charges along with electricity bills including Income Tax, Sales Tax, Further Tax (FT), Extra Tax (ET) etc for their Industrial Units, situated in the defunct FATA, on the strength/basis of dispensation provided/promised at the time of 25th amendment, therefore, any demand raised by the respondents irrespective of the recent Notification S.R.O. No.1213(I)/2018 dated 05.10.2018 for the Income Tax and SRO. No. 1212(I)/2018 dated 05.10.2018, for the Sales Tax and any adverse action taken in this respect, be declared as illegal unlawful, without lawful authority and of no legal effect; and

That the respondents be directed to send electricity bills of the petitioners' Industries without charging the impugned levies, Income Tax, Sales Tax, F-Tax and E-Tax.

Any other relief, if not specifically asked for by the petitioners".

3. In their respective writ petitions, the petitioners have averred that Tribal Areas Electric Supply Company (TESCO) "respondent No.4", under supervision and control of the Federal Ministry of Energy and Peshawar Electric Supply Company (PESCO) provides and distributes electricity in seven Agencies i.e. the

ATTESTED

erstwhile FATA, whereas petitioners being its consumers are regularly paying electricity bills of their Industrial Units. For the month of January, 2019, respondent No.4/TESCO, sent electricity bills of Industrial Units of the petitioners wherein unprecedented heavy and exorbitant amount under the heads of Income Tax, Sale Tax, FC Surcharge, E-Tax (Extra Tax) and F-Tax (further Tax), have been charged without any legal justification. Petitioners emphasize that on 29th May, 2018, a Regulation to provide for an Interim System of Administration of Justice, Maintenance of Peace and good Governance in the Federally Administered Tribal Areas, "FATA Interim Governance Regulation, 2018", was promulgated, under section 3 whereof, Frontier Crimes Regulation (FCR), 1901 (Amended in 2011), was repealed. On 31st May, 2019, the President assented the Act, namely, "Constitution (Twenty-fifth Amendment) Act, 2018" promulgated on 5th June, 2018, consequent whereupon, Article 247 of the Constitution was omitted and relevant changes in Article 246 of the Constitution were made. Eventually, FATA/PATA was merged with the Province of Khyber Pakhtunkhwa. Nevertheless, the Members of Majlis-e-Shura and Provincial Assembly had desired that special incentives and exemptions should be given by the Federal and Provincial Governments to the newly created Districts of defunct FATA for a period of 5 to 10 years. Resultantly, Economic Coordination Committee (ECC), approved tax exemptions and incentives for the people of erstwhile FATA and PATA for a period of five years so as to also facilitate the general consumers and domestic consumers of electricity. The immunity also includes the use of Non-Custom Paid (NCP) vehicles for a period of five years ending on 30.06.2023. Here apropos is the SRO No.887(I)/2018 dated 23.07.2018, whereby after clause 143 in Part-I, new clauses 144 and 145 were inserted in the Income Tax Ordinance, 2001, whereby profits and gains derived by individuals, association of persons and companies, inter alia, of the defunct FATA, were exempted from payment of income tax w.e.f. 01.06.2018 to 30.06.2023. Similarly, clause 106 was omitted and new clause 110 was inserted in the Ordinance (ibid), whereby deduction or collection of withholding tax was made not applicable to individuals, association of persons and companies of newly created Khyber District. Petitioners allege that, Income Tax on Steel Melting Units, is charged under section 235-B of the Income Tax Ordinance, 2001, whereas F-Tax and E-Tax are charged under sections 3(1A) and 3(5) read with SRO.509(I)/2013 dated 12.06.2013 of the Sales Tax Act, 1990, respectively. Similarly, Sales Tax is either charged under section 3(1) of the Sales Tax Act, 1990 or under Chapter-XI of the Sales Tax Special Procedures Rules, 2007, issued under the relevant provisions of Sales Tax Act, 1990. The petitioners being manufacturing Units, carrying on business in the vicinities of the erstwhile FATA, in view of the SRO (ibid), are not amenable to levy of any Income Tax or Sales Tax, hence, these writ petitions.

4. The moment, this and the connected cases were taken up for preliminary hearing yesterday i.e. 02.04.2019, learned counsel for the respondents along with representative of the Income Tax and Sales Tax, came to the rostrum and while accepting notice requested for time to file their respective replies to the writ petitions. Their request was acceded to with the direction to file their comments and also to provide copy thereof in advance to the learned counsel for petitioners, whereas, the cases were posted for today.

5. Arguments of learned counsel for the parties heard and record perused with their able assistance.

6. The epitome of the controversy, involved in the instant cases, revolves around interpretation of "exemption from payment of tax and exemption from certain provisions of tax", now provided to Individuals, Association of persons and Companies, located in the Tribal Areas of Pakistan, (the defunct FATA), as defined by Article 246 of the Constitution. Before discussing merits of the case, it is necessary to mention that before the constitutional (25th Amendment Act, 2018), Income Tax and Sales Tax laws, were not applicable to the erstwhile FATA. However, on omission of Article 247 and changes in Article 246 of the Constitution through the aforesaid amendment, all the laws, including tax laws enforced in the country, particularly, in the Provinces of the Khyber Pakhtunkhwa and Balochistan, ipso facto, became applicable to the defunct FATA. Since, the Federal Government realized that inhabitants of the defunct FATA needed breathing space for entering into the tax regime, therefore, the already existing constitutional tax immunity was maintained and inhabitants of the defunct FATA were exempted from certain provisions of the Income Tax Ordinances w.e.f. 1st June 2018 to 30th June, 2023, vide two different Notifications of even date i.e. 05.10.2018. The SRO No. 1213(I)/2018, whereby clauses 144, 145 and 110, have been inserted in the Income Tax Ordinance, 2001, is taken for consideration and for the sake of convenience and ready reference, is reproduced below:-

Government of Pakistan Revenue Division

**ATTESTED**

Federal Board of Revenue

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Islamabad the 5th October, 2018

NOTIFICATION  
(Income Tax)

S.R.O. 1213(I)/2018.---WHEREAS prior to the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) , the Income Tax Ordinance , 2001 (XLIX of 2001) was not in force in the Tribal Areas as defined in Article 246 of the Constitution of the Islamic Republic of Pakistan, hereinafter called as the Constitution , and the levy of income tax was not attracted to the said Tribal Areas;

AND WHEREAS Article 247 of the Constitution stood omitted on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) with effect from 31st day of May, 2018 and the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) stood merged in the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution;

AND WHEREAS on commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018), the Income Tax Ordinance, 2001 (XLIX of 2001) is in force in the said Provinces including the erstwhile Tribal Areas forming part thereof ;

AND WHEREAS a phased approach was needed for the full application of fiscal laws to the said erstwhile Tribal Areas, a decision was made to exempt all persons from levy of income tax which was not applicable to the said areas by virtue of said Article 247 and accordingly Notification No. S.R.O. 887(I)/2018, dated the 23rd July, 2018, was issued by the Federal Government granting exemption from income tax as aforesaid;

AND WHEREAS concerns were raised by the trading community of the said erstwhile Tribal Areas to the effect that the aforesaid Notification did not restore the position as existed prior to the commencement of the Constitution (Twenty-fifth Amendment) Act , 2018 (XXXVII of 2018);

NOW THEREFORE in order to address the concerns so raised and to restore the position in relation to levy of income tax to the said erstwhile Tribal Areas, and in exercise of the powers conferred by subsection (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the said Ordinance, namely:--

In the aforesaid Schedule-

(a) In Part I,---

(i) clauses (144) and (145) shall be omitted ; and

(ii) after clause (145), omitted as aforesaid, the following new clause shall be added, namely:--

"(146) Any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article 246 of the Constitution with effect from the 1st day of June, 2018 to the 30th day of June, 2023 (both days inclusive); and

(b) In Part-IV-

(i) clause (106) shall be omitted;

(ii) after clause (109), the following new clause shall be added, namely;

"(110) The provisions of sections in Division III of Part-V of Chapter-X and Chapter-XII of the Ordinance for deduction or collection of withholding tax which were not applicable prior to commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018) shall

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not apply to individual domiciled or company and association of person resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Balochistan under paragraph (d) of Article-246 of the Constitution with effect from the 151 day of June, 2018 to the 30th day of June, 2023 (both days inclusive). (emphasis supplied).

7. Concerns were raised by the Trading Community of the erstwhile Tribal Areas regarding the abrupt and sudden applicability of taxes in the defunct FATA, where its concept was alien to the inhabitants. The Federal Government, while realizing the restiveness amongst the bewildered residents of defunct FATA due to abrupt applicability of tax laws, decided to provide a time limit so as to shift them from century old system into the constitutional tax regime prevalent in the settled area and so issued SRO No.887 dated 23.07.2018, whereby the following four amendments were made in the tax regime:-

- i. Business in defunct FATA shall be registered with the field Officer by 30.09.2018.
- ii. The person owing business must be a bona fide resident of defunct FATA.
- iii. The earning of the person must be from the locality of defunct FATA; and
- iv. The registered of the business concern be situated in those areas.

Those qualifying the above criteria were put to exemption through the above mentioned SRO.

8. As is manifest from the record, the Trading and Business community had raised strong concerns to the effect that above-mentioned SRO is mere an eyewash and is against the spirit of Resolution of the Provincial Assembly as well as assurance of the Federal Government that position regarding taxes in the defunct FATA shall be the same as was prevalent before 25th Constitutional Amendment Act, 2018. Thus, in order to address the concerns so raised and to restore the position in relation to levy of income tax to the said area, the earlier SROs were rescinded.

9. There is no cavil to the legal provisions that before 25th Amendment Act, 2018 and merger of FATA into settled area, the residents and inhabitants of Tribal Areas were enjoying immunity from every kind of tax, either on Person, Occupier, Company and Properties etc, however, this immunity was done away with by the Constitutional 25th Amendment Act, 2018, whereby Tribal Areas were merged into settled area and all the Federal laws, including tax laws, automatically got extended to the Tribal Areas and as such, the residents and persons carrying on business in the Tribal Areas remained no more immune from the payment of taxes. It is also an undeniable fact that through the above quoted SRO No. 1213, the Federal Government has decided to continue concession to the residents of Tribal Areas by providing breathing space to them to enter into the regime of tax gradually and so they were granted all those benefits, in the shape of exemption from all taxes, which were available to them prior to the 25th Amendment Act, 2018. The legislative intent in this respect is clear than crystal, which denotes in the following phrase of SRO 1213.

"And whereas a phased approach was needed for the full application of fiscal laws to the said erstwhile Tribal Areas, a decision was made to exempt all persons from levy of income tax which was not applicable to the said areas by virtue of said Article 247 and accordingly Notification No. SRO. 887(I)/2018, dated the 23rd July, 2018, was issued by the Federal Government granting exemption from income tax as aforesaid.

AND WHEREAS concerns were raised by the trading community of the said erstwhile tribal areas to the effect that the aforesaid Notification did not restore the position as existed prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018).

NOW THEREFORE, in order to address the concerns so raised and to restore the position in relation to levy of income tax to the said erstwhile Tribal Areas and in exercise of the powers concerned by subsection (2) of section 53 of the Income tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendment shall be made in the Second Schedule to the said Ordinance; namely:-.....

The above cited phrases in Preamble of the SRO 1213, indicate the intention of acknowledgement of concerns and strong reservations of business community raised before the Federal Government and most particularly to transform the attitude of inhabitants of FATA phase-wise from century old tribal traditions to

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perfect constitutional state, hence, it was not a simple exemption to be regulated under section 53(1) of the Income Tax Ordinance, 2001, rather the Federal Government intended to keep the situation intact regarding all the non- applicable taxes as it was existing prior to the twenty-fifth amendment.

