

**ORDER SHEET****IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

W.P. No.47698 of 2019

Khalid Nazir Spinning Mills Ltd. Versus Federation of Pakistan, etc.

Sr. No. of Order/ Proceeding	Date of Order/ Proceeding	Order with Signature of Judge, and that of parties or counsel, where necessary
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21.08.2019

Ch. Imtiaz Ullah Khan, Advocate for the Petitioners.  
Mr. Azmat Hayat Khan Lodhi, Assistant Attorney  
General on Court's call.  
Mr. Ujaz Mehmood Chaudhry, Advocate/Legal Advisor  
for the Respondent/FBR.  
Dr. Ishtiaq Ahmad, Commissioner Inland Revenue, FBR.  
Mr. Aurangzeb Mirza, Advocate/Legal Advisor LESCO.

The Petitioners through this writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") have challenged the levy of income tax amount in their electricity bills.

2. Learned counsel for the Petitioners states that the Petitioners are Textile Mills and have been registered as Manufacturers, Importers, Exporters and Wholesalers under Section 27 of the Sales Tax Act, 1990 (the "Act") with the inter alia Inland Revenue (Sales Tax and Income Tax) Departments of the Federal Board of Revenue (FBR) under their STRN and NTN as required by law. Further states that all the Petitioners are Tax Payers and filed this Petition

wherein the income tax amount has been  
exemption granted under clause 66, Part-IV of  
the Income Tax Ordinance, 2001  
(the "Ordinance"). Further contended that the  
Respondents have wrongly inserted the income tax  
amount without going through the relevant provisions  
of the Ordinance because the Petitioners being (i)  
exporters (ii) importers of Textile Sector are  
exempted from the aforesaid income tax. He adds  
that Article 4 of the Constitution clearly states that it  
is their inalienable right to be treated in accordance  
with law by the Respondents and no action  
detrimental to the reputation, life, and liberty shall be  
taken except as per law and in the case in hand the  
relevant law is tax Rules and Regulations. He  
maintains that Article 10-A of the Constitution  
provides right of fair trial and due process for  
determination of rights and obligations to the  
citizens.

3. Learned Legal Advisor of the FBR and Dr.

appeared and objected qua the maintainability of this petition on the ground that the Petitioners did not approach the concerned Commissioner to obtain the exemption certificates under Section 159 of the Ordinance. Learned counsel relied on the judgments cited as "Zia-ur-Rehman v. Syed Ahmed Hussain and others" (2014 SCMR 1015), "Arslan Poultry Pvt. Ltd. Officer Inland Revenue and others" (2015 PTD 448), "Messrs Cherat Packaging Ltd. Staff Provident Fund and Gratuity, Peshawar v. Federation of Pakistan, through Secretary Finance and Economic Affairs, Revenue Division, Islamabad and 9 others" (2016 PTD 2257) and "Meezan Islamic Funds and others v. D.G. (WHT) FBR and others" (2016 PTD 2014).

4. It has been observed that the Petitioners have not filed any Application to the concerned Commissioner as required under Section 159 of the Act, which reads as under:

**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 [or**

(a) exempt from tax under this Ordinance;

or

(b) subject to tax at a rate lower than that specified;

(c) is subject to hundred percent credit under section 100K. [The Commissioner shall, upon application in writing by the person, issue the person with an exemption or lower rate certificate.

(1A) .....

(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 sub-section (1) relating to the collection or deduction of such tax, in which case the person shall comply with the certificate."

Under Section 159 the word "shall" has been used

certificate if all the requirements of exemptions are met by the person on the factual element with record. In this case admittedly the Petitioners have not filed any Application in writing to the Commissioner, therefore, in order to advance the cause of justice and to prevent miscarriage of justice as laid down in the judgment of the Hon'ble Supreme Court of Pakistan cited as "Mian Asghar Ali v. Government of Punjab through Secretary (Colonies) BOR, Lahore and others" (2017 SCMR 118), **this Petition is transmitted to the Commissioner concerned**, who shall treat it as Application in writing on behalf of the Petitioners under Section 159 of the Ordinance and decide the issuance of exemption certificate as per their entitlement under Clause 66, Part-IV of Second Schedule of the Ordinance, till 30.08.2019 after providing fair right of hearing to all the concerned. The Petitioners shall provide all the necessary documents, if required by the Commissioner concerned because under Section 159(1) the Commissioner has to be satisfied from the record.

5. At this stage learned counsel for the Petitioners submits, that the due date for payment of electricity

matter is decided by at least one independent forum outside the revenue hierarchy, the recovery of disputed amount cannot be made. He relied on the chains of the judgments cited as M/s Pak Saudi Fertilizers Ltd. v. Federation of Pakistan and others (2002 P T D 679), Z.N. Exports (Pvt.) Ltd. v. Collector Sales Tax etc. (2003 PTD 1746), "Messrs PEARL CONTINENTAL HOTEL, LAHORE through Director Finance and another versus CUSTOMS, EXCISE AND SALES TAX APPELLATE TRIBUNAL, LAHORE and another" (2005 PTD 1368), "Sun-Rise Bottling Company (Pvt.) Limited versus Federation of Pakistan and 4 others" (2006 PTD 535), "Karachi Shipyard and Engineering Works Limited, Karachi versus Additional Collector, customs, Excise and Sales Tax (Adjudication-III), Government of Pakistan, Karachi and 2 others" (2006 PTD 2207), "PAK SUZUKI MOTORS CO. LTD. through Senior General Manager (Corporate Planning & Logistics), Karachi versus COLLECTOR OF CUSTOMS through Assistant Collector (Processing), Karachi" (2006 PTD 2237) and "MARI PETROLEUM COMPANY LTD. Versus

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others" (2016 PTD 2406), wherein direction was issued to the authorities to decide the case and temporary relief was granted as stopgap measures.

6. In view of above, as a stop gap measure the due date of electricity bill is extended till the decision of issue regarding exemptions i.e. 30.08.2019.

7. Disposed of.

Copy *dasti* on payment of usual charges.

  
(JAWAD HASSAN)  
JUDGE