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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.3973 of 2023

Strategic Plans Division and another **V/S** *Punjab Revenue Authority and others*

J U D G M E N T

Date of hearing	**23.04.2024**
Petitioner(s) by	M/s. Ahmar Bilal Soofi, Sr. ASC, Fatima Midrar, Usman Jilani and Waseem Doga, Advocates.
Respondent(s) by	Mr. Hassan Kamran Bashir, ASC and Zeeshaan Zafar Hashmi, Ali Farooq Shujra, Advocates for PRA with Nadia Murad, Legal Officer, with Zubair Abbas, PLO, SPD. M/s Hassan Askari Kazmi, Muhammad Bilal, Malik Shaukat Mahmood and Faizan Naseer Chohan, Advocates. Mr. Abid Aziz Rajori, Assistant Advocate-General with Barrister Talha Ilyas Sheikh and Syed Saim Hassan, Advocates. Mr. Arshad Mahmood Malik, Assistant Attorney General and Sibah Farooq, Advocate.

JAWAD HASSAN, J. This judgment will also decide the connected petitions bearing W.P.Nos.3150, 3151 of 2022 and 3972 of 2023 filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (*the* **"*Constitution*"**), as common questions of law and facts are involved in all these constitutional petitions.

2. The Petitioner in the instant petition and in connected petitions (hereinafter would be referred as the ***"Petitioners"***) have impugned show cause notices of different dates (the ***"impugned notices"***) issued by Respondent/Punjab Revenue Authority (the ***"PRA"***) under the

provisions of the Punjab Sales Tax on Services Act, 2012 (the ***"Act"***) whereby levy of provincial sales tax on the services have been imposed.

I. OVERTURE

3. The development of Alternate Dispute Resolution ***("ADR")*** in Pakistan has been influenced by the need to alleviate the overburdened judicial system which aims to provide more efficient, cost-effective and amicable dispute resolution alternatives, reducing the burden on Courts and improving access to justice for the public. This approach was first time introduced in tax matters by the Supreme Court of Pakistan in *"FEDERATION OF PAKISTAN and others versus ATTOCK PETROLEUM LTD. ISLAMABAD"* **(2007 SCMR 1095)** (***"Attock Petroleum case"***) holding that *"it would facilitate settlement of tax dispute without intervention of court through mediation and negotiation"*. This concept of *"ADR"* in tax disputes has further been strengthened by Supreme Court of Pakistan in *"COMMISSIONER INLAND REVENUE versus Messrs RYK MILLS"* **(2023 SCMR 1856)** (***"RYK Mills case"***) holding that *"issuance of a show cause notice also acts as a tool to resolve the issue in the pre-litigation stage and a show cause notice can also be viewed as being akin to alternate dispute resolution as it provides a pre-litigation opportunity for the recipient to present their position and show cause"*. Further, the Supreme Court of Pakistan in *"PROVINCE OF PUNJAB through Secretary C&W, Lahore, etc versus M/s HAROON CONSTRUCTION COMPANY, Government Contractor, etc."* **(2024 SCMR 947)** ***("Haroon Construction Company case")*** held as well that *"the courts should not only encourage mediation but also exhibit a pro-settlement bias and a pro-mediation bias"*. The above reproduced principles and developed jurisprudence with regard to *"ADR"* is binding within the meaning of Article 189 of the *"Constitution"*. In this case, the Court is intending to dispose and decide the controversy amongst parties by adopting

"ADR" for resolution of dispute in the light of guidelines, principles and jurisprudence laid by the Supreme Court of Pakistan in above referred judgments.

II. CONTEXT

4. Present a succinct overview of the factual background relevant to the case is that the Petitioner No.1/Strategic Plans Division (the ***"SPD"***) is controlled by the Petitioner No.2/National Command Authority (the ***"NCA"***) under the National Command Authority Act, 2010 (the ***"Act 2010"***). The *"SPD"* functions as Secretariat of the Authority as defined under Section 2(a) of the *"Act 2010"* which functions and exercise its powers under Section 7 of the *"Act 2010"*. The Petitioners have an operational and statutory compulsion to perform specified functions in view of Section 7 of the *"Act 2010"* and it can be validly stated that certain services required in pursuance thereto may very well be deemed to be ancillary and incidental to the functions provided under Section 7 of the Act ibid. As per version of the Petitioners, they are aggrieved by the *"impugned notices"* issued by the Respondent No.1/PRA imposing an unlawful levy of provincial sales tax on the services; therefore, the same be declared as illegal having been issued without lawful authority.