10. It transpired from the record that in order to make the Fiscal Laws applicable to the erstwhile Tribal Areas, sale tax Notification No. SRO 888(I)/2018, SRO 889(I) of 2018, and SRO No. 890(I) of 2018 both dated 23rd of July, 2018, were issued by the Federal Government qua exemption of the supplier specified therein from sale tax, but subject to registration of Industrial Units with the Federal Tax Authorities i.e. under section 181 of the Income Tax Ordinance. However due to strong reservations and concerns of the Trading Community of the Tribal Areas to the effect that said notifications are not in consonance with the promise made by the Legislative Authority regarding keeping status-quo in the matters of taxes as was existing prior to merger of FATA, subsequent Notifications SRO Nos. 1212(I)/2018 and 1213(I)/2018, were issued whereby earlier Notifications Nos. 888 to 890 of 2018, were rescinded ab-initio and by insertion of section 110 in the 2nd Schedule Part-IV, the provision of section in Division-III of Part-V Chapters-X and XII were made not applicable to the merged area of FATA, for the purpose of collection of withholding tax on the same pattern as it was not applicable to the then FATA.

11. In the cases in hand, undisputedly, SROs under discussion have been issued under section 53(2) of Income Tax Ordinance, which not only empower the Federal Board of Revenue (with the approval of Federal Minister-in-charge) to exempt any class or classes of persons specified in the 2nd Schedule from payment of tax, but also empower the Federal Government to exempt any person from the operation of any provision of the Ordinance. For the purpose of clarity, section 53 of Income Tax Ordinance, is reproduced below:-

"S.53. Exemption and tax concession in the Second Schedule:--- (1) The income or classes of income or persons or classes of persons specified in the Second Schedule shall be:--

- (a) Exempt from tax under this Ordinance, subject to any conditions and to the extent specified therein'
- (b) subject to tax under this Ordinance at such rates, which are less than the rates specified in the first Schedule, as are specified therein'
- (c) Allowed a reduction in tax liability under this Ordinance, subject to any conditions and to the extent specified therein; or
- (d) Exempted from the operation of any provision of this Ordinance, subject to any conditions and to the extent specified therein;

(2) The Board with the approval of Federal Minister-in-Charge may, from time to time pursuant to the approval of the Economic Coordination Committee of Cabinet, whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interest in situations arising out of abnormal fluctuation in international commodity prices, removal of anomalies in taxes, development of backward areas implementation of bilateral and multilateral agreements or granting an exemption from any tax imposed under this Ordinance including a reduction in the rate of tax imposed under this Ordinance or a reduction in tax liability under this Ordinance or an exemption from the operation of any provision of this Ordinance to any international financial institution or foreign government owned financial institution operating under an agreement, memorandum of understanding or any other arrangement with the Government of Pakistan, by notification in the official Gazettee, make such amendment in the Second schedule by:-

- (a) Adding any clause or condition therein;
- (b) Omitting any clause or condition therein; or
- (c) Making any change in any clause or condition therein, as the Government may think fit and all such amendments shall have effect in respect of any tax year beginning on any date before or after the commencement of the financial year in which the notification is issued.

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(3) The Federal Government shall place before the National Assembly all amendments made by it to the Second Schedule in a financial year".

(Subsection (4) and proviso attached thereto have no relevancy with the controversy in the instant case, therefore, are not reproduced).

From the above quoted section of Income Tax Ordinance, it is manifest that exemption from tax or exemption from the operation of any provision of the Income Tax Ordinance, may be granted to any person who falls within the domain and regime of Federal Board of Revenue and liable to pay tax. As discussed in the preceding Para, the defunct FATA, after the 25th constitutional Amendment, has been merged into the settled area, and like residents of the settled areas, the inhabitants of merged FATA have entered into the tax regime, thus, they have been held liable to pay all kinds of taxes unless granted exemption from tax or from any provision of payment of tax. It is to be noted that a person exempted under section 53(1) (a, b and c), shall make recourse to section 159 of the Income Tax Ordinance, which provides a mechanism of grant of exemption.

12. No doubt, through SRO No. 1213, sections 144 and 145 of the Income Tax Ordinance have been omitted from the Second Schedule while new sections i.e. 146 and 110, have been added/inserted in the Second Schedule Part-I and Part-IV, respectively. Similarly, through SRO No. 1212, issued under section 13(2)(a) of Sales Tax Act, 1990, the petitioners are found granted exemption from whole of the sales tax, by whatever name called. Manifestly, by SRO No.1213, exemption had not been granted to the people of merged areas from payment of income tax, rather they have been exempted from applicability of provisions of Chapter-X and XII of Ordinance. Emphasis supplied to the provision of newly inserted sections 110 in preceding Para, where SRO No.1213, has been reproduced, shall make it abundantly clear that provisions of sections 149 to 158, being part of Division-III Part-V, Chapter-X and sections 231-A to 236-X being part of Chapter-XII, have been made not applicable to the inhabitants of merged areas as was the case prior to the constitutional 25th Amendment Act, 2018, for the purpose of deduction or collection of withholding taxes including tax on electricity consumption, under section 235 of the Income Tax Ordinance. Needless to mention that section 235 of the Income Tax Ordinance, whereby advance tax may be collected on account of electricity consumption, has been made not applicable by the SRO No.1213 to the merged areas. Likewise, vide SRO No. 1212, all types of sales tax recoverable under Sale Tax Act, 1990, have not been made applicable and the residents of the merged areas have been exempted from whole of the sales tax on supply made till 30 June, 2023,

13. The respondents have not denied the exemption granted to the petitioners, however, they have refuted it on the ground that under section 159 of the Ordinance, where a person claims exemption from payment of tax under the provision of Division-II or III of Chapter-X or Chapter-XII, he is under obligation to produce "Exemption Certificate" from the Commissioner. The petitioners disagree with the above said contention of respondents and claim that the provision of obtaining an exemption certificate is restricted only to the cases covered under sections 148 to 158 i.e. Division-II and III, respectively or falling under Chapter-XII which run from sections 231-A to 236-X of the Income Tax Ordinance. The petitioners have not been exempted from tax payable under the above mentioned provisions; rather they have been exempted from applicability of the same. "Exemption from payment of tax" is a concession while "Exemption from applicability of provision of Ordinance", is an absolute immunity. In case of exemption, the tax-payer shall require an "Exemption Certificate" while in case of immunity from provision of Ordinance, it shall be deemed that the Ordinance is not applicable to tax-payer. The claim of petitioners is forceful and fully approbated by the SROs under discussion as well as section 159 of the Income Tax Ordinance. Language of SROs is plain, wherefrom it can be easily inferred that the Federal Government has decided to keep away the inhabitants of merged area from burden of any kind of tax for about five years. Likewise, the language used in the main statute i.e. section 159 being unambiguous, is of paramount consideration. Verily, exemption enumerated in the second schedule shall be regulated by Part-IV section 159 which provides general provision relating to the advance payment of tax or deduction of tax at source, for which the commissioner, under circumstances and upon application in writing by the persons seeking exemption, shall issue a certificate of exemption. The said provision of Income Tax Ordinance, read as under

ATTESTED

"159. Exemption or lower rate certificate:---(1) Where the Commissioner is satisfied that an amount to which Division II or III of this Part or Chapter XII applies is:--

- (a) Exempt from tax under this Ordinance; or
- (b) Subject to tax at a rate lower than that specified in the First schedule; or
- (c) is subject to hundred per cent tax credit under section 100C, the commissioner shall upon application in writing by the person, issue the person with an exemption or lower rate certificate.
- (1-A) The commissioner shall, upon application from a person whose income is not likely to be chargeable to tax under this Ordinance, issue exemption certificate for the profit on debt referred to in clause C of subsection (1) of section 151.
- (2) A person required to collect advance tax under Division II of this Part or deduct tax from a payment under Division III of this Part or deduct or collect tax under Chapter-XII shall collect or deduct the full amount of tax specified in Division II or III or Chapter XII, as the case may be, unless there is in force a certificate issued under subsection (1) relating to the collection or deduction of such tax in which case the person shall comply with the certificate.
- (6) Notwithstanding omission of subsections (3), (4) and (5) any notification issued under the said subsections and for the time being in force, shall continue to remain in force, unless rescinded by the Board through notification in the official Gazette. "

14. From bare reading of the above cited section 159 of the Income Tax Ordinance, it appears that an "Exemption Certificate" would be required by the tax payer, where exemption is granted from payment of tax liability to which Division-II i.e. sections 148 to 148-A and Division-III viz deduction of tax at source i.e. from sections 149 to section 158 of Income Tax Ordinance, are applicable or where the provision of Chapter-XII i.e. sections 231-A to 236-X of Income Tax Ordinance, are applicable. In cases in hand, the added clauses 146 and 110 in the Second Schedule of the Income Tax Ordinance, 2001 provide that the provision of section in Division-III of Part-V of Chapter-X and Chapter-XII of the Ordinance for deduction or collection of withholding tax, which were not applicable prior to commencement of the constitutional 25th Amendment Act, 2018 shall not apply to individual domicile or company and association of person resident in the Tribal Area.

15. The petitioners claimed that they have their Industrial Units in the erstwhile Tribal Areas. In their respective writ petitions they have questioned the recovery of income tax and most particularly the sale tax. According to them the provisions of section-III of PART-V of Chapter-X and Chapter-XII of the Ordinance, for deduction or collection of withholding tax, not applicable prior to the commencement of the constitutional 25th Amendment Act, 2018, shall not apply to the individual or company and association of persons residing in the tribal areas which were not hither to part of the province of Khyber Pakhtunkhwa and Balochistan. The provisions ibid were made inapplicable from 1st day of June, 2018 to 30th day of June, 2023. Similarly, by issuance of the SRO, the tribal areas were exempted from whole of sale tax, by whatever name called, as levied in Sales Tax Ordinance, 1990 or notification issued thereunder. The stated exemption was to carry effect till 30th June, 2023 with an explanation that the same exemption shall be extended to the residents/occupiers of tribal areas in the manner as was the case before the constitutional 25th Amendment Act, 2018.

16. From the above discourse it is barefaced that amendment of Schedule-II, Part-IV by insertion of section 110 through SRO No. 1213, the words "exempted from the provision of the Ordinance" have been specifically used instead of "exemption from tax" enumerated in Division-II and III of Chapters-X and XII of the Income Tax Ordinance. Invariably, the petitioners, having their Industrial Units inside the Tribal Areas, have been given immunity in the shape of exemption, where applicability of Chapters-X and XII, have been excluded for a period of five years. There is no cavil to the proposition that a statute and an enactment are the intention of Legislature, which enact them after having regard to various facts and circumstances prevailing at the time of legislation. It is a cardinal principle of law that interpretation by the Courts shall be done in such a way that intention of Legislature shall prevail and no injustice is accrued to the parties. In other words, it can be said that an interpretation, which makes the enactment a consistent whole, should be the aim of the Court. Looking fairly at the preamble of the SROs and language used

**ATTESTED**

therein, one can arrive at an irresistible conclusion that the Federal Government, after merger of FATA into the settled area, had decided that tax laws shall be applied phase-wise to the defunct FATA within a transition period of five years. It is, therefore, that instead of "exemption from tax" the inhabitants of the defunct FATA were given "exemption from applicability of provision of payment of tax".

17. The upshot of the above discussion is that, the petitioners are not liable to pay any tax which was not applicable prior to the Constitution (Twenty-fifth Amendment) Act, 2018. Consequently, collection of advance tax on the amount of electricity bills of Industrial Units of the petitioners, being in violation of SROs Nos. 1213 and 1212 dated 05.10.2018, is hereby declared illegal. The petitioners are not required to obtain any Exemption Certificate as contemplated under section 159 of the Income Tax Ordinance.

18. This and the connected writ petitions are disposed of accordingly.

KMZ/155/P Order accordingly.

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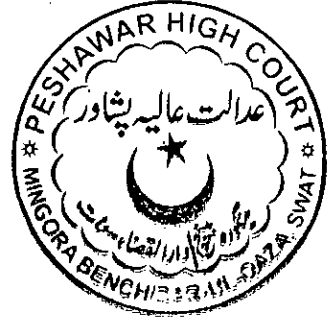
# ANNEXURE

XVI

118

## IN THE PESHAWAR HIGH COURT, MINGORA BENCH DAR-UL-QAZA, SWAT

W.P No. 1094 -M/2020  
With interim relief  
Advance Tax/Withholding Tax  
/Income Tax



M/s. Wasim Sharif Industries (Pvt) Ltd,  
Ghawar Kally, Road, Sharif Khan Village, Skhakot, District Malakand,  
through Authorized representative Mr. Muhammad Samin Jan,  
(Director) R/o Islam House Opposite GCP Ghee Mills, Meherdai, Tehsil  
Dargai District Malakand.

