

Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

W.P.No.21403/2014.

Sardar Qasim Hassan Khan.....vs....Federation of Pakistan etc.

JUDGMENT

Date of hearing	04.04.2017.
Petitioners by:	Mr. Ikram Ullah Malik, Advocate for petitioners. Sardar Qasim Ali Khan petitioner in person in this petition and also in connected writ petitions.
Respondents by:	Mian Muhammad Javaid, AAG-Pk. Mr. Khalid Waheed Khan, AAG. Mr. Zafar Iqbal, Advocate/Legal Advisor for Custom Department.

ABID AZIZ SHEIKH, J. This judgment will also decide Writ Petitions No. 6078, 9319, 12726, 15422 and 27757 of 2015 as common questions of law and facts are raised in all these petitions.

2. Through these constitutional petitions, the petitioners have challenged the demand of advance tax/withholding tax on the registration of their motor vehicles u/s 231-B of the Income Tax Ordinance, 2001 (“Ordinance”). The facts common in all these petitions are that petitioners purchased imported motor vehicles from various importers after verification of import documents.

The petitioners applied for the registration of these vehicles in their name to the Excise and Taxation Department (“Department”). The department beside registration charges also demanded advance tax/withholding tax from the petitioner u/s 231-B of the Ordinance. The petitioners being aggrieved filed these constitutional petitions.

3. Learned counsel for the petitioners argued that vehicles in question were imported by various importers who paid tax u/s 148 of the Ordinance at the time of import, therefore, no advance tax/withholding tax was recoverable from the petitioners at the time of registration or transfer of ownership in their name under subsection (4) of section 231-B of the Ordinance. Further submits that petitioners provided proof of advance tax to the respondents but they have illegally refused to register the vehicles and demanded advance tax/withholding tax which has already been paid at the time of import.

4. Learned counsel for the respondents submit that Motor Registering Authority has lawfully demanded advance/withholding tax from the petitioners in accordance with section 234 read with section 231-B of

the Ordinance as per rate introduced through Finance Act, 2014.

5. I have heard learned counsel for the parties and perused the record. The main arguments of the petitioners are that as they purchased the vehicles from different importers who had already paid tax u/s 148 of the Ordinance, therefore petitioners are not liable to pay advance/withholding tax u/s 231-B of the Ordinance. To examine this argument, it is necessary to go through the provision of section 231-B of the Ordinance which is reproduced as under:-

[231B. Advance tax on private motor vehicles.—

(1) Every motor vehicle registering authority of Excise and Taxation Department shall collect advance tax at the time of registration of a motor vehicle, at the rates specified in Division VII of Part IV of the First Schedule

(2) Every motor vehicle registering authority of Excise and Taxation Department shall collect advance tax at the time of transfer of registration or ownership of a private motor vehicle, at the rates specified in Division VII of Part IV of the First Schedule:

Provided that no collection of advance tax under this subsection shall be made on transfer of vehicle after five year from the date of first registration in Pakistan.

(3) Every manufacturer of a motor car or jeep shall collect, at the time of sale of a motor [vehicle], advance tax at the rate specified in Division VII of Part IV of the First Schedule from the person to whom such sale is made.

(4) Sub-section (1) shall not apply if a person produces evidence that tax under sub-section (3) in case of a locally manufactured vehicle or tax under section 148 in the case of imported vehicle was collected from the same person in respect of the same vehicle.

(5) The advance tax collected under this section shall be adjustable:

Provided that the provisions of this section shall not be applicable in the case of –

.....
.....

(d) in all other cases the date of first registration by the Excise and Taxation Department.