III. PETITIONERS' SUBMISSIONS

4. Mr. Ahmar Bilal Soofi, Sr. ASC has attacked on the authority of the *"PRA"* to impose sales tax on the Petitioners having no jurisdiction and while reading the preamble of the *"Act 2010"*, which clearly states that the *"NCA"* has been established for complete command and control over research, development, production and use of nuclear/space technologies as well as other related applications in various fields, besides providing safety and security of all personnel, facilities, information, installations or organizations and other activities or matters connected therewith or ancillary thereto; he has drawn attention towards the provision of Section 5 of the *"Act 2010"*, according to which, the *"SPD"* shall function as the Secretariat of the

NCA and shall be headed by a Director General to be appointed by the Chairman, on recommendation of the Chairman Joint Chiefs of the Staff Committee. He maintains that since the *"SPD"* is performing functions and acts of integral, ancillary and incidental nature in terms of items No.18 and 51 of the Federal Legislative List, thus no provincial sales tax is leviable on it under the *"Act"*.

5. When confronted how writ is maintainable against the *"impugned notices"* as the *"PRA"* has only fixed a hearing and required representation on behalf of the Petitioners through a duly authorized legal counsel, Mr. Ahmar Bilal Sufi, Sr. ASC argued that the writ is maintainable against the show cause notice in the light of judgment passed by this Court in the case of *"RELIANCE COMMODITIES (PRIVATE) LTD. versus FEDERATION OF PAKISTAN and others"* **(PLD 2020 Lahore 632=2020 PTD 1464)** whereby it has been held that a writ petition is maintainable if the show cause notice has not lawfully been issued by the competent authority; or, if issuance of the show cause notice is ultra vires the relevant law and/or without jurisdiction or with malafide. He next argued that the nature of work/services being done by the Petitioner No.1 does not cover under the meaning and purport of services as defined in Section 2(38) of the *"Act"*. He has further placed reliance on the judgment passed by the Supreme Court of Pakistan on similar issue in the case of *"SINDH REVENUE BOARD THROUGH CHAIRMAN GOVERNMENT OF SINDH and another versus THE CIVIL AVIATION AUTHORITY OF PAKISTAN THROUGH AIRPORT MANAGER"* **(2017 SCMR 1344)**, which discusses scope of the (aforesaid) items No.18 and 51 of the Federal Legislative List and holds that matters of common concern to the federating units of Pakistan are attended to by the Federal Legislature and the Federal Government has the power to exercise executive authority in respect of all such matters itself or through an authority in terms of Articles 97 and 98 of the Constitution. Learned counsel for the Petitioners

lastly relied on the judgment reported as *"STATE BANK OF PAKISTAN versus FEDERATION OF PAKISTAN and 4 others"* **(PLD 2023 Lahore 392).**

III. RESPONDENTS' SUBMISSIONS

6. Learned Law Officer as well as learned counsel for the Respondent/PRA unanimously objected to the maintainability of these petitions by submitting that the *"impugned notices"* have rightly been issued by the *"PRA"* as per law and there is no occasion for this Court to intervene into the matter.