.....Petitioner

### VERSUS

1. The Government of Pakistan through Federal Secretary Finance & Revenue Division, Islamabad.
2. Federal Board of Revenue, through its Chairman Constitutional Avenue, Islamabad.
3. The Chief Commissioner (Inland Revenue), Regional Tax Office, (RTO), Jamrud Road, University Town, Peshawar.
4. The Collector of Customs, MCC Customs House, University Road, Peshawar.
5. The Collector of Customs Appraisal/(East/West), MCC Customs House, Karachi.
6. The Collector of Customs MCC (Imports) Port Muhammad Bin Qasim, Karachi

.....Respondents

ATTESTED

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

FILED TODAY

17 OCT 2020

Additional Registrar

**JUDGMENT SHEET**

**PESHAWAR HIGH COURT, MINGORA  
BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P. No. 1094-M/2020  
With Interim Relief**

**JUDGMENT**

Date of hearing: 24.11.2020

**Petitioner:- (M/S Waseem Sharif Industries through representative) by Muhammad Akbar Khan, Advocate.**

**Respondents (Govt: of Pakistan through Secretary Finance & others) by Mr. Nawroz Khan, D.A.G and M/S Ishtiaq Ahmad and Ghulam Shoib Jally, Advocates.**

**WIQAR AHMAD, J.-** With the declarations, determinations and observations recorded in detailed judgment in the case of "M/S Hadi Khan Silk Mills & others v/s Govt: of Pakistan through Secretary Finance & others" ("W.P. No. 442-M of 2020"), the instant writ petition is disposed of.

**ANNOUNCED**

**Dt: 24.11.2020**

S.No. 21  
Name of Applicant M/S Waseem Sharif Industries  
Date of Presentation of Applicant 29-03-2021  
Date of Completion of Copies 40  
No of Copies 337  
Urgent Fee ---  
Fee Charged 1321/-  
Date of Delivery of Copies 29-03-2021

**JUDGE**

**Certified to be true copy**

**EXAMINER**

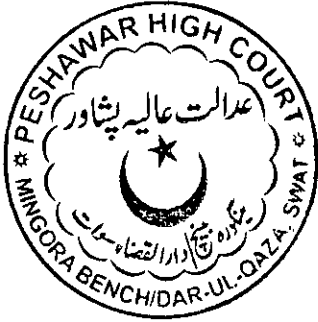
Peshawar High Court, Mingora/Dar-ul-Qaza, Swat  
Authorized Under Article 67 of Qanoon-e-Shahadat Order, 1984

**JUDGE**

Office  
08/12/2020

**JUDGMENT SHEET**

**PESHAWAR HIGH COURT, MINGORA  
BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**



1) **W.P. No. 442-M/2020**

M/S Hadi Khan Silk Mills & others  
Versus

Government of Pakistan, through Federal  
Secretary Finance & others

2) **W.P. No. 886-M/2020**

M/S Gul Steel House through Jannat Gul  
Versus

Federation of Pakistan through Sectary Finance  
& Revenue & others.

3) **W.P. No. 1090-M/2020**

M/S SB Steel Metal & Rolling Mills through  
Managing Partner  
Versus

Government of Pakistan through Sectary  
Finance & Revenue & others.

4) **W.P. No. 1091-M/2020**

M/S Sher Steel Finance & Rolling Mills  
through Managing Partner  
Versus

Government of Pakistan through Sectary  
Finance & Revenue & others.

5) **W.P. No. 1092-M/2020**

M/S Mardan Industries (Pvt.) Ltd, through  
Representative  
Versus

Government of Pakistan through Sectary  
Finance & Revenue & others.

6) **W.P. No. 1093-M/2020**

M/S Gul Shahzada Steel Mills through  
Managing Partner  
Versus

Government of Pakistan through Sectary  
Finance & Revenue & others.

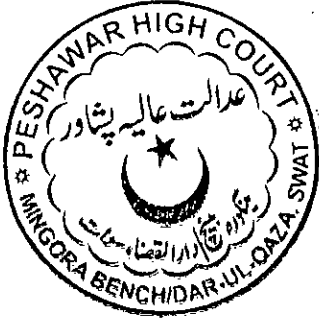
7) **W.P. No. 1094-M/2020**

M/S Waseem Sharif Industries through  
Representative  
Versus

Government of Pakistan through Sectary  
Finance & Revenue & others.

**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.



**ATTESTED**  
 Examiner  
 Peshawar High Court Bench  
 Mingora Dar-ul-Qaza, Swat.

- 8) **W.P. No. 1210-M/2020**  
 M/S Dargai Steel Furnace through Partner  
 Versus  
 Government of Pakistan through Sectary  
 Finance & Revenue & others.
- 9) **W.P. No. 1245-M/2020**  
 M/S Pak Premier Enterprises through General  
 Manager  
 Versus  
 Government of Pakistan through Sectary  
 Finance & Revenue & others.
- 10) **W.P. No. 1267-M/2020**  
 M/S Al-Mahmood Lubricants & Allied  
 Industries (Pvt.) Ltd. through Director  
 Versus  
 Government of Pakistan through Sectary  
 Finance & Revenue & others.
- 11) **W.P. No. 1268-M/2020**  
 M/S Al-Mahmood Foods (Pvt.) Ltd.  
 through Director  
 Versus  
 Government of Pakistan through Sectary  
 Finance & Revenue & others.
- 12) **W.P. No. 1243-M/2020**  
 M/S Al-Mahmood Silk Mills (Pvt) Ltd. through  
 Director  
 Versus  
 Government of Pakistan through Sectary  
 Finance & Revenue & others.
- 13) **W.P. No. 1082-M/2019**  
 With CMs No. 807 &  
 1503/2020  
 M/S Tameer Steel Zone  
 Versus  
 Government of Pakistan through Federal  
 Secretary Finance & others.
- 14) **W.P. No. 1233-M/2019**  
 M/S Dargai Polymer (Pvt.) Ltd. through Mr.  
 Sana Ullah Khan  
 Versus  
 Government of Pakistan through Federal  
 Secretary Finance & others.
- 15) **W.P. No. 421-M/2020**  
 With CMs Nos. 974 & 1518/2020  
 M/S Maqbool Plastic Industries  
 Versus

Federation of Pakistan, through Secretary &  
Economic Affairs & others

16) W.P. No. 422-M/2020

M/S Al-Mubeen Oil Extraction & Ghee  
Industries through Manager Finance  
Versus

Government of Pakistan through Federal  
Secretary Finance & others.

17) W.P. No. 435-M/2020

M/S Punjab Steel Works through Ahsanullah  
Versus

Government of Khyber Pakhtunkhwa through  
Secretary Finance & others.

18) W.P. No. 448-M/2020

M/S Ihtisham Steel Mills (Pvt.) Ltd. through  
CEO

Versus

Government of Pakistan through Federal  
Secretary Finance & others.

19) W.P. No. 522-M/2020

M/S Taj Wood Board Mills (Pvt.) Ltd. through  
CEO

Versus

Government of Pakistan through Secretary  
Finance & Revenue & others.

20) W.P. No. 525-M/2020

With CM No. 1582/2020

M/S Prime Steel through Managing Partner  
Versus

Government of Pakistan through Secretary  
Finance & Revenue & others.

21) W.P. No. 527-M/2020

With CM No. 1583/2020

M/S Prime Steel through Managing Partner  
Versus

Government of Pakistan through Secretary  
Finance & Revenue & others.

22) W.P. No. 670-M/202

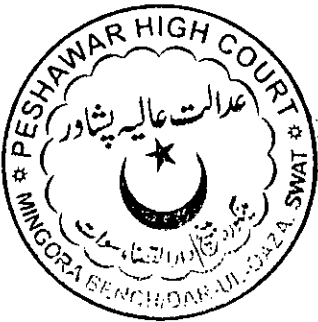
With CM No. 1587/2020

M/S Apollo Plastic & Chemicals (Pvt.) Ltd.  
Versus

Government of Pakistan through Secretary  
Finance & Revenue & others.

23) W.P. No. 792-M/2020

M/S Khaleej Steel Industries Private Limited



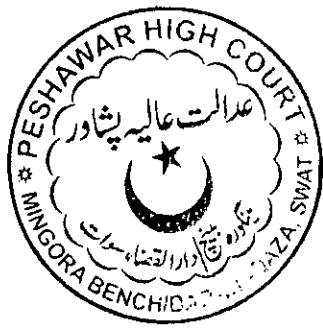
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Versus  
Government of Pakistan through Secretary  
Finance & Revenue & others.

24) W.P. No. 812-M/2020  
With CM No. 1586/2020  
M/S Mansha Steel Mills through representatives  
Versus  
Federation of Pakistan through Sectary Finance  
& Revenue & others.



25) W.P. No. 813-M/2020  
With CM No. 1581/2020  
M/S Yar Steel Mills through representative  
Versus  
Federation of Pakistan through Sectary Finance  
& Revenue & others.

26) W.P. No. 963-M/2020  
M/S Hilal Plastic Industries through its Sole  
Proprietor  
Versus  
Government of Pakistan through Secretary  
Finance, Revenue & others.

27) W.P. No. 1004-M/2020  
M/S Ali Packages Trading Company through  
Rahmat Ali  
Versus  
Government of Pakistan through Secretary  
Finance & Revenue & others.

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28) W.P. No. 1247-M/2020  
M/S Berg Light Engineering through attorney  
Versus  
Government of Pakistan through Secretary  
Finance & Revenue & others.

29) W.P. No. 1063-M/2020  
M/S Lal Qil & Ghee Mills Pvt. (Ltd.) through  
Rafiullah  
Versus  
Government of Pakistan through Secretary  
Finance & Revenue & others.

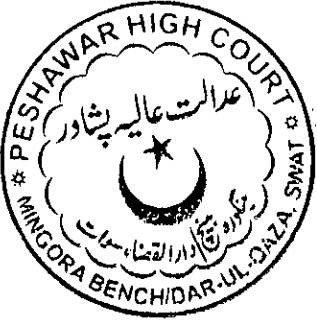
**CONSOLIDATED**  
**JUDGMENT**

Date of hearing: **24.11.2020**

Present;

M/S Isaac Ali Qazi,  
Barrister Asad-ur-Rehman and  
Muhammad Akbar Khan, Advocates  
for petitioners.

M/S Nawroz Khan, Deputy Attorney  
General, Raza-ud-Din Khan,  
A.A.G, M/S Ishtiaq Ahmad,  
Mukhtar Ahmad Maneri, (via video  
link) and Ghulam Shoib Jally,  
Advocates for respondents.

