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IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.

PRESENT

MR. JUSTICE

W.P. No. 200 /2010/BWP

Muhammad Basim Khan

1. M/S Pakistan CNG Filling Station, Pakistan Chowk Khanpur
through its owner Shabbir Ahmad

.....Petitioner.

Versus

1. The Federation of Pakistan through its Secretary, Law,
Islamabad.

2. The Federal Board of Revenue through its Chairman,
Government of Pakistan, Islamabad.

3. The Collector of Sales Tax, Sales Tax Office, Lahore.

R 4. The Revenue Officer, MEPCO, Rahim Yar Khan.

5. Regional Manager, Sui Northern Gas Pipelines Limited
Bahawalpur Region, Bahawalpur.

R 6. Multan Electricity Power Company (MEPCO) Multan.

.....Respondents.

Writ Petition under Article 199 of the Constitution of the
Islamic Republic of Pakistan, 1973.



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JUDGMENT SHEET

IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.

(JUDICIAL DEPARTMENT)

JUDGMENT

W.P.NO.200/2010. M/S. PAKISTAN CNG FILLING STATION VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.257/2010. AL-JANNAT FILLING STATION, ETC. VS.
FEDERATION OF PAKISTAN, ETC.

W.P.NO.1095/2010. M/S. UCH SYED JALAL CNG STATION VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.114/2010. M/S. TOTAL CNG STATION, ETC. VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.2685/2010. M/S. SUTLUG CNG STATION, ETC. VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.666/2010. M/S. FRIENDS CNG FILLING STATION. VS.
FEDERATION OF PAKISTAN, ETC.

W.P.NO.2998/2010. MUHAMMAD AHMAD VS FEDERATION OF
PAKISTAN, ETC.

W.P.NO.60/2010. MEHMOOD & COMPANY, ETC. VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.600/2010. M/S. ALI CNG CORPORATION VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.5668/2009. M/S/ GILLAN BROTHERS CNG VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.261/2010. M/S CHUGHTAI CNG FILLING STATION VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.1348/2010. FRIENDS CNG FILLING STATION, ETC. VS
FEDERATION OF PAKISTAN, ETC.

W.P.NO.1225/2010. M/S. ROHI CNG FILLING STATION, ETC. VS
FEDERATION OF PAKISTAN, ETC.

DATE OF HEARING 06.07.2010.

PETITIONER BY: عبد الحقیت شیخ + سردار محمد حسین خان

RESPONDENT BY: حافظ محمد عبد القیوم - خان محمد حسین آزاد (D.A.G.)

سید مجاہد ایوب داسلمی + محمد عزیز پرویز * ڈاکٹر دوکیش
MUHAMMAD QASIM KHAN, J:- Through this single

judgment, I propose to dispose of the above captioned

numerous writ petition, as all arise out of similar facts and circumstances and also impugn the same action of the official respondents.

2. Briefly the facts are that in the above mentioned writ petitions, the respective petitioners are running their CNG Filling Stations, for which purpose they obtain supply of Natural Gas and also consume electric power supply by Multan Electric Power Company (hereinafter to be called as MEPCO), impleaded as respondent in these writ petitions. According to the claims of the petitioners, they are also duly registered under the Sales Tax Act, 1990. Precisely in all these writ petitions, the action of the MEPCO authorities in levying and collecting Withholding Tax is being assailed.

3. In these cases, with the assent of respective writ petitioners, mainly Sardar Muhammad Hussain Khan, Advocate addressed the arguments. The learned counsel contended that the Federal Government while exercising its power under section 71 of the Sales Tax Act, 1990, read with clauses (9) and (46) of section 2, sections 3 and 4, sub-section (2) of section 6, section 7A clause (b) of sub-section (1) of section 8, clause (a) of sub-section (2) of section 13, sub-sections (2A) and (3) of section 22, sections 23 and 60 of the Sales Tax Act, 1990 promulgated Sales Tax Special Procedures Rules, 2007, duly got it notified and its rules 19 to 24 deal with collection and payment of sales tax on Natural Gas and as for this purpose on supply of Natural Gas to CNG Filling Stations, sales tax at the rate of 25% is being charged,