7. Arguments heard. Record perused.

8. Out of divergent contentions of the parties following points of determination are framed by this Court:

IV. POINTS OF DETERMINATION

1. *Whether Writ is maintainable against Show Cause Notice?*
2. *Whether Show Cause Notice must satisfy the principles of natural justice?*
3. *Whether Show Cause Notice matters can be referred for Mediation?*

9. Now, I will discuss points of determination respectively as under:

POINT NO.1 *(Maintainability of writ petition against show cause notice)*

10. There is no cavil to the proposition that mere issuance of notice or a show-cause notice is not an adverse order and a petition under Article 199 of the *"Constitution"* would not be competent. The exception to this general rule is a grievance relating to the notice or show-cause notice suffering from want of jurisdiction. Where the show-cause notice is so patently illegal, void or wanting in jurisdiction that any further recourse to alternative remedy might only be counterproductive and by invoking Article 199 the mischief could forthwith be nipped in the bud then in such matters existence of alternative remedy would not bar the exercise of Constitutional jurisdiction. Reliance is placed on *"MUSLIM COMMERCIAL*

BANK LIMITED versus DEPUTY COMMISSIONER OF INCOME-TAX and others" **(2004 PTD 1901)**, *"CHAUDHARY SUGAR MILLS LIMITED versus CHIEF COMMISSIONER and 2 others"* **(2016 PTD 527)** and *"NORTHERN POWER GENERATION COMPANY LTD. Versus FEDERATION OF PAKISTAN and others"* **(2015 PTD 2052)**. It has been held by the Supreme Court in the judgment titled *"COMMISSIONER OF INCOME TAX versus ELI LILLY PAKISTAN (PVT.) LTD."* **(2009 SCMR 1279)** that the rule barring jurisdiction in the case of exercising powers under Article 199 of the *"Constitution"* when a show-cause notice has been assailed is not an absolute rule, but rather a rule by which the jurisdiction is regulated. The exercise of jurisdiction in the case of a show-cause notice has been held to be justified when the said notice is without jurisdiction or mala fide. The relevant portion of the judgment is reproduced for ready reference *"The tendency to bypass the remedy provided in the relevant statute and to press into service constitutional jurisdiction of the High Court was to be discouraged, though in certain cases invoking of such jurisdiction instead of availing the statutory remedy was justified, e.g. when the impugned order/action was palpably without jurisdiction and/or mala fide."* Further reliance is placed on *"GATRON (INDUSTRIES) LTD. versus GOVERNMENT OF PAKISTAN and others"* **(1999 SCMR 1072)** and *"MURREE BREWERY CO. LTD. versus PAKISTAN THROUGH SECRETARY TO GOP, WORKS AND DIVISION and 2 others"* **(PLD 1972 SC 279)**. This Court in exercise of its extraordinary constitutional jurisdiction may take up writs to challenge the show cause notice if it is found to be lack of jurisdiction, barred by law or abuse of process of the court or coram non judice. Reliance is place on "*RELIANCE COMMODITIES (PRIVATE) LTD. versus FEDERATION OF PAKISTAN and others"* **(PLD 2020 Lahore 632)** and *"DR. SEEMA IRFAN and others versus FEDERATION OF PAKISTAN"* **(PLD 2019 Sindh 519)**.

Moreover, it is pertinent to refer to the precedent law expounded by the Supreme Court of India with regard to entertaining constitutional petition when the challenge is against a show-cause notice. It is well settled principle propounded by the Court that ordinarily no writ lies against a show-cause notice. It has been a consistent view of the Court in India that a mere show-cause notice is not an adverse order and, therefore, the petition invoking jurisdiction against a show-cause notice is considered premature. The only two exceptions to the rule that ordinarily writ will not be issued against a show-cause notice are, (a) when the Court is satisfied that the show-cause notice is totally non est. i.e. want of jurisdiction of the issuing authority and (b) issued malafidely. Reliance is placed on *"Union of India (UOI) and others versus Vicco Laboratories"* **((2007) 13 SCC 270)**. The relevant portion of the judgment is reproduced for ready reference *"Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner."*