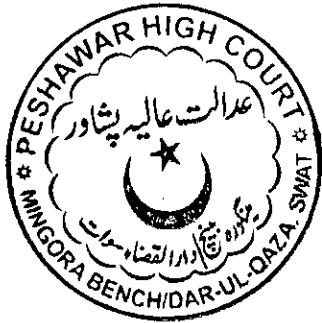


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**WIOAR AHMAD, J.-** Through this judgment, we  
intend to dispose of W.P. No. 442-M/2020, W.P. No.  
886-M/2020, W.P. No. 1090-M/2020, W.P. No.  
1091-M/2020, W.P. No. 1092-M/2020, W.P. No.  
1093-M/2020, W.P. No. 1094-M/2020, W.P. No.  
1210-M/2020, W.P. No. 1245-M/2020, W.P. No.  
1267-M/2020, W.P. No. 1268-M/2020, W.P. No.  
1243-M/2020, W.P. No. 1082-M/2019, W.P. No.  
1233-M/2019, W.P. No. 421-M/2020, W.P. No. 422-  
M/2020, W.P. No. 435-M/2020, W.P. No. 448-  
M/2020, W.P. No. 522-M/2020, W.P. No. 525-  
M/2020, W.P. No. 527-M/2020, W.P. No. 670-  
M/2020, W.P. No. 792-M/2020, W.P. No. 812-  
M/2020, W.P. No. 813-M/2020, W.P. No. 963-

M/2020, W.P. No.1004-M/2020, W.P. No. 1247-M/2020 and W.P. No. 1063-M/2020. In all these cases, respective petitioners have been importers of raw materials for their respective industrial concerns situated in the erstwhile Provincially Administered Tribal Areas (hereinafter referred to as "PATA") or the erstwhile Federally Administered Tribal Areas (hereinafter referred to as "FATA"). Both PATA and FATA used to be governed, under the dispensation provided in repealed Article 247 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as "*the Constitution*"). Under the said scheme, executive authority of the Federation extended to FATA while executive authority of the Provincial Government of the Khyber Pakhtunkhwa extended to PATA, but the legislative authorities of Parliament or Provincial Assembly had not been extending thereto, unless the particular acts passed by such legislature were specifically extended with the approval of President in case of FATA or with the approval of Governor of the Province of Khyber Pakhtunkhwa with the previous sanction of the President in the case of PATA. The Income Tax Ordinance 2001 (hereinafter referred to as "*the Ordinance*") or the Income Tax Act 1969 had never been extended to FATA or PATA. Same was the case

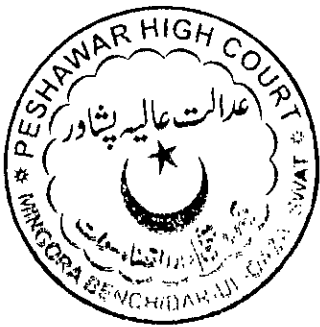


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*[Handwritten signature]*

with Sales Tax Act 1990, and these areas have historically been immune from operations of the two laws. Liability of the industrial concerns to pay income tax at import stage under section 148 of the Ordinance, as well as under section 3.1 (b) of the Sales Tax Act 1990 were also declared not to have been existing on their part in a leading judgment of this Court bearing title "Messrs Taj Packages Company (Pvt.) LTD. through Manager v/s The Government of Pakistan through Federal Secretary Finance and Revenue Division and 6 others" reported as 2016 PTD 203 (hereinafter referred to as "the case of Taj Packages"). Said judgment was also subsequently upheld by Hon'ble Supreme Court of Pakistan in the case of "Pakistan through Chairman FBR and others v/s Hazrat Hussain and others" reported as "2018 SCMR 939". Both the areas of FATA and PATA were merged in province of Khyber Pakhtunkhwa vide the Constitution (Twenty-fifth Amendment) Act, 2018 (hereinafter referred to as "Twenty-fifth Amendment"). Article 247 of the Constitution was also repealed vide section 9 of the Twenty-fifth Amendment. As a natural corollary, Income Tax Ordinance 2001 as well as the Sales Tax Act 1990 became applicable in these parts of the country. As people of the locality had historically

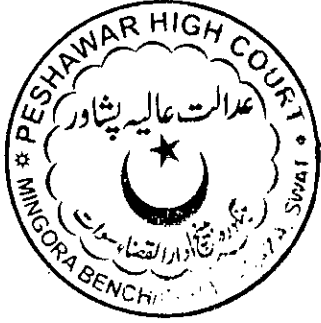


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been enjoying tax exemptions under the above-mentioned two laws, therefore the Federal Government also provided for tax exemptions under the two laws through SRO No. 888 (1)/2018 dated 23.07.2018, SRO No. 889 (1)/2018 dated 23.07.2018 and SRO No. 890 (1)/2018 dated 23.07.2018, but said SROs were subsequently replaced by SRO No. 1212 (1)/2018 dated 05.10.2018 issued by the Federal Board of Revenue Government of Pakistan which provided exemptions from liability of payment of sales tax, while SRO No. 1213 (1)/2018 issued by the Federal Board of Revenue Government of Pakistan on 5<sup>th</sup> October, 2018 provided exemptions from liability of payment of income tax by insertion of clause 146 in Part-1st of the Second Schedule of the Ordinance and for exemption from operation of certain provisions of the Ordinance by insertion of Clause No. 110 in Part-IV of Second Schedule of the Ordinance.



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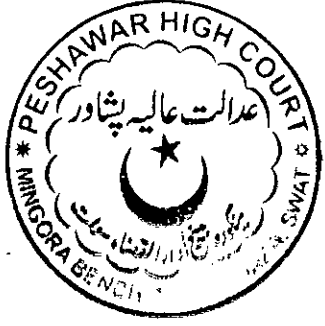
2. Grievances of the respective petitioners arose when they were denied the facility of release of goods at import stage according to the mechanism provided in the case of *Taj Packages*. Their import consignments were not being cleared by the custom authorities at ports of entries on

execution of post-dated cheques. This led to filing of all these connected petitions.

3. Petitioners have contended in their respective writ petitions that with issuance of SRO Nos. 1212(1)/2018 and 1213(1)/2018 the entire tax regime existing before promulgation of the Twenty-fifth Amendment Act has been resurrected and they should be dealt with accordingly.

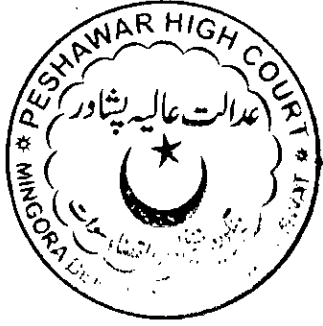
4. The Inland Revenue Authorities have filed their comments in some of the cases, wherein they have contended that with promulgation of Twenty-fifth Amendment, the Income Tax Ordinance 2001 and Sales Tax Act 1990 stood extended to the areas of FATA and PATA and therefore the petitioners should apply before the authorities under the respective acts for the grant of whatever exemptions they have been claiming. They have further contended in their comments that the benefit of erstwhile regime provided in the case of *Taj Packages* could not be availed anymore.

5. A Development took place regarding sales tax wherein entry No. 151, has been inserted to the following effect vide Finance Act, 2019;



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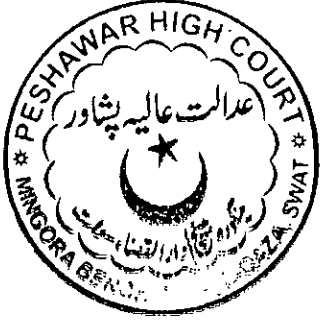
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"151	<p>(a) Supplies; and (b) Import of plant, machinery, equipment for installation in tribal areas and of industrial inputs by the industries located in the tribal areas, as defined in the Constitution of Islamic Republic of Pakistan, ....</p> <p>as-made till 30<sup>th</sup> June, 2023, to which the provisions of the Act or the notification issued thereunder, would have not applied had Article 247 of the Constitution not been omitted under the Constitution (Twenty-fifth Amendment) Act, 208 (XXXVII of 2018);</p> <p>Provided that, in case of imports, the same shall be allowed clearance by the Customs authorities on presentation of a post-dated cheque for the amount of sales tax payable under the Sales Tax Act, 1990, and the same shall be returned to the importer after presentation of a consumption or installation certificates, as the case may be, in respect of goods imported as issued by the Commissioner Inland Revenue having jurisdiction.</p> <p>Provided further that if plant, machinery and equipment, on which exemption is availed under this serial number, is transferred or supplied outside the tribal areas, the tax exempted shall be paid at applicable rate on residual value.</p>	Respective heading
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*[Handwritten signature/initials]*

Grievances of the petitioners agitated in respect of sales tax have already been addressed and we need not adjudicate upon it in this judgment. We are left with determining liability of the respective

petitioners in respect of payment of advance income tax at import stage under section 148 of the Ordinance as well as the question that what should be the mechanism for obtaining such an exemption, if they are found entitled thereto.

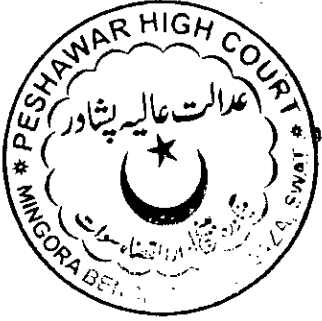


6. Mr. Isaac Ali Qazi has argued the cases as lead counsel and rest of the learned counsel for petitioners have mainly relied upon his arguments. He started his arguments by giving a history of development of taxation regime for explaining the background of issuance of SRO Nos. 1212 (1)/2018 and 1213(1)/2018. In this respect, he referred to Articles 246 and 247 of the Constitution. He also read selected Paras from the case of *Taj Packages* as well as the case of *Hazrat Hussain* Supra and stated that the purpose of issuance of SRO Nos. 1212 (1) and 1213 (1) by the Federal Government had been no other than restoring the position as it existed prior to promulgation of the Twenty-fifth Amendment. He also added that the case of *Taj Packages* is quite clear on the subject that people of this area had been exempted from payment of advance income tax under section 148 of the Ordinance and that their import consignments should be released at the ports of entries on execution of post-dated cheques for ensuring that same were consumed entirely in the

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specified area. To substantiate his assertions, he relied upon the texts of SRO Nos. 1212 (1) and 1213 (1) and submitted that the two documents had to be read with as an organic whole and when so read it was clear that it created a legal fiction to the effect that Article 247 of the Constitution should not be deemed to have been repealed for the purpose of taxation regime in the area. In this respect, he also placed reliance upon judgments of Hon'ble Supreme Court of Pakistan reported as PLD 1975 Supreme Court 397 and PLD 2012 Supreme Court 1. The learned counsel also argued that Clauses 146 and 110 have been added to Part-1st and Part-IV of the Second Schedule of the Ordinance which provided for total tax exemption. He added that when industrial concerns of the petitioners have totally been exempt from payment of tax liability, then they need not apply for obtaining an exemption certificate under section 159 of the Ordinance. He also stated that even if they apply for grant of such a certificate the authorities of Inland Revenue would only ascertain place of resident of the petitioners, regarding which no doubt had been existing as all of them were registered with the income tax authorities and have admittedly been carrying their businesses in the areas of FATA or PATA. In order to bolster his

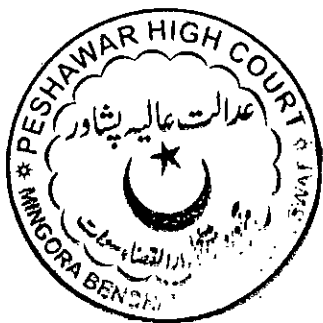


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arguments, he also placed reliance on judgment of Hon'ble Apex Court in the case of "Commissioner of Income-Tax, Peshawar v/s Messrs Gul Cooking Oil and Vegetable Ghee (PVT.) LTD. through the Chief Executive and 6 others" reported as 2003 PTD 1913.

7. Learned counsel appearing on behalf of officers of the Inland Revenue Department mainly contended that with promulgation of the Twenty-fifth Amendment to the Constitution, the Income Tax Ordinance 2001 stood extended to the area and therefore the total immunity that the petitioners have been enjoying before merger of this part with the province of Khyber Pakhtunkhwa have no more been available to them. They have also asserted that vide SRO No. 1213 (1)/2018 exemption had only been provided in respect of provisions falling in Division-III of Part-V of Chapter-X and Chapter-XII of the Ordinance, while section 148 of the Ordinance falls in Division-II thereof and therefore they had not been exempted from payment of tax liability at import stage under the said clauses of the Schedule. They also contended that whatever exemption the petitioners have been claiming they would have to apply for the same under section 159 of the Ordinance.



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8. We have heard arguments of learned counsel for petitioners in all these connected petitions, learned counsel appearing on behalf of officers of the Inland Revenue Department and perused the record.