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out of which 16% is chargeable on the supply by the Gas Transmission Company in terms of Sub-section 1 of Section 3 of the Sales Tax Act and further 9% in lieu of value addition made by the CNG Filling Station and in addition to this sales tax, the MEPCO is also charged General Sales Tax on electricity bills and this collection is not permitted by the above mentioned Sale Tax Special Procedure Rules, 2007, hence this act of the respondents is illegal, ultra vires and without jurisdiction and collection of sales tax is not permitted by the Sales Tax Special Procedure Rules, 2007 with regard to the payment of sales tax on electric power from Rules 11 to 18. The learned counsel further argued that in Rules 11, 12 and 13 the word used "*distribution companies*" does not include MEPCO, hence, under these rules MEPCO could not collect sales tax on electricity bills and this act of the MEPCO authorities is against fundamental rights and also against Article 157 and 161 of the Constitution of Islamic Republic of Pakistan, 1973.

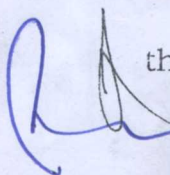
4. The learned counsel representing the petitioners in W.P.No.1095 and 257 of 2010 adopted the above arguments by adding that collection of sales tax by MEPCO on the electricity bills is sort of double taxation as CNG stations discharge their duties while paying the sales tax on the supply of Natural Gas and more over the taxation through MEPCO bills is unreasonable, arbitrary and violative of fundamental rights.

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5. On the other hand, learned counsel representing the Federal Government, MEPCO and the Sales Tax Department argued that MEPCO is a company which generates its own electricity power and also distributes it to the consumers and MEPCO by all norms of law is a distributing company covered by Rules 11 to 18 of the Sales Tax Special Procedure Rules, 2007. Further argued that respondent MEPCO authorities are rightly charging sales tax as the sales tax is levied on taxable supplies by a registered person in the case of furtherance of any taxable activities and Sui Gas and electricity are independent and distinct elements, both are used for furtherance of taxable activity, as such the sales tax is levied on all the inputs in such activities and collection of sale tax on electricity does not tantamount to double taxation.

6. I have considered the respective arguments of learned counsel for the parties at length and perused the relevant Sales Tax Act, 1990 and the Sales Tax Special Procedure Rules, 2007 with their assistance.

7. After independence the Federal Government decided to take over the sales tax, enacted a law to this effect on 31st March, 1948 viz. the Pakistan General Sales Tax Act, 1948 which came into force on the 1st day of April, 1948 and later on, on the representations of the traders against the multiple point tax system, the Government appointed a Sales Tax Committee to study the whole situation and make suggestions. On the recommendations of the said Committee, the Government enacted the new Sales Tax Act. This Act was



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assented by the Governor General of Pakistan on 20th April, 1951 but put into force on 1st July, 1951 by Notification No.5, dated 27th June, 1951. In 1981 necessary amendments were made in the Sales Tax Act, 1951 by the Sales Tax (Amendment) Ordinance 1981. Since then the administration of the Sales Tax was with the Central Excise and Customs Department. To achieve the higher role of revenue generation, the Federal Government drafted a new Sales Tax and it brought the enactment relating to value added tax and a completely new enactment except the "Preamble" of the old Act No.III of 1951 has been legislated as a part of the Finance Act, 1990 for the purpose to generate revenue by way of Value Added Tax through this amended Sales Tax Act, 1990.

8. The sales tax is a Value Added Tax, which is charged, levied and paid only when taxable supply is made in the course or furtherance of "taxable activity" and definition of taxable activity makes it clear in unambiguous terms that it involved in whole or in part the supply of goods to any other person which is condition precedent for the levy of sales tax. The provisions of Sales Tax Act, 1990 show that it was a Value Added Tax which was levied at every stage where value addition took place at the time of supply, therefore, it was not a mere one point levy, as laid down in the case of "M/s. USMANI ASSOCIATES SUB PROPRIETARY FIRM vs. CENTRAL BOARD OF REVENUE AND ANOTHER" (PTCL 2003 CL 461).