11. A discreet analysis of the aforementioned case law reveals that the consistent view of the Pakistani and Indian Courts has been that a mere show-cause notice is not an adverse order. However, the Court in exercise of its constitutional jurisdiction could take up writs to challenge the show-cause notice if it is found that the show-cause notice is totally non est i.e. want of jurisdiction of the issuing authority or has been issued malafidely i.e. merely to harass the subject. In the light of the settled principles, it may be concluded as follows:--

i. *Show-cause notice is not an adverse order unless it could be clearly shown to the satisfaction of the Court that it has been issued by an authority not vested with jurisdiction or it was issued for mala fide reasons.*
ii. *The exception relating to want of jurisdiction does not include every jurisdictional error. A wrong exercise of jurisdiction or interpretation of the law cannot be treated as want of jurisdiction.*
iii. *Constitutional jurisdiction is exercised if the Court is satisfied that the person is an 'aggrieved party' within the context of Article 199 of the Constitution and no adequate remedy is provided by law. If adequate statutory remedies are provided under the relevant statute, it is to be taken into consideration while exercising discretion under Article 199 of the Constitution.*
iv. *By passing or circumventing statutory forums is to be discouraged.*
v. *The approach should be to advance the object and purpose of a statute and every effort made to uphold the sanctity of the legislative intent rather defeating it.*

POINT NO.2 *(Show Cause Notice on principles of natural justice)*

12. The Constitution guarantees the right to be treated according to law, and it upholds the principles of a fair trial and due process under Articles 4 and 10-A. Article 4 ensures every citizen's inalienable right to enjoy legal protection and to be treated according to law. It also stipulates that no action that could harm a person's life, liberty, body, reputation, or property can be taken unless it is in accordance with law. Furthermore, it prevents or hinders any person from doing anything that is not prohibited by law. Article 10-A of the *"Constitution"* establishes the fundamental right to a fair trial and due process. The issuance of a show cause notice is crucial in safeguarding these rights, as it gives individuals and organizations the chance to justify their actions and respond to allegations of law violation or non-compliance before any negative

action is taken against them. Therefore, if a specific allegation is not presented to the recipient, denying them the opportunity to respond, any judgment on that allegation would violate the right to due process and a fair trial, contravening Articles 4 and 10A of the *"Constitution"*.

13. A show cause notice is an official document issued by an Authority to inform a recipient of a potential violation or non-compliance with a law, providing them an opportunity to respond. It upholds the principle of natural justice, ensuring a fair hearing before any decision affecting their rights or interests is made. The recipient is given adequate time to respond, access to relevant evidence, and an opportunity to be heard. This process ensures unbiased decision-making based on facts and relevant laws, protecting the recipient's rights and interests. The principles of impartiality and reasons are also upheld, requiring the decision-maker to be unbiased and provide reasons for their decision. Thus, a show cause notice is a crucial tool for law enforcement, ensuring a fair and transparent process before any adverse order is passed. Reliance is placed on *"Siemens Engineering versus Union of India"* **(AIR 1976 SC 1785)** and *"S.N. Mukherjee versus Union of India"* **(AIR 1990 SC 1984)**

14. A show cause notice served to a taxpayer must encompass all essential facts and clearly outline the alleged actions or inaction by the taxpayer that breached the law, facilitating a substantial response from the taxpayer. It's crucial that the taxpayer is faced with precise allegations, along with the basis for such allegations, to adequately respond and to record relevant material that would be necessary for any defense presented and for any adjudication by the assessing officer related to it. This is because once a show cause notice is served, the original adjudication on the said notice can only be founded on the grounds and allegations raised therein. Without confronting the taxpayer with the allegations through a

show cause notice, the assessing officer cannot make a determination regarding the said allegations as it exceeds the department's competence to argue a case which the department had never proposed and the taxpayer had never been given the chance to address. Therefore, unless the allegations, and the grounds on which the said allegations are based, are specifically stated in the show cause notice served to the taxpayer, the entire process becomes futile and legally untenable. Reliance is placed on *"Commissioner Inland Revenue versus Pakistan Tobacco Company"* **(2022 SCMR 1251)**; *"Al-Khair Gadoon versus The Appellate Tribunal"* **(2019 SCMR 2018)**; *"Raj Bahadur versus Union of India"* **((1997) 6 SCC 81)**; *"New Delhi Television versus Deputy Commissioner of Income Tax"* **(AIR 2020 SC 2177)**; *"Collector of Central Excise versus H.M.M. Limited"* **(1995 Supp. (3) SCC 322)** and *SACI Allied Products versus Commissioner of Central Excise* **((2005) 7 SCC 159)**.