9. The following two questions require determination in the instant proceedings;

(a) *Whether raw materials imported for industrial concerns situated in FATA or PATA are exempt from payment of advance income tax leviable under section 148 of the Ordinance?*

(b) *If first question is answered in affirmative, then the petitioners would be required to claim and obtain exemption under section 159 of the Ordinance, or the mechanism provided in the case of Taj Packages should be continued for future imports?*

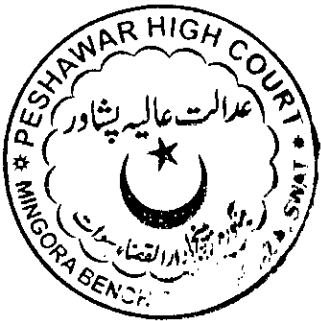


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**Determination of question (a):**

The area falling in FATA or PATA had been exempt from the levy of income tax and sales tax as the respective statutes providing for the levy had not been extending either to FATA or PATA. In other words, they had historically been exempt from payment of sales tax as well as income tax. This benefit was also declared available to them at the

time of importing goods and machineries for their industrial concerns situated in FATA or PATA, in the judgment of this Court dated 04.01.2000 rendered in the case of Messrs Gul Cooking Oil and Vegetable Ghee (PVT.) LTD. through the Chief Executive and 6 others v/s Commissioner of Income-Tax, Peshawar ("W.P. No. 1278/1999"). Said judgment was also upheld by Hon'ble Supreme Court of Pakistan in the case of Commissioner of Income-Tax, Peshawar v/s Messrs Gul Cooking Oil and Vegetable Ghee (PVT.) LTD. through the Chief Executive and 6 others reported as 2003 PTD 1913. Review petition against the judgment had been allowed vide judgment dated 05.03.2007 of Hon'ble Apex Court rendered in the case of Commissioner of Income-Tax, Peshawar v/s Messrs Gul Cooking Oil and Vegetable Ghee (PVT.) LTD. through the Chief Executive and 6 others reported as 2008 PTD 169, but even while allowing the review, liability of persons residing in FATA or PATA for payment of advance income tax at import stage had been kept intact. The situation was further clarified and an authoritative declaration was made by this Court in its leading judgment on the subject which is being referred here as the case of Taj Packages. The concluding Para of said judgment requires



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reproduction hereunder for giving a picture of the state of law that had been existing on the subject, before promulgation of the Twenty-fifth Constitutional Amendment;

Accordingly, for the reasons stated hereinabove, this Court would hold and:—

(i) Declare that advance tax charged on import under section 148 of the Income Tax Ordinance, 2001, is not payable by petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;

(ii) Declare that Sales Tax charged under section 3(1)(b) of the Sales Tax Act, 1990, is not payable by the petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;

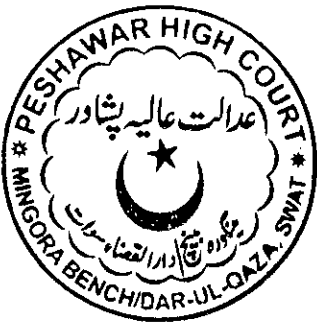
(iii) Direct the Federal Government to take appropriate steps to ensure that persons carrying on business in FATA or PATA are rendered immunity from the payment of taxes under Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, as the said statutes have not been extended to the said areas within the contemplation of Article 247(3) of the Constitution;

(iv) Direct the Federal Government to take necessary steps to formulate a uniform policy for seeking securities from the persons importing goods for its consumption and utilization in FATA or PATA, so that the immunity provided under the Constitution is not abused and in case the imported goods are utilized or sold outside the said area, then the revenue of the State is recoverable from the securities, so provided.

(v) Direct that till the decision is taken by the Federal Government regarding the security mechanism stated hereinabove, the Board shall obtain from the petitioners postdated cheques for the payment of taxes at import stage under the Act and the Ordinance, as security, for goods destined for utilization and consumption in FATA or PATA. The postdated cheques shall be returned to the petitioners upon production of consumption certificates duly issued by the concerned commissioners, as specified in Notification dated 28.2.2011. It will be the liability of the petitioners to approach the respondents for the issuance of consumption certificates."

Judgment of *Taj Packages* was also

upheld by Hon'ble Apex Court in the case of

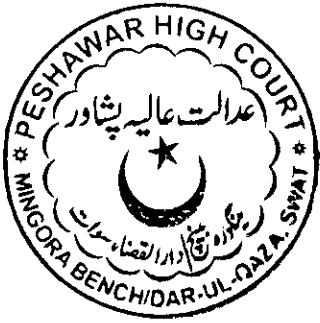


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"Pakistan through Chairman FBR and others v/s Hazrat Hussain and others" reported as "2018 SCMR 939", as stated earlier.

10. But after merger of the area falling in FATA and PATA in the province of Khyber Pakhtunkhwa, Income Tax Ordinance 2001 as well as Sales Tax Act 1969 became operational in both these areas automatically, along with all other laws prevalent in the country at the relevant time, as held by Hon'ble Supreme Court in the case of "National Commission on Status of women through Chairperson and others v/s Government of Pakistan through Secretary Law & Justice and others" reported as PLD 2019 Supreme Court 218. The Federal Government then issued SRO No. 888 (1)/2018 dated 23.07.2018; SRO No. 889 (1)/2018 dated 23.07.2018 and SRO No. 890 (1)/2018 dated 23.07.2018 for extending tax exemptions to the areas, but same were later on substituted with SRO No. 1212 (1)/2018 dated 05.10.2018 and SRO No. 1213 (1)/2018 dated 05.10.2018. The matter of levy of sales tax does not require adjudication as explained earlier. We are left with determining liability of the petitioners to pay advance income tax at import stage leviable under section 148 of the Ordinance. Grievances of the petitioners in all these petitions



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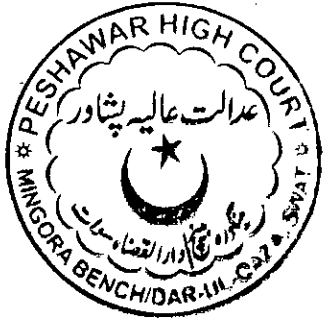
arose when said benefit was declined by officers of the Inland Revenue Department. Their stance agitated at the bar has been that since section 148 of the Ordinance had not been falling in Division-III of Part V of Chapter X which had been given exemption in Clause 110 of the Second Schedule to the Ordinance and had rather been falling in Division-II of Part V of Chapter X of the Ordinance and they have therefore not been exempt from payment of advance income tax leviable at import stage. Stance of the Inland Revenue can properly be discerned from letter No. D.O.C. No. 1 (1)-M(IR-Ops) 2020/165904-R dated 21<sup>st</sup> September, 2020 of the Member (IR-Operations) of the Federal Board of Revenue Government of Pakistan, issued during pendency of the instant proceedings, (operation of which had also been suspended through an interim order dated 03.11.2020 in the case of "Waseem Sharif Industries (Pvt). LTD v/s Government of Pakistan & others" ("W.P. No. 1094-M of 2020"). Said letter being relevant is reproduced hereunder for ready reference;

D.O.C 1 (1)-M/(IR-Ops)/2020/165904-R

Islamabad; the 21<sup>st</sup> September, 2020

Subject; Collection of Withholding Tax w/s 148 of the ITO 2001 on the import of Raw Material and Plant & Machinery by Residents of FATA/PATA.

Dear



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Invite your kind attention to the extremely important issue of alleged non deduction of income tax u/s 148 of the Income Tax Ordinance, 2001 (hereinafter called "the Ordinance") by the Custom Collectrates on import of raw material and plant & machinery by FATA/PATA residents presumably because of the exemption under the provisions of Clause (110) of Part IV of Second Schedule to the Ordinance. The said provision reads;

(110) The provisions of sections in Division III of Part V of Chapter X and Chapter XII of the Ordinance for deduction or collection of withholding tax which were not applicable prior to commencement of the Constitution (Twenty-fifth Amendment Act, 208 (XXXVII of 2018 shall not apply to individual domiciled or company and association of person resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Baluchistan under paragraph (d) of Article 246 of the Constitution with effect from the 1st day of June, 2018 to the 30th day of June, 2023 (both days inclusive).

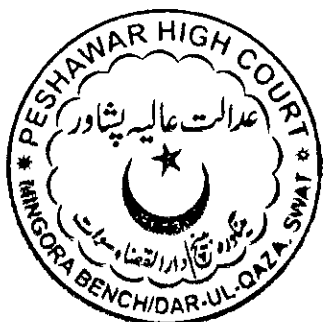
2. Since Section 148 is included in Division II of Part V of Chapter X, which finds no mention whatsoever in Clause (110) of Part IV of the Second Schedule of the Ordinance which leads to un-resistible conclusion that the legislature did not intend to extend exemption to residents of FATA and PATA on imports of raw material and plant & machinery u/s 148 of the Ordinance.

3. I avail opportunity to request you to kindly instruct your Officers below particularly at Port Qasim and Karachi Port to collect withholding tax u/s 148 of the ITO 2001 on the import of raw material and plant & machinery from all including FATA/PATA residents."

Such an opinion existing across ranks

and files of the Inland Revenue hierarchy has necessitated addressing of the question in the current situation.

11. Vide SRO No. 1213(1) of 2018 issued by Federal Board of Revenue Government of Pakistan on 5<sup>th</sup> October, 2018 entry No. 146 has been added in Part-1<sup>st</sup> of Second Schedule and entry No.



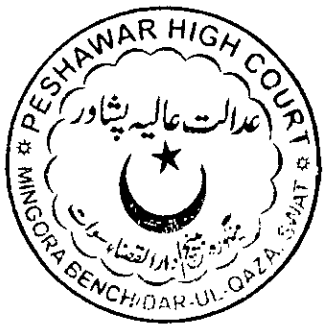
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110 has been added in Part-IV of the Second Schedule of the Ordinance. Same are reproduced hereunder for ready reference;

*“(146) Any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018 of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Baluchistan under paragraph (d) of Article 246 of the Constitution with effect from the 1st day of June, 2018 to the 30th day of June, 2013 (both days inclusive)”*

*“(110) The provisions of sections in Division III of Part V of Chapter X and Chapter XII of the Ordinance for deduction or collection of withholding tax which were not applicable prior to commencement of the Constitution (Twenty-fifth Amendment Act, 2018 (XXXVII of 2018 shall not apply to individual domiciled or company and association of person resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Baluchistan under paragraph (d) of Article 246 of the Constitution with effect from the 1st day of June, 2018 to the 30th day of June, 2023 (both days inclusive).”*



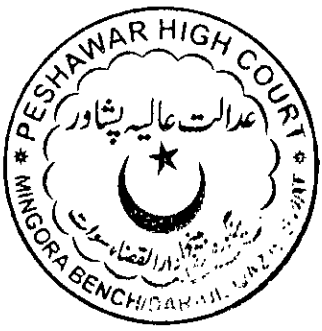
**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

While taking the stance, that section 148 of the Ordinance had been falling in Division-II of Part-V of Chapter-X which had been finding no mention in Clause 110 of Part-IV of the Second Schedule of the Ordinance and thereby exemption had not been available to residents of FATA and PATA, officers of the Inland Revenue have been ignoring Clause 146 added in Part-1st of Second

Schedule of the Ordinance. Wordings of the newly inserted Clause 146 makes it quite clear that any income which was not chargeable to tax prior to the commencement of the Constitution (Twenty-fifth Amendment) Act, 2018 of any individual domiciled or company and association of persons resident in the Tribal Areas forming part of the Provinces of Khyber Pakhtunkhwa and Baluchistan as defined under paragraph (d) of Article 246 of the Constitution, shall be exempt from levy and collection of the income tax. The fact that residents of FATA and PATA had been exempt from payment of advance income tax at import stage has been made manifestly clear in the judgment of *Taj Packages*, concluding Para of which has been reproduced hereinabove. The Federal Government have kept continuity of their exemptions by inserting Clause 146 in Part-1st of the Second Schedule, which provided for total exemption from payment of income taxes which were not payable in earlier dispensation. Stance of the Inland Revenue Department has therefore been misconceived and residents of FATA and PATA cannot be divested of the benefit of exemption given to them by the Federal Government, on the basis of such misconceived interpretations of the legal provisions on the subject.

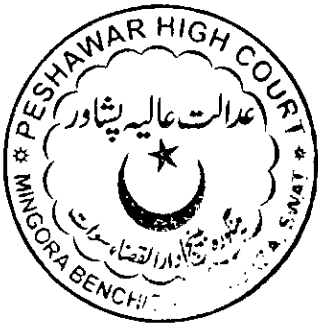
Letter No. D.O.C. No. 1 (1)-M(IR-Ops) 2020/165904-



**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

R dated 21.09.2020 which had been issued during pendency of the instant proceedings is badly hit by the principle of *Lis Pendens* besides being ill conceived. Same is declared to be ultra vires, invalid and non-est. For removal of doubt, it is once again declared that the consignments of industrial inputs and machineries of the petitioners and all others industrial concerns situated in FATA or PATA are exempt from levy of the advance income tax at import stage.



