

IN THE LAHORE HIGH COURT, LAHORE


JIS WRIT

No. 10432

Dated 1-3-22

From,

The Additional Registrar (Judicial),  
Lahore High Court, Lahore

To, 

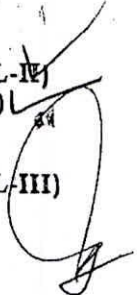


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09 MAR 2022

*M(L)*

- Chief (L-I)
- S-Lit(SC)
- S(A&A)
- S(A)
- Chief (L-II)
- S-Lit(HC)
- S(L-DT)
- S(L-IDT)
- Chief (L-III)
- S(PA)
- S(TO-I)
- S(TO-II)
- PS



*14/3*

1. FEDERATION OF PAKISTAN through Secretary Finance third floor R & S Block Pak Secretariat Islamabad.
2. FEDERAL BOARD OF REVENUE through its Chairman FBR Building Constitution Avenue Islamabad.
3. COMMISSIONER INLAND REVENUE Regional Tax Office Lahore.
4. LESCO through it Chairman. Lahore.

Subject:- WRIT PETITION/ICA/CRL.ORG.NO. 10432-22

Memo, \_\_\_\_\_ VS \_\_\_\_\_

In continuation of this Court's Letter No. \_\_\_\_\_

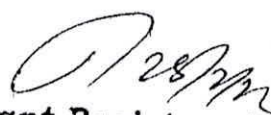
Dated \_\_\_\_\_ I am directed to say that the case cited on the subject has been disposed off. A copy of order dated 22-02-22 is enclosed herewith for necessary action. A copy of Petition on which the order has been passed is also enclosed herewith.

FBR e-Dox No \_\_\_\_\_  
Received in (ML) Office on 13 MAR 2022

BR e-DOX D/No \_\_\_\_\_  
Received in Chairman's Secret \_\_\_\_\_  
09 MAR 2022

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For Assistant Registrar (Writ-I)  
For Additional Registrar (Judicial)

Form No.HCJD/C-121

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

W.P. No.10432 of 2022.

M/s Waqar Flour Mills

**VERSUS**

Federation of Pakistan and  
others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties of counsel, where necessary
02	22.02.2022	Mr. Abdul Razzaq Mirza Advocate for the petitioner. Mr. Zain ul Abideen Bukhari, Advocate for the respondent on Court's call. Mr. Azmat Hayat Khan Lodhi, Assistant Attorney General on Court's call.

This writ petition calls into question the levy of extra tax and further tax through electricity bills under section 3(1A) of the Sales Tax Act, 1990 (the Act) read with SRO No.509(I)/2013 dated 12.03.2013 on the ground that the petitioners are not registered with the Sales Tax Department and are not providing any taxable supplies. Reliance in this regard is placed on the judgment rendered in writ petition No.30936 of 2021 Muhammad Arif Ice Factory & others v. Federation of Pakistan and others.

2. Learned Assistant Attorney General submits that the issue raised in this writ petition has already decided by learned Division Bench of this Court in ICA No.63674 of 2020 titled Jhang Fabrics (Pvt.) Limited v. Federation of Pakistan etc.
3. This Court in writ petition No.26354 of 2016 titled Haindery Cold Store v. Federal Board of Revenue was dealing with a similar matter relating to levy of extra tax. It was held as under:

In terms of the said provision, the Federal Government through SRO No.510(I) of 2013 added a new chapter IVA in Sales Tax Special Procedure Rules, 2007. Under SRO No.509(I)/2013, extra tax @5% of the total billed amount was imposed

(excluding the amount of federal taxes) on supplies of electric power and natural gas to persons having industrial and commercial connections and whose bill in any one month exceeds Rs.15000/- but who have either not obtained sales tax registration number or are not on active tax payers list maintained by FBR. The "further tax" and "extra tax", it is evident, are in fact being levied on supply of electric power and natural gas to persons having industrial and commercial connections, which taxes are in turn passed on to and being charged from the petitioners, who are admittedly not registered with the by Federal Board of Revenue (FBR). It is not disputed by the petitioners that they are availing B3 Tariff, which is an Industrial tariff. It is also not in dispute that the extra tax and further tax is being levied on Lahore Electric Supply Company Limited (LESCO), which is supplying electricity under an industrial tariff to the petitioners. Section 3(3) of the Act stipulates that the liability to pay the tax in case of supply of goods is on the person making the supply, which in the present case is LESCO. In the scheme of things, when the taxes are being levied on and charged from LESCO on the supply of electricity made to the petitioners, the question of the petitioners being registered with the FBR or them not making any taxable supplies does not arise. The said taxes are being charged on the basis of sections 3 (1A) and 3 (5) of the Act, the vires whereof has not been challenged by the petitioners. It is, therefore, clear that the extra and further taxes are being validly levied on LESCO in terms of the aforementioned SRO's and the petitioners are obliged to pay the amount of the same collected through their electricity bills.