POINT NO.3 (*Whether Show Cause Notice matters can be referred for Mediation)*

15. Today, during the course of arguments, this Court proactively played its due role to convince the parties to settle their dispute through mediation in terms of *"RYK Mills case"* and *"Haroon Construction Company case"* of the Supreme Court of Pakistan. Mr. Hassan Kamran Bashir, ASC for the Respondent/PRA under instructions submitted candidly that the Respondent/PRA is ready to mediate the matter regarding impugned notice(s). Mr. Ahmar Bilal Soofi, Sr. ASC for the Petitioners accepted the offer for mediation.

V. ANTHOLOGY OF ADR/MEDIATION

16. According to Halsbury's Laws of England Fifth Edition (2008) Volume 2, Para 1204 an *"Alternate dispute resolution ('ADR') is a term for describing the process of resolving disputes in place of litigation and includes mediation, conciliation, expert determination, and early neutral evaluation."* Mediation, a form of alternative dispute

resolution (ADR), is praised for its efficiency, cost-effectiveness, and ability to foster amicable settlements. Unlike litigation's adversarial nature, mediation promotes a collaborative approach for parties to find mutually beneficial solutions. Courts should encourage mediation and exhibit a pro-settlement and pro-mediation bias, favoring dispute resolution through mediation over litigation. This bias, favoring the mediation process itself, is based on the belief that settlements are generally more efficient and satisfactory for all parties compared to court-determined outcomes. By promoting a pro-settlement bias, courts can contribute to a harmonious and efficient dispute resolution environment, empowering parties to resolve conflicts collaboratively and constructively. This aligns with the broader goals of global justice systems to resolve disputes fairly, efficiently, and in a manner conducive to the long-term well-being of all parties involved. The centuries old traditional method of settlement of private dispute through negotiation is not only familiar in the modern world, but this voluntary scheme for settlement of tax dispute through mediation and negotiation is an effective method to be followed. There are various forms of ADR such as mediation, arbitration, conciliation and compromise with or without intervention of court. Reliance is placed on *"Province of Punjab through Secretary C&W, Lahore, etc versus M/s Haroon Construction Company, Government Contractor, etc."* **(2024 SCMR 947)** and *"Federation of Pakistan and others Vs. Attock Petroleum Ltd. Islamabad"* **(2007 SCMR 1095)**. Mediation offers a voluntary and confidential alternative to traditional court proceedings for resolving disputes. In this process, disputing parties willingly engage in discussions facilitated by a neutral third party known as the mediator. Unlike court proceedings, mediation is a more informal and flexible approach, fostering open communication and creative problem solving. Mediator's role is not to make decisions but to guide the parties in finding common ground and exploring potential solutions. One of the key advantages of

mediation is its cost-effectiveness compared to court proceedings. It also tends to be a faster method of resolution, putting more control in the hands of the parties involved. Informality of mediation contributes to a quicker resolution compared to the often time-consuming nature of court proceedings. Additionally, the process preserves relationships, as parties actively engage in finding mutually agreeable solutions. Flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved. Mediation not only saves time and money of parties, but it also reduces load of work in the courts as well as it is a most updated way on resolutions based on the "divine culture of Peace." Reliance is placed on *"FAISAL ZAFAR and another versus SIRAJ-UD-DIN and 4 others"* **(2024 CLD 1)**; *"NETHERLANDS FINANCIERINGS MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V. (F.M.O.) versus MORGAH VALLEY LIMITED and SECP"* **(PLD 2024 Lahore 315)**; *"SOHAIL NISAR versus NADEEM NISAR & others"* **(2024 LHC 1435)** (High Court Citation), *"MESSRS U.I.G. (PVT.) LIMITED THROUGH DIRECTOR and 3 others versus MUHAMMAD IMRAN QURESHI"* **(2011 CLC 758)** and judgment of Sindh High Court delivered by Yousuf Ali Sayeed, J in case "*SHEHZAD ARSHAD Vs. Pervez Arshad and 2 others*" (Suit No.1721 of 2022).