12. Determination of question (b):

We would first address arguments raised by learned counsel for petitioners in this respect. His contention was that SRO No. 1213/218 had been aiming to restore the position that existed prior to repeal of Article 247 of the Constitution, therefore it should be read as an organic whole and its net effect would be that whatever dispensation had earlier been existing, same stood restored with promulgation of the SRO. He had referred to judgments of the Hon'ble Supreme Court of Pakistan reported as PLD 1975 Supreme Court 397 and PLD 2012 Supreme Court 1 and submitted that the SRO had been having the effect of introducing a deeming clause to the effect that Article 247 of the

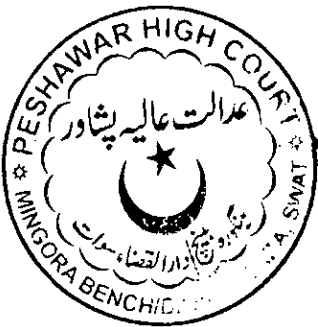
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Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

Constitution, though in-fact been repealed, shall be deemed not to have been repealed and therefore the matter should be given same effect as it had been having prior to repeal of Article 247 of the Constitution. On these premises, the learned counsel also added that the dispensation provided in the case of *Taj Packages* for execution of post-dated cheques and release of consignments on its basis at import stage, should be kept continued. The learned counsel vehemently opposed the contention of the Inland Revenue Department that in any case the petitioners would be required to apply for and obtain exemption certificate from the Commissioner Income Tax for claiming exemption under Clause 146 of Part-1<sup>st</sup> of Second Schedule and Clause 110 of Part-IV of the Second Schedule of the Ordinance.

13. SRO No. 1213/2018 has been issued by the Federal Government under the powers vested in it by sub-section (2) of section 53 of the Income Tax Ordinance, which provision of the Ordinance being relevant for the present discourse, is reproduced hereunder for ready reference;

*(2) The Federal Government may whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests in situations arising of abnormal fluctuation in*



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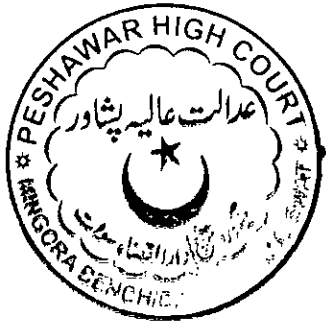
Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

*international commodity prices, implementation of bilateral and multilateral agreements or granting an exemption from any tax imposed under this Ordinance including a reduction in the rate of tax imposed under this Ordinance or an exemption from the operation of any provision of this Ordinance to any international financial institution or foreign Government owned financial institution operating under an agreement, memorandum of understanding or any other arrangement with the Government of Pakistan by notification in the official Gazette, make such amendment in the Schedule by;*

*(a) adding any clause or condition therein;*

*(b) omitting any clause or condition therein; or*

*(c) making any change in any clause or condition therein, as the Government may think fit, and all such amendments shall have effect in respect of any tax year beginning on any date before or after the commencement of the financial year in which the notification is issued.*



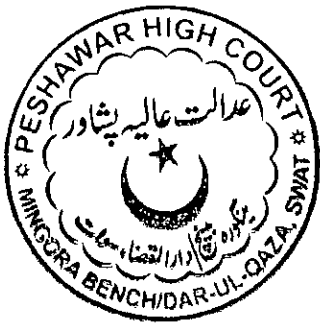
**ATTESTED**

Examiner

Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

The enabling powers of the Federal Government, in respect of granting exemptions through the above reproduced clause of section 53 has been to the effect of making amendments in Second Schedule of the Income Tax Ordinance. What is to be given effect to, are the amendments brought in the Second Schedule whereby clause 146 has been added to Part-1st of the Second Schedule and clause 110 has been added to Part-IV of the Second Schedule. The prelude given in opening Paras of SRO No. 1213/2018 can be referred to for knowing the purpose of making amendments in Second Schedule, but cannot be given a super imposing effect, so as to read something not expressly

incorporated in the Income Tax Ordinance. It would therefore be difficult for us to agree with the learned counsel for petitioners that SRO No. 1213/2018 may be read as an organic whole and should interpret other provisions of the Income Tax Ordinance like section 159 of the Ordinance, accordingly. Regarding his arguments that a deeming clause has been introduced in SRO No. 1213/2018, which should be given a super imposing effect over other provisions of the Income Tax Ordinance, we would not be able to read it in said fashion and give it an effect more than the power of the Federal Government vested in it by sub-section (2) of Section 53 of the Ordinance, unless immunity from operation of certain provisions of the Ordinance is found to have been granted by amendment of Part-IV of the Second Schedule of the Ordinance.



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Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

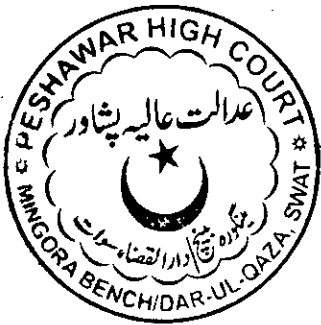
14. So far as the mechanism provided in the case of *Taj Packages* for release of consignments in lieu of post-dated cheques at import stage is concerned, it is important to be noted that said mechanism had been provided by this Court, when the Income Tax Ordinance had not been extending to FATA or PATA. With promulgation of Twenty-fifth Amendment, Income Tax Ordinance stood extended to these specified areas *ipso facto*. This Court had felt a necessity for providing temporary arrangements

due to the fact that no alternate procedure for getting exemption had been available by then. This fact is itself clear from concluding part of the judgment where such a mechanism had been provided. Said Para is re-quoted for ready reference herein;

*(v) Direct that till the decision is taken by the Federal Government regarding the security mechanism stated hereinabove, the Board shall obtain from the petitioners postdated cheques for the payment of taxes at import stage under the Act and the Ordinance, as security, for goods destined for utilization and consumption in FATA or PATA. The postdated cheques shall be returned to the petitioners upon production of consumption certificates duly issued by the concerned commissioners, as specified in Notification dated 28.2.2011. It will be the liability of the petitioners to approach the respondents for the issuance of consumption certificates."*

*(emphasis supplied)*

When the Income Tax Ordinance stands extended and being fully operational in the area, a self-contained mechanism for seeking exemption from payment of liability of income tax stands provided therein. In such situation, resort may not be had to the temporary regime provided in the case of *Taj Packages*. Section 159 of the Ordinance do provide the mechanism, through which a person who claims to be exempt from payment of any tax liability under the exemptions provided in Part 1<sup>st</sup> of the Second Schedule of the Ordinance, may get a certificate to said effect and may thereby be treated as exempt from payment of the tax liability. Said provision of law has not been exempted under clause



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Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

110 of Part-IV of the Second Schedule, therefore it would have its due operation and petitioners may have recourse thereto if they seek exemption from liability of income tax at import stage.

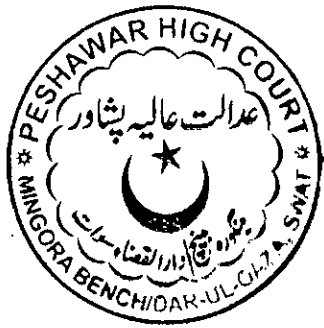
15. In some of the cases, learned counsel for petitioners have relied upon judgment of this Court given in the case of "M/S Ikram Ullah Associates and 08 others v/s Government of Khyber Pakhtunkhwa through Chief Secretary and 17 others" ("W.P. No. 886-M/2019"), but it is important to be noted here that said judgment is distinguishable from facts of the instant cases. There this Court was seized with petitions of people carrying on execution of different construction contracts in the area of PATA. Their activity was subject to the incident of advance income tax under section 153 of the Ordinance which fell in Division-III of Part-V of Chapter X of the Ordinance, and a specific exemption from operation of said provision of law had been available in Clause 110 of Part-IV of the Income Tax Ordinance. In the cases in hand, the charging provision for petitioners has been section 148 which falls in Division-II of Part-V of Chapter X of the Ordinance and no specific exemption from operation of the said provision has been given thereto. Ratio of

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Examiner  
Peshawar High Court Bench  
Mingora Da Gul-Qaza, Swat.

the said judgment cannot be made applicable in these connected cases.

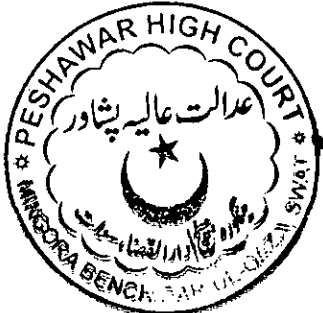
16. One of the issues that learned counsel for petitioners has repeatedly been highlighting at the bar were their apprehensions that they would not have a fair treatment at the hands of respondents, with whom they have locked horns in litigation, in case they claim exemptions there. They were also wary of the bureaucratic red-tapism and difficulties that they might be facing while applying for exemptions. Their concerns in this respect may not be entirely un-founded. We expect that the concerned authorities of Inland Revenue Department would understand the backgrounds in which these exemptions have been extended to residents of FATA and PATA by the Federal Government. They would be knowing that this area had been the bedrock of insurgency and terrorism, besides being deprived of normal developments that rest of parts of the country have been having over a span of decades of development because of government spendings in the shape of annual development programs and the investments made because of relative stability in those areas. We hope that petitioners and people of these areas shall be dealt with by officers of the



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Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

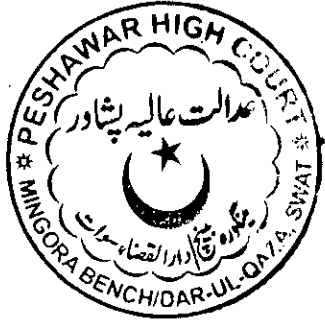
Inland Revenue not only according to letters of the law providing for exemptions but according to its spirit as well. "While it is perfectly true that the power of granting exemptions is discretionary", as held by Hon'ble Supreme Court of Pakistan in the case of Pakistan through Chairman FBR and others v/s Hazrat Hussain and others reported as 2018 SCMR 939, "It is equally true that said power could not be exercised in a discriminatory manner. Exemptions are to be granted and regulated in terms of consistent policies for sound reasons. There is no justification for granting or refusing exemptions arbitrarily or on the ipse dixit of the concerned officials. Power to grant an exemption or to decline an exemption must be exercised in accordance with the general principles relating to good governance". Hon'ble Supreme Court of Pakistan had recorded the above passage on the dint of earlier case law reported as 2005 SCMR 25, 1997 SCMR 1804 and a large number of precedents cited therein providing that the functionaries of an organization or establishment could not be allowed to exercise discretions at their whims, sweet will or in an arbitrary manner, rather they were bound to act fairly, evenly and justly. In



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 Peshawar High Court Bench  
 Mingora Dar-ul-Qaza, Swat.

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such backdrop, it is expected that the officers of Inland Revenue Department, while entertaining applications of residents or association of persons of FATA and PATA for granting exemptions, shall exercise their discretions in accordance with ratios of the above cited judgments. They shall not burden or harass the applicants, nor would they subject them to unnecessary difficulties. The exemption certificates shall be granted to all such applicants for the maximum allowable time, if and when they are found entitled thereto. With these observations, we dispose of all these connected writ petitions by holding and declaring;



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Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

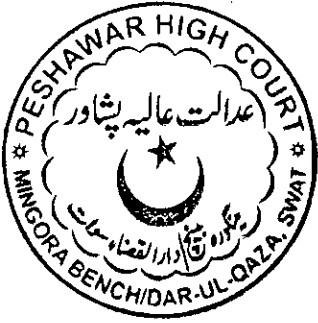
(a) that individuals and association of persons resident in the areas of erstwhile FATA or PATA shall be exempt from levy and imposition of advance income tax payable under section 148 of the Income Tax Ordinance at import stage, till the period mentioned in Clause 146 of Part-1<sup>st</sup> of Second Schedule to the Ordinance;

(b) that for seeking exemption from payment of advance income tax under section 148 of the Ordinance at import stage, the petitioners shall

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have to seek exemption from the levy thereof, under section 159 of the Ordinance.

