IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE IJAZ AHMED CHAUDHRY.

C. P. No. 834 of 2011.
(On appeal against the judgment dt. 25.5.2011 passed by Islamabad High Court, Islamabad in Tax Reference No. 172 of 2011).

M/s C.M. Pak. Ltd. ...Petitioner

Versus.

Additional Commissioner, Inland Revenue, Islamabad, etc. ...Respondents

For the petitioner: Mr. Ali Sibtain Fazli, ASC.
Ch. Akhtar Ali, AOR.

For respondents 1, 3: Mr. M. Bilal, Sr. ASC.

For respdt. No. 2: Mr. Baber Bilal, ASC.

Date of hearing: 26.09.2012.

ORDER

EJAZ AFZAL KHAN, J. - This petition of leave to appeal has arisen out of the judgment dated 25.05.2011 of the Islamabad High Court, Islamabad, whereby tax reference filed by the petitioner was dismissed.

2. Learned counsel appearing on behalf of the petitioner contended since the matter related to 01.07.2006 to 31.12.2006, it was to be decided according to the law as it then stood and not in the light of the amendment which was inserted vide Finance Act, 2008. The decision of the High Court, the learned counsel maintained, when seen in this background appears to be erroneous on the face of it, therefore, it has to be set at naught. The learned counsel next contended that when the petitioner denied from the very inception of the proceeding its status as a franchisee, levy of

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duty thereon, in view of the definitions of the words franchise, franchisee and franchiser, is misconceived altogether.

3. As against that learned counsel appearing on behalf of the respondents by taking us through the order of the learned Appellate Tribunal contended that where petitioner itself declared in the note forty of the financial statement for the year 2000 that it paid Rs.166,479,000 as technical fee to the Franchiser M/s Millicom International Cellular S.A., no finding whatever was to be handed down on this issue. The learned counsel by referring to Section 3 of the Federal Excise Act, 2005 contended that for the purpose of levying and collecting excise duty what is required to be looked into is services provided or rendered in Pakistan. As far as this aspect of the case is concerned, the learned counsel maintained, it has not been disputed at any stage, therefore, the impugned judgment being free from any infirmity much less legal or jurisdictional is not open to any interference.

4. We have gone through the entire record carefully and considered the submissions of the learned counsel for the parties.

5. Before we appreciate the contentions raised by the learned counsel for the parties, it is worthwhile to refer to Section 3 of the Act which reads as under :-

> "3. Duties specified in the First Schedule to be levied._
>
> (1) Subject to the provisions of this Act and rules made thereunder, there shall be levied and collected in such manner as may be prescribed duties of excise on, __
>
> a) .....
>
> b) .....
>
> c) .....
>
> d) services, provided or rendered in Pakistan; at the rate of fifty per cent ad valorem except the goods and services specified in the First

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Schedule, which shall be charged to Federal excise duty as, and at the rates, set-forth therein.

2) .....

3) The Board may, by notification in the official Gazette, in lieu of levying and collecting under sub-section (1) duties of excise on goods and services, as the case may be, levy and collect duties, __

a) on the production capacity of plants, machinery, undertakings, establishments or installations producing or manufacturing such goods; and

b) on fixed basis, as it may deem fit, on any goods or class of goods or on any services or class of services, payable by any establishment or undertaking producing or manufacturing such goods or providing or rendering such services.

4) .....

Explanation.__ ....."

6. A look at the above quoted provision would leave no doubt that what is to be considered for the purpose of levying and collecting excise duty is services provided or rendered in Pakistan. We for a while ignore the words "services originated" inserted by the dint of the amendment mentioned above, yet the words "provided or rendered" would alone be enough to justify the levy and collection mentioned above. When asked whether the duty levied and collected has been levied and collected twice: once for provision and then for rendition of service, the answer was no When this being the case. The whole exercise sought to be embarked upon appears to be academic.

7. The argument that when petitioner denied from the very inception of the proceeding its status as a franchisee levy of duty thereon was misconceived is also without force when the record, as contended by the learned counsel for the respondent, proves to

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the contrary. Even if it be as it was contended by the learned counsel for the petitioner, it being a question of fact could not have been raised in a reference before the High Court which always invariably lies only on a question of law. In this view of the matter, we don't think impugned judgment suffers from any infirmity much less legal or jurisdictional so as to justify interference therewith.

8. For the reasons discussed above, this petition being without merit is dismissed and the leave asked for is refused. --

Sd/- Ejaz Afzal Khan, J
Sd/- Ejaz Ahmed Chaudhry, J.

SEAL OF THE SUPREME COURT OF PAKISTAN
Islamabad 09.2012

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