VI. MEDIATION/ADR REGIME IN PAKISTAN

17. There are several federal and provincial laws on Alternate Dispute Resolution in Pakistan i.e.

i. *The Alternate Dispute Resolution Act, 2017.*

ii. *The Punjab Alternate Dispute Resolution Act, 2019.*

iii. *The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020.*

iv. *The Balochistan Alternate Dispute Act, 2022.*

18. In addition thereto, Section 89-A and Order IX-A of the Code of Civil Procedure, 1908 warrant process of Alternate Dispute resolution/mediation, whereas provisions of the Order IX-B ahead read as follows:

> *"**RULE 1:***
> *(1) Except where the Court is satisfied that there is no possibility of mediation or an intricate question of law or facts is involved, the Court shall refer the case for mediation.*
> *(2) While referring the matter for mediation, the Court may indicate the material issues for determination through mediation.*
> ***RULE 2:***
> *Where a case is referred for mediation, the Court shall stay the proceedings for a period not exceeding thirty days and direct the parties to appear before the Mediation Centre, set up by Lahore High Court, on such date and time as the Court may specify.*
> ***RULE 3:***
> *(1) Where the mediation proceedings are successful and the parties have arrived at an agreement, the Mediator shall cause the same to be recorded in writing, signed by the parties or their recognized agents or their pleaders and attested by two independent witnesses.*
> *(2) The agreement shall be certified by the Mediator and transmitted forthwith, through the Administrator of the Mediation Centre, to the Court.*
> *(3) The Court shall, on receipt of the agreement, pass a decree in terms thereof unless the Court, for reasons to be recorded in writing, finds that the agreement between the parties is not enforceable at law.*
> *(4) Where the settlement relates only to a part of the dispute, the Court shall pass decree or an order in terms of such settlement and proceed to adjudicate the remaining issues.*
> ***RULE 4:***
> *Where the meditation fails and no settlement is made between the parties, the Mediator shall submit a report to the Court and the Court shall proceed with the case from the stage it was referred to Mediation."*

19. Moreover, Section 134-A (1) of the Income Tax Ordinance, 2001 (the ***"Ordinance"***) states that "An aggrieved person in connection with any dispute pertaining to: (a) the liability of tax of one hundred million rupees or above against the aggrieved person or

admissibility of refund, as the case may be; (b) the extent of waiver of default surcharge and penalty; or (c) any other specific relief required to resolve the dispute, may apply to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application, which is under litigation in any court of law or an appellate authority, except where criminal proceedings have been initiated." The Rule 231-C in Chapter XIX of the Income tax Rules, 2002 is also available in connection thereto. Moreover, Sections 276 to 278 of the Companies Act, 2017 also set forth mode for Mediation or arbitration etc. Federal Government, in exercise of the powers conferred by section 25 read with section 4 of aforementioned Alternative Dispute Resolution Act, 2017 has also framed ADR Mediation Accreditation (Eligibility) Rules, 2023 featuring accreditation and Notification, accreditation committee, accreditation eligibility rules and notification, ADR Register and suspension or revocation of accreditation.

VII. MEDIATION BY THE PRA UNDER THE "ACT"

20. The Preamble of the *"Act"* plainly demonstrates intent to expedite to reform and modernize the system of taxation, to provide assistance to tax payers, to promote compliance with fiscal laws, to establish a progressive and professionally efficient tax management organization, and to provide for ancillary matters. The Preamble of the Act laid strong emphasis to regulate the matters relating to taxation system, progressive & efficient tax administration management, to assist taxpayer and to promote compliance of fiscal laws. Section 5 of the *"Act"* envisages following functions of the PRA as Section 5 (1) states that the Authority shall exercise such powers and perform such functions as are necessary to achieve the purposes of this Act; Section 5 (2) (e) states that the Authority shall have powers to adopt modern effective tax administration methods, information technology systems and policies to consolidate

assessments, improve processes, organize registration of tax payers, widen the tax base, and make departmental remedies more efficient including enforcement of, or reduction or remission in duty, penalty or tax, in accordance with the relevant fiscal law; Section 5 (2) (o) states that the Authority shall have powers to set up mechanism and processes for remedying the grievances and complaints of the tax payers; Section 5 (2) (q) states that the Authority shall have powers to practice transparency and public participation as a norm for all its processes and policies. The mechanism of alternate dispute resolution has also been provided under Section 69 of the "Act" which reads as