*(7) For the purpose of this section, “**motor vehicle**” includes car, jeep, van, sports utility vehicle, pick-up trucks for private use, caravan automobile, limousine, wagon and any other automobile used for private purpose.]*

(underlining by me to add emphasis)

Plain reading of section 231-B shows that under sub-section (1), every Motor Vehicle Registering Authority of Excise and Taxation Department shall collect advance tax at the time of registration of motor vehicle at the rates specified in Division VII of Part IV of the First Schedule. Under sub-section (2) of section 231-B of the Ordinance, advance tax shall be collected at the time of transfer of registration or ownership of a private vehicle, if such transfer is before five years from the date of first registration in Pakistan. Under sub-section (3) of section 231-B of the Ordinance, every manufacturer of motor car

or jeep shall collect advance tax at the time of sale of vehicle. However, sub-section (4) of section 231-B provides an exception that sub-section (1) shall not apply if a person produces evidence that tax under sub-section (3) in case of a local manufactured vehicle or tax u/s 148 of the Ordinance in case of imported vehicle, was collected from the same person in respect of same vehicle. The words “person produces evidence” and the words “same person in respect of same vehicle” used in sub-section (4) of section 231-B leaves no doubt that sub-section (1) of section 231-B shall not apply, only if registration of vehicle under sub-section (1) is sought in the name of same person who already paid advance tax under sub-section (3) of section 231-B or paid tax u/s 148 of the Ordinance at the time of import in respect of same vehicle. In converse this means that at time of initial registration of vehicle under sub-section (1) of section 231-B in name of a person who is not an importer and has not paid tax under section 148 of the Ordinance, the benefit of exception under sub-section (4) of section 231-B will not apply and said subsequent purchaser shall be liable to pay advance tax under sub-section (1) of section 231-B. Further sub-section (2) of section 231-B postulates that if initial registration under sub-section (1) was made

in favour of the importer who already availed benefit of sub-section (4) of section 231-B, the subsequent purchaser when apply for transfer of registration or ownership, he will still be liable to pay advance tax, if said transfer is within five years from the date of first registration in Pakistan. The exception provided under sub-section (4) of section 231-B being in form of exemption, the said provision has to be construed very strictly against the assertion of tax payer and in favour of the taxing power. Further in case of any ambiguity or two possible interpretations, the one favours the taxation authorities has to be adopted. In this contest reliance is placed on Islamabad and another Vs. Wapda and another (PLD 2014 SC 766), M/S Army Welfare Sugar Mills Limited and others Vs. Federation of Pakistan and others (1992 SCMR 1652), Collector of Customs and others Vs. Ravi Spinning Ltd and others (1999 PTD 1078) and Ahmad Ali Anjum Vs. Deputy Commissioner, Faisalabad (1998 SCMR 1950).

6. The above plain language of section 231-B and its interpretation when applied to these petitions, it is found that none of the petitioners are original importers or have paid advance tax under sub-section (3) of section 231-B of the Ordinance or paid tax u/s 148 of the Ordinance. The

petitioners are subsequent purchasers of vehicles imported by various importers and have applied either for its initial registration under sub-section (1) or transfer of registration in their name under sub-section (2) of section 231-B of the Ordinance. As already discussed above, the exception in sub-section (4) of section 231-B of the Ordinance is only available to same person who already paid tax and seeking registration in his own name, for same vehicle and not applicable to the subsequent purchaser. Therefore, petitioners' cases are not covered under sub-section (4) of section 231-B of the Ordinance.

7. The above interpretation is also in consonance with settled law that "income tax" is on the income of a particular person and not on the goods. The advance tax paid u/s 148 of the Ordinance by importer was a final tax on the income of said importer arising from import. Therefore, subsequent purchaser cannot take advantage of said final tax paid by importer when benefit of final tax was also availed by him. I have also noted that advance tax paid under section 231-B by subsequent purchaser is not final tax and same is adjustable under sub-section (5) of section 231-B of the Ordinance. Therefore, petitioners if pay advance tax, will be entitled to adjust same at the time of their final assessment for particular tax year.

8. In view of above discussion, the demand of advance tax/withholding tax from the petitioners by the Excise and Taxation Department on behalf of Federal Board of Revenue cannot be held to be illegal or against provision of section 231-B (4) of the Ordinance. The upshot of above discussion is that **these petitions have no merits, therefore, same are dismissed with no order as to cost.**

(ABID AZIZ SHEIKH)
JUDGE

Approved for reporting.

Judge

Riaz Ahmad