17. Since main writ petitions have been disposed of, C.Ms Nos. 505-M, 807-M, 974-M, 989-M, 1420-M, 1503-M, 1518-M, 1581-M, 1582-M, 1583-M, 1586-M and 1587-M have therefore become infructuous and same are also disposed of accordingly. The consignments already released on receipt of post-dated cheques, in pursuance to interim orders of this Court in various writ petitions, shall however be processed according to the erstwhile regime provided in the case of **Taj Packages.**



**ANNOUNCED**  
**Dt: 24.11.2020**

**JUDGE**

**Certified to be true copy**

**EXAMINER**

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat  
Authorized Under Article 87 of Qanoon-e-Shahadat Order, 1984

**JUDGE**

Office 08/12/2020

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AMENDMENT  
XVII

GOVERNMENT OF PAKISTAN  
(REVENUE DIVISION)  
FEDERAL BOARD OF REVENUE  
\*\*\*\*

C.No.2(2)/L&P/2004

Islamabad, the 25<sup>th</sup> February, 2021

CUSTOMS GENERAL ORDER NO. 01 OF 2021

**SUBJECT: AMENDMENTS IN CUSTOMS GENERAL ORDER NO. 12 OF 2002 DATED 15.06.2002**

The Federal Board of Revenue is pleased to direct that the following further amendments shall be made in Customs General Order No. 12 of 2002 dated the 15<sup>th</sup> June, 2002, namely:-

In the aforesaid order, after paragraph 116, the following new paragraph shall be inserted, namely:-

**"117. PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA"**

In order to ensure safe and secure transportation of the raw material imported under SROs 1212(I)/2018 & 1213(I)/2018 both dated 5<sup>th</sup> October, 2018, which grants exemption of leviable Sales Tax and Income Tax at import stage, if imported by industrial units, located in erstwhile FATA/PATA, following procedure is prescribed in respect of goods / raw materials imported thereof:-

- (i) On importation of goods / raw materials intended for use in industrial units availing the afore-referred benefits, TP will be filed at Karachi;
- (ii) Goods will be transported through bonded carriers only;
- (iii) The goods and raw materials shall be cleared at the nearest dry port i.e. Azakhel and Peshawar;
- (iv) The containers / vehicles carrying goods/ raw materials meant for consumption in these industrial units shall be monitored in terms of Tracking and Monitoring of Cargo Rules, 2012 from Karachi to Peshawar and then to factory premises;
- (v) The industrial units availing the exemption shall be subjected to annual audit regarding input and output and other parameters to be determined by the Directorate General of Post Clearance and Internal Audit."

*Wajid Ali*  
(Wajid Ali)  
Secretary (Law & Procedure)

**ATTESTED**

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GOVERNMENT OF PAKISTAN  
(REVENUE DIVISION)  
FEDERAL BOARD OF REVENUE  
\*\*\*\*

C. No.2(2)L&P/2016

Islamabad, the 25<sup>th</sup> February, 2021.

The Director General of Intelligence & Investigation (Customs), Islamabad.  
The Directorate General of Transit Trade, Karachi.  
The Chief Collector of Customs Appraisalment & Facilitation (South), Karachi.  
The Chief Collector of Customs Enforcement & Compliance (South), Karachi.  
The Chief Collector of Customs (Appraisalment & Facilitation (Central), Lahore.  
The Chief Collector of Customs Enforcement & Compliance (Central), Lahore.  
The Chief Collector of Customs (North) Islamabad.  
The Chief Collector of Customs Balochistan, Quetta.  
The Director General, Post Clearance Audit & Internal Audit, Karachi.  
The Director General of Valuation (Customs), Karachi.  
The Directorate General, Reforms & Automation, Islamabad.

Subject: CUSTOMS GENERAL ORDER - PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA

I am directed to enclose Customs General Order (CGO) No.01 of 2021 dated 25.02.2021 for information and necessary action.

Encl: As above.

*Wajid Ali*  
(Wajid Ali)  
Secretary (L&P)

Copy to:

1. Member (IR-Operations), FBR, Islamabad.

**ATTESTED**

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XVII

Government of Pakistan  
Revenue Division  
Federal Board of Revenue  
Inland Revenue  
\*\*\*\*\*

C.No.7(1)T:IPU/IR/2020

Islamabad, the March 1, 2021

Circular No.09 of 2021 – Operations  
(Inland Revenue/Customs)

**Subject: Mechanism to be adopted for the release of Consignment of FATA/PATA Residents Stuck-up at the Karachi Ports**

A meeting was held under the Chairmanship of the Chairman, FBR with Inland Revenue-Operations and Customs Operations Wings to sort out the issues of imported goods of FATA/PATA residents stuck-up at Karachi Ports, Consumption/Installation Certificates, Postdated Cheques and Exemption Certificates under Section 148 of the Income Tax Ordinance, 2021.

2. After thorough deliberations between the Chairman, Member (IR-Operations) and Member (Customs-Operations) following mechanism was devised for the release of consignments of FATA/PATA residents stuck-up at the Karachi Ports:-

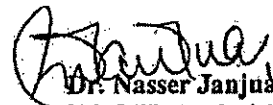
- (i) The stuck-up containers are to be released by Customs authorities against Postdated Cheques (PDCs) and sent to their destination (FATA/PATA) under standard tracker mechanism.
- (ii) The Collector Customs (Enforcement & Compliance), Peshawar, will issue detention orders of the raw materials effective from day the consignment reaches the manufacturing premise of importers.
- (iii) The importer/manufacture will be responsible to take the import documents alongwith detention order to the CIR Corporate Zone, RTO, Peshawar and make arrangements to have the manufacturing premises/raw material/machinery/goods imported verified.
- (iv) The CIR Corporate Zone, RTO, Peshawar will be liable to verify/undertake physical visit as conducted by the importer/manufacture to the manufacturing premises where the goods are kept under detention, and allow the raw material to be consumed/utilized in writing.
- (v) The CIR, Corporate Zone, RTO, Peshawar will ensure the monthly stock-taking of the raw materials to consumed in the production of manufactured goods by these manufacturing units. This stock-taking will facilitate in issuance of the

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Consumption Certificate under S.No.151 of the Sixth Schedule of the Sales Tax Act, 1990.

- (vi) The residents of FATA/PATA will apply for tax exemption certificates under section 159 of the Income Tax Ordinance, 2001 for the import of raw material/machinery in light of the Honorable Peshawar High Court, Mingora Bench, (Dara-ul-Qaza), Swat's decision dated 24.11.2020.

3. Commissioner Corporate, RTO, Peshawar and Collector Customs (Enforcement & Compliance), Peshawar would keep a close liaison to successfully implement the laid down mechanism.

  
Dr. Nasser Janjua 3.21.  
Chief (IR-Analysis)

Distribution:-

- (i) SA to Minister for Finance & Revenue.
- (ii) SA to Chairman FBR.
- (iii) SA to Member (IR-Operations)
- (iv) SA to Member (Customs-Operations)
- (v) Chief Commissioner-IR, LTOs, MTO, CTOs, and RTOs.
- (vi) Collector Customs (Enforcement & Compliance), Peshawar
- (vii) President Pakistan Tax Bar Association

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GOVERNMENT OF PAKISTAN  
(REVENUE DIVISION)  
FEDERAL BOARD OF REVENUE  
\*\*\*\*

C. No.2(2)L&P/2016

Islamabad, the 2<sup>nd</sup> March, 2021

The Director General of Intelligence & Investigation (Customs), Islamabad.  
The Directorate General of Transit Trade, Karachi.  
The Chief Collector of Customs Appraisalment & Facilitation (South), Karachi.  
The Chief Collector of Customs Enforcement & Compliance (South), Karachi.  
The Chief Collector of Customs (Appraisalment & Facilitation (Central), Lahore.  
The Chief Collector of Customs Enforcement & Compliance (Central), Lahore.  
The Chief Collector of Customs (North) Islamabad.  
The Chief Collector of Customs Balochistan, Quetta.  
The Director General, Post Clearance Audit & Internal Audit, Karachi.  
The Director General of Valuation (Customs), Karachi.  
The Directorate General, Reforms & Automation, Islamabad.

Subject: CUSTOMS GENERAL ORDER - PROCEDURE FOR CLEARANCE OF GOODS  
IMPORTED BY INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA

I am directed to refer to the captioned subject and to say that due to problems / issues faced by the Iron and Steel industries in erstwhile FATA regarding clearance of consignments of scrape, the field formations of FBR may implement the subject procedure prescribed vide Customs General Order (CGO) No.01 of 2021 dated 25.02.2021 from 20<sup>th</sup> March, 2021 in respect of these consignments. Moreover, these goods cleared from Collectorates in Karachi shall be loaded onto sealable trucks with intrusion belt / trackers installed for en-route monitoring in terms of para 2(i) of Circular No.09 of 2021 – Operations dated 01.03.2021. On arrival of these trucks in the jurisdiction of MCC (Enforcement & Compliance), Peshawar, the same shall be escorted by the staff of MCC (Enforcement & Compliance), Peshawar upto factory premises and will issue detention order in terms of para 2(ii) of the aforementioned circular.

Encl: As above.

*Wajid Ali*  
(Wajid Ali)  
Secretary (L&P)

Copy to:

1. Member (IR-Operations), FBR, Islamabad.

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GOVERNMENT OF PAKISTAN  
MODEL CUSTOMS COLLECTORATE  
APPRAISEMENT AND FACILITATION (EAST)  
CUSTOM HOUSE, KARACHI



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No. MCC-A&F (East)/ Internal Corresponds/09/2020

Dated: 17.03.2021

CIRCULAR


ANNOUNCEMENT XX

It is hereby informed that for the consignments destined for FATA/PATA the concerned importer / customs agent should approach the Directorate of Transit Trade for installation of tracker etc. in pursuance of CGO No. 01/2021 dated 25.02.2021 for consignments where assessment has been finalized by the Collectorate.

  
(Shahzad Ali)  
Assistant Collector- HQ

Copy for information to:-

1. The Collector, MCC Appraisal and Facilitation (East), Custom House, Karachi.
2. The Director, Directorate of Transit Trade, Custom House, Karachi.
3. Karachi Customs Clearing Agent Association, Karachi.
4. All concerned.

  
ATTACHED

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GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF TRANSIT TRADE  
CUSTOMS HOUSE  
KARACHI

\*\*\*\*\*



No.S1/Misc/16/2017-DTT

Dated: 17.03.2021

The Chief Collector of Customs,  
Appraisalment-South,  
Customs House,  
Karachi.

ATTENDED

XVI

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Subject: **CUSTOMS GENERAL ORDER – PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY INDUSTRIAL UNITS OF ERSTWHILE FATAPATA.**

Please refer to Board's letters No.2(2)L&P/2016 dated 25.02.2021 and 02.03.2021, and Customs General Order (CGO) No. 01 of 2021 dated 25.02.2021 and letter of even number dated 11.03.2021 of this Directorate General on the subject cited above (copies enclosed).

2. It is stated that vide above referred letter, necessary instructions have already been issued by this Directorate General to M/s. TPL Trakker (Pvt.) Ltd., for manually installing tracking devices for the subject consignments and to ensure en route tracking and monitoring till the development of the functionality in the WeBOC system. However, keeping in view the processing of such consignments in the Collectorates and non-availability of access to their data by the Directorate of Transit Trade in the WeBOC system, it is suggested that such consignments may be cleared in the system by the respective Collectorates only after implementation of the required condition as prescribed in the CGO and Board's instructions issued vide letter No. 2(2)L&P/2016 dated 02.03.2021. In this regard since control mechanism for clearance of such consignments lies with the Collectorates, they may accordingly get the written confirmation from the concerned clearing agents / bonded carriers regarding the installation of tracking device by M/s. TPL Trakker (Pvt.) Ltd., before clearing the consignments in the WeBOC system.