9. The sales tax is indirect taxation the burden whereof is to be borne by the purchaser and the vendor is bound to

reimburse the same to the Federal Government in terms of Section 3(B) of the Sales Tax Act, 1990. Reliance is placed on the case "M/S. FECTO BELARUS TRACTORS LTD. versus GOVERNMENT OF PAKISTAN" (PTCL 2005 CL 461). The duty of sales tax is an indirect tax which is capable of being passed on to the consumer as part of the price of taxable goods, laid down in "AIR 1955 RAJISTHAN 114" and "AIR 1962 SC 1006".

10. The petitioners have not assailed the Sales Tax Special Procedure Rules, 2007 and one of the learned counsel only tried to make out a case of double taxation by referring to Rules 11, 12 and 13, ibid and argued that MEPCO is not covered by the definition "distributing company". Every word used by the legislature must be given true meaning and the provisions construed together in a harmonious manner. The legislative intent and purpose must be given effect to and not thwarted in a vague and nebulous manner. Reliance is placed on the case reported in PTCL 1992 CL 63). A bare reading of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997) read with Rule 2(ix) of the Sales Tax Special Procedures Rules, 2007, to the following effect:-

"distribution", in relation to Chapter III, means the ownership, operation, management or control of distribution facilities for the movement or delivery or sale of consumers of electric power but shall not include the ownership, operation, management and control of distribution facilities located on private property and used solely to move or deliver electric power to the person, owning, operating, managing and controlling

those facilities or to tenants thereof shall not constitute distribution”

make it clear that WAPDA is a distributing company and in the light of Rule 11 the provision of collection and payment of the sales tax will attract in the case of MEPCO when it supplies electricity power to the petitioners and as the MEPCO is an independent and distinct element as power supply is used for furtherance of taxable activity and sales tax is levied on all such inputs used in taxable activities and in the light of section 3(1)(a) of the Sales Tax Act, 1990 the MEPCO is rightly collecting the sales tax on the electricity being supplied to the petitioners and charging the same through electricity power bills. Hence, the ground of one of the learned counsel that MEPCO does not fall within the definition of “Distribution Company” is not backed by any law.

10. Section 3(1)(a) of the Sales Tax Act, 1990 reads as under:-

“Subject to the provisions of this act there shall be charged, levied and paid the tax known as sales tax at the rate of 16% 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”

The above reproduced provision clearly shows that when independent and distinct elements are provided to some one and they are used for the furtherance of taxable activity on all inputs used in such taxable activity and as I have earlier discussed that sales tax on electricity and Natural Gas being

independent, do not tantamount to double taxation. Moreover, the ultimate burden to pay the sale tax lies on the consumer because this is an indirect tax. So the CNG stations are not actually bearing the burden of the sales tax. In this respect I would also refer to a judgment of this Court in "M/S. GAS LINKS CNG PVT (LTD), FAISALABAD through its Director and others vs. FEDERATION OF PAKISTAN through Secretary Finance, Islamabad and others" (PLJ 2010 Tax Cases (Lah) 23), wherein, it has been held as under:-

"The contentions now being raised by the learned counsels for petitioners must necessarily be examined in the context of the scheme and structure of Sales Tax Act 1990 and the Rules framed there under. In pith and substance, Sales Tax is a tax on consumption charged upon a taxable supply collected by a registered person making the said supply as an agent and trustee of the Federal Government. Where such taxable supplies are consumed, the burden of tax falls upon the consumer. However, where the said supplies are converted into another taxable supply, the same are liable to collection of Sales Tax. However, in such an eventuality, in order to avoid duplication of the tax burden upon the ultimate consumer, the Sales Tax already paid by the recipient of the supplies is liable to be adjusted against the Sale Tax payable on the converted further taxable supply."

11. For what has been discussed above, I find no substance in all these writ petitions which are dismissed accordingly.

Sd/-
(MUHAMMAD QASIM KHAN)
JUDGE.

ANNOUNCED IN OPEN COURT.

Sd/-
9/9/2010
JUDGE

Javed*

Zafar
16/9/10
SUPERVISOR
Copy Branch
Lahore High Court
Lahore Bench Bahawalpur