4. Before this Court in writ petition No.30703 of 2020 titled H.A. Haq Spinning Mill (Pvt.) Limited etc v. Federation of Pakistan-etc., a challenge was made to the imposition of extra tax and further tax through electricity bills on the ground that Sales Tax Special Tax Procedure Rules, 2007 were rescinded through SRO No.694(I)/2019 dated 29.06.2019 and as such extra tax and further tax could not be levied through electricity bills. This contention was

repelled by this Court while referring to section 3(5) of the Act. It was held as follows:

From a bare reading of the Section, it is evident that the Federal Government can levy and collect extra tax on such persons in such mode, manner and time as it deems appropriate and it can impose certain conditions and limitations on the collection of such tax through rules. The Federal Government issued SRO 509(1)/2013 dated 12.6.2013 under Section 3(5) of the Act, which contains the levy of extra tax pursuant to Section 3(5) of the Act. This SRO clearly provides the rate at which the tax is to be levied, the manner in which it is to be levied and the persons on whom it is to be levied. Furthermore this SRO has not been rescinded by SRO 649(1)/2019 dated 29.6.2019. In this regard, it is also noted that the amendments made to the 2006 Rules vide SRO 777(1)/2020 dated 25.8.2020 inserts Rule 158J which provides for the mode and manner of collection wherein it is stated that every person supplying electric power or natural gas, shall charge and collect extra tax at the rate notified by the Federal Government, from every consumer having an industrial or commercial connection, where the bill for a month is in excess of rupees fifteen thousand, and the consumer's name does not appear on the active taxpayer' list. This rule is a replication of SRO 509(1)/2013 dated 12.6.2013 which provides for the mode, manner and time for collection of extra tax. The 2006 Rules then prescribe that the extra tax should be shown separately in the electricity bill or natural gas bill and that this collection should be made in terms of Section 6 of the Act. The conditions and limitations are further provided in Rule 158K of the 2006 Rules which are not relevant for the purposes of levy of extra tax. The levy of extra tax is therefore on the basis of a substantive provision of the Act, that is Section 3(5) read with SRO 509(1)/2013 dated 12.6.2013. The said Section authorizes the Federal Government to levy extra tax which it has maintained through SRO 509(1)/2013 dated 12.6.2013. Furthermore as already stated the levy of extra tax was never dependent on the Rules, consequent to SRO 480(1)/2007, the purpose of the Rules was to set out the conditions and limitations on the collection of extra tax. It is noted that the Rules as issued under SRO 480(1)/2007 dated 9.7.2007 were

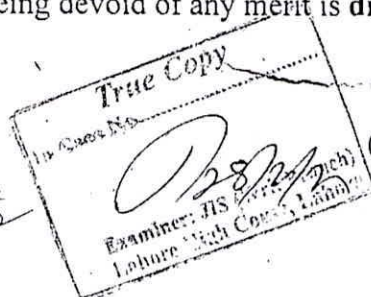
amended by SRO 510(1)/2013 dated 12.6.2013 and on the same date of 12.6.2013, SRO 509(1)/2013 was issued pursuant to Section 3(5) of the Act. So while SRO 510(1)/2013 dated 12.6.2013 made amendments to the Rules, SRO 509(1)/2013 levied extra tax at the rate of five percent in terms of Section 3(5) of the Act.

This judgment was brought under challenge by filing Intra Court Appeal No.2928 of 2021 alongwith other appeals. A learned Division Bench of this Court passed a consolidated order on 25.02.2021 in ICA No.63674 of 2020 titled Jhang Fabrics (Pvt.) Limited v. Federation of Pakistan etc by dismissing all the Intra Court Appeals.

5. It is thus clear that the Federal Government has levied extra tax and further tax on electricity supply made by LESCO in terms of section 3(5) of the Act read with SRO No.509(I)/2013 dated 12.06.2013 which still in existence. The amount of these taxes are validly being passed on to the petitioners to which no exception can be taken. The judgment relied upon this Court was rendered by learned Single Judge in Chambers who was perhaps was not made aware of the earlier judgment passed by this Court on the same subject matter including the judgment of the learned Division Bench of this Court, ICA No.63674 of 2020 titled Jhang Fabrics (Pvt.) Limited v. Federation of Pakistan etc.

6. In view of the position stated above, this writ petition being devoid of any merit is **dismissed**.

Ihsan  
22/02/22



(Shams Mehmood Mirza)  
Judge.