Encl: (As above)

(Ahmad Reza Khan)  
Director General

Copy to:

1. The Chief (Facilitation & Compliance), Federal Board of Revenue, Islamabad.
2. The Collector, MCC (Appraisalment & Facilitation), Port Muhammad Bin Qasim, Karachi with the request to direct the concerned staff of the Collectorate for sharing the information of bulk cargo with the Sealing Focal Point at QICT for manual sealing in addition to mounting of tracking device as requested in his letter No.Group-V-133-2020-PQ/223 dated 16.03.2021.
3. The Collector, MCC (Appraisalment & Facilitation-West), Customs House, Karachi.
4. The Collector, MCC (Appraisalment & Facilitation-East), Customs House, Karachi.
5. The Chief Executive Officer (CEO), M/s. TPL Trakker (Pvt.) Ltd with the directions to manually install the tracking devices for the subject consignments and to ensure en route tracking and monitoring till the development of the functionality in the WeBOC system.
6. All Pakistan Customs Bonded Carrier Association, Room No. 107, 1<sup>st</sup> Floor, Business & Finance Center I.I. Chundrigar Road, Karachi.
7. Karachi Customs Agent Association, Office Address: 2<sup>nd</sup> Floor, Burhani Terrace, Bohri Road Off: Eduljee Dinshaw Road Opp: Customs House, Karachi.

ATTENDED  
ATTESTED TO BE  
TRUE COPY



GOVERNMENT OF PAKISTAN  
MODEL CUSTOMS COLLECTORATE  
(APPRAISEMENT & FACILITATION)  
PORT MUHAMMAD BIN QASIM  
KARACHI

**MOST URGENT**



No. SI/MISC/12/PQ-Bulk

Dated: 17.03.2021

The Terminal Manager  
Mujahid Oil Terminal (MOT),  
Plot No. 11,  
Port Muhammad Bin Qasim  
Karach.


APPROVED

2/11

Subject: DELIVERY OF IMPORTS MADE BY THE INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA

Please refer to the subject cited above.

2. In the light of Customs General Order (CGO) No. 01 of 2021 dated 25.02.2021, issued by the Federal Board of Revenue, Islamabad (copy enclosed), the containers/vehicles carrying imported goods/raw material meant for consumption by industrial units located in erstwhile FATA/PATA areas shall have to be monitored enroute on the basis of Tracking and Monitoring of Cargo Rules, 2012. Accordingly, you are hereby directed to ensure that no ex-bond cargo destined for FATA/PATA is allowed delivery / gate-out by the terminal without installation of tracker on each vehicle, with immediate effect. Due to system constraints, the importer and / or its clearing agent shall, henceforth, present manual proof of tracker installation on the vehicle carrying ex-bond cargo to the Collectorate which shall intimate the same to the terminal for allowing delivery of each vehicle.

  
(Shah Samad Hamadani)  
Deputy Collector  
(Bulk)

ATTESTED

Scanned with CamScanner

ATTESTED TO BE  
TRUE COPY



GOVERNMENT OF PAKISTAN  
MODEL CUSTOMS COLLECTORATE  
(APPRAISEMENT & FACILITATION)  
PORT MUHAMMAD BIN QASIM  
KARACHI

MOST URGENT



Dated: 20.03.2021

No. SIMISC/12/PQ-Bulk


The Terminal Manager,  
Port Muhammad Bin Qasim,  
Karachi.

APPROPRIATE  
XXIII

Subject: DELIVERY OF IMPORTS MADE BY THE INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA

Please refer to the subject cited above.

2. The letter No. SIMISC/12/PQ-Bulk dated 17.03.2021 issued by this office is hereby withdrawn, with immediate effect and until further orders.

  
(Shah Samad Hamadani)  
Deputy Collector  
(Bulk)

Copy to:

- M/s MapakQasim Bulkera (Pvt) Ltd,
- M/s Muhammad Hussain Terminal,
- M/s Bulk Oil Terminal (Pvt) Ltd (IFFCO)
- M/s Zaheer Hafeez Tank Terminal
- M/s Ferozesons Tank Terminal
- M/s Pakistan House International (Pvt) Ltd
- M/s Terminal Ltd
- M/s Mujahid Oil Terminal
- M/s Hamza Tank Terminal (Pvt) Ltd
- M/s Kashif Basit Trading
- M/s A Puri Terminal
- M/s FWQ Bulk Oil Terminal
- M/s Cargil Pakistan
- M/s Apical Oil Terminal Pvt. Limited

ATTESTED

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TRUE COPY

IN THE PESHAWAR HIGH COURT  
PESHAWAR

160

In Re: Writ Petition No. 312-M /2021  
With Interim Relief

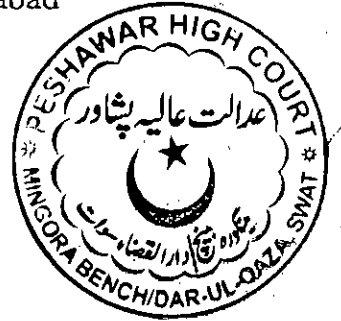
**ANNEXURE XXIV**

M/s Dargai Polymer (Pvt) Ltd  
Plots No. 55, 56 & 57, Small Industrial Estate Dargai, Malakand

..... Petitioner

*Versus*

1. **Government of Pakistan**  
through Federal Secretary Finance and Revenue Division, Islamabad
2. **The Chairman**  
Federal Board of Revenue, Constitutional Avenue, Islamabad
3. **Secretary (Law & Procedure)**  
Federal Board of Revenue, Constitutional Avenue, Islamabad
4. **Collector of Customs**  
MCC, Custom House, University Road, Peshawar
5. **Deputy Collector of Customs**  
Customs Dry Port, Peshawar
6. **Deputy / Assistant Collector of Customs**  
Customs Station, Torkham
7. **Collector of Customs (Appraisalment) / (East / West)**  
MCC, Custom House, Karachi
8. **Collector of Customs MCC (Imports)**  
Port Qasim / Karachi Port, Karachi
9. **Collector of Customs**  
MCC, Custom House, Quetta
10. **Deputy / Assistant Collector of Customs**  
Customs Station, Chaman
11. **Chief Commissioner / Commissioner Inland Revenue**  
Regional Tax Office, University Road, Peshawar



ATTESTED

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.

..... Respondents

FILED TO Writ PETITION UNDER ARTICLE 199  
OF THE CONSTITUTION OF ISLAMIC  
REPUBLIC OF PAKISTAN 1973

20 MAR 2021

Additional Registrar

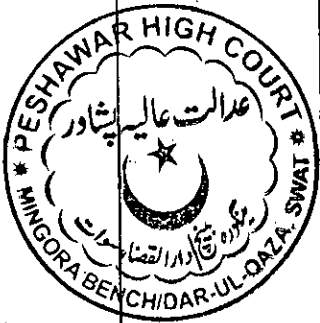
**PESHAWAR HIGH COURT, MINGORA BENCH/  
DAR UL QAZA, SWAT**

**FORM OF ORDER SHEET**

Court of .....

Case No. .... of .....

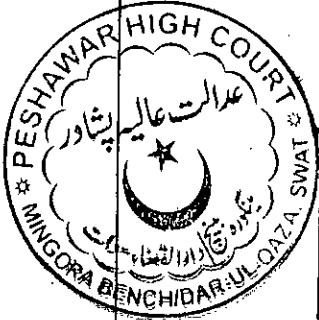
Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
	24.03.2021	<p><b><u>W.P. No. 312-M/2021</u></b></p> <p><b>Present:</b> Mr. Isaac Ali Qazi, Advocate, for the petitioner.</p> <p style="text-align: center;">***</p> <p>Learned counsel for petitioner contended that vide Customs General Order No. 01 of 2021 dated 25<sup>th</sup> February 2021 as well as Circular No. 09 of 2021 an extraordinary stringent procedure has been furnished and provided for release of goods imported for industrial units of erstwhile FATA and PATA. The learned counsel added that such mechanism has totally been discriminatory and violative of Article 25 of the Constitution as alike procedure has never been provided for industrial concerns of rest of the country. The learned counsel also contended that providing of the procedure has been without lawful authority and violative of the mechanism provided through Entry No. 151 of the Sixth Schedule to the Sales Tax Act, 1990 as well as the</p>



*[Handwritten signature]*

**ATTESTED**

Examiner  
Peshawar High Court Bench  
Mingora Dar-ul-Qaza, Swat.



provisions of section 159 of the Income Tax Ordinance, 2001 as explained and interpreted in judgment of this Court dated 24.11.2020 rendered in the case of "M/S Hadi Khan Silk Mills & others v/s Government of Pakistan through Secretary Finance & others" ("W.P. No. 442-M of 2020"). He further contended that the impugned suggested measures had been totally unreasonable, illegal and confiscatory in nature also. Let notice of the instant petition be issued to respondents for 21.04.2021. In the meanwhile, respondents No. 4, 5 & 11 shall also file their para-wise comments to the instant petition.

#### Interim Relief

Notice for the date fixed. Till then operation of the Circular No. 09 of 2021 dated 01.03.2021 shall remain suspended.

Certified to be true copy

EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat  
Authorized Under Article 87 of Qanun-e-Shahadat Order 1984

S.No. 27  
Name of Applicant M/S Hadi Khan Silk Mills & others  
Date of Presentation of Applicant 24.03.2021  
Date of Completion of Copies 24  
No of Copies 03  
Urgent Fee ---  
Fee Charged 125  
Date of Delivery of Copies 29.03.2021

JUDGE

JUDGE

"Nawab" (D.B.) Hon'ble Mr. Justice Ishtiaq Ibrahim  
Hon'ble Mr. Justice Wiqar Ahmad

M/S Hadi Khan  
29/3

**IN THE PESHAWAR HIGH COURT, MINGORA BENCH DAR-UL-QAZA, SWAT**

W.P No. \_\_\_\_\_ -M/2021

**With interim relief**

M/s. Wasim Sharif Industries (Pvt) Ltd  
through Authorized representative Mr. Muhammad Samin Jan,  
(Director).....Petitioner

**V E R S U S**

Government of Pakistan through Federal Secretary Finance & Revenue  
Division, Islamabad & others.....Respondents


**NOTICE**

To

1. The Government of Pakistan through Federal Secretary Finance & Revenue Division, Islamabad.
2. Federal Board of Revenue, through its Chairman, Constitutional Avenue, Islamabad.
3. Secretary (Law & Procedure) Federal Board of Revenue, Constitutional Avenue, Islamabad.
4. The Collector of Customs, MCC Customs House, University Road, Peshawar.
5. The Deputy Collector of Customs, Customs Dry Port Peshawar/Aza Khel.
6. The Collector of Customs Appraisalment/(East), MCC Customs House, Karachi.
7. The Collector of Customs Appraisalment/(West), MCC Customs House, Karachi.
8. Deputy/Assistant Collector of Customs, MCC Customs Station Chaman, Quetta.
9. The Chief Commissioner (Inland Revenue), Regional Tax Office, (RTO), Jamrud Road, University Town, Peshawar.
10. The Collector of Customs MCC (Imports) Port Muhammad Bin Qasim, Karachi.
11. Deputy/Assistant Collector of Customs, Customs Station, Torkham

**Respectfully Sheweth:**

*Please take notice that I am going to file Writ Petition before the Hon'ble Peshawar High Court Mingora Bench Dar-ul-Qaza Swat.*

  
**Muhammad Akbar Khan**  
Advocate High Court

Date: 26/03/2021

164

No. 957

For I. Stamp RGL52520429

Rs. Ps.

uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50/-

Received a registered\* addressed to Chairman Date Stamp

Initials of Receiving Officer SR \*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 50 (in words)

If insured.

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

No. 958

For I. Stamp RGL52520430

Rs. Ps.

Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50/-

Received a registered\* addressed to Collector Date Stamp

Initials of Receiving Officer CC \*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 50 (in words)

If insured.

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

No. 959

For Ins. Stamp RGL52520431 reverse.

Rs. Ps.

Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50/-

Received a registered\* addressed to Chief Commissioner Date Stamp

Initials of Receiving Officer SR \*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 50 (in words)

If insured.

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender

No. 960

For Ins. Stamp RGL52520432 reverse.

Rs. Ps.

Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

50/-

Received a registered\* addressed to Collector Customs Date Stamp

Initials of Receiving Officer SR \*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 50 (in words)

If insured.

Insurance fee Rs. Ps. (in words) Weight Kilo Grams

Name and address of sender