> *"SECTION 69:*
> *(1) Notwithstanding any other provisions of this Act or the rules,* ***any registered person aggrieved*** *in connection with any dispute pertaining to–*
> *(a) the liability of the tax against the registered person;*
> *(b) the extent of waiver of default surcharge and penalty;*
> *(c) relaxation of any procedural or technical irregularities and condonation of any prescribed time limitation; and*
> *(d) any other specific relief required to resolve the dispute,* ***may apply to the Authority for the appointment of a committee for the resolution of any dispute mentioned in detail in the application***.
> *(2) Notwithstanding anything contained in sub-section (1), the Authority shall not accept an application under sub-section (1) where criminal proceedings have been initiated or where the Authority is of the opinion that the interpretation of a question of law having a larger impact on revenue or on a number of similar cases is involved.*
> *(3)* ***The Authority may, after examination of the application of a registered person, appoint a committee of not less than three persons within thirty days of receipt of such application,*** *consisting of an officer of the Authority not below the rank of an Additional Commissioner and nominees from the notified panel consisting of*

> *chartered or cost accountants, advocates, representatives of trade bodies or associations, retired officers of the rank of not less than BS-20, retired judges, or any other reputable taxpayers, for the resolution of the dispute.*
> *(4) The committee constituted under sub-section (3) shall examine the issue and may, if it deems fit, conduct an inquiry, seek expert opinions, direct any officer of the Authority or any other person to conduct an audit and shall make recommendations to the Authority within ninety days of its constitution in respect of the dispute.*
> *(5) If the committee fails to make recommendations within the said period, the Authority may dissolve the committee and constitute a new committee which shall decide the matter within a further period of ninety days and even if after the expiry of that period the dispute is not resolved, the matter shall be taken up before the appropriate forum provided under this Act for decision.*
> *(6)* ***The Authority may, on the recommendation of the committee, pass such order, as it may deem appropriate within forty-five days of the receipt of the recommendations of the committee.***
> *(7) The registered person may make payment of the tax as determined by the Authority in its order under sub-section (6), and such order of the Authority shall be submitted before the forum, Appellate Tribunal or the Court where the matter is pending adjudication for consideration of orders as deemed appropriate.*

21. Now Question arises whether matters regarding issuance of show cause notice can be referred for mediation. This issue has already been settled by the Supreme Court in the case titled *"COMMISSIONER INLAND REVENUE versus Messrs RYK MILLS"* **(2023 SCMR 1856)** the relevant portion is reproduced for ready reference:

> *"7. A show cause notice can also be viewed as being akin to alternative dispute resolution ("ADR") as it provides a pre-litigation opportunity for the recipient to present their position and show cause. By doing so, the matter can potentially be resolved before it escalates and requires any adjudication. This not only saves time and resources but also encourages the efficient resolution of disputes, acting as an effective mode of resolving disputes outside of the traditional legal framework. Thus, while acting as a means to ensure due process and fair trial by allowing the recipient to explain their position and respond to the allegations before any legal action is taken, the issuance of a show cause notice also acts as a tool to resolve the issue in the pre-litigation stage, similar to the objective of ADR."*

VIII. CONCLUSION

22. Hence, with the mutual consent of parties and keeping in light preamble of the "Act" coupled with obligation of the *"PRA"* envisaged in its functions under Section 5 of the *"Act"*, the mechanism of ADR enacted in Section 69 of the *"Act"* and fetching guidelines from esteemed judgments of the Supreme Court of Pakistan in case *"Attock Petroleum case"*, *"RYK Mills case"* and *"Haroon Construction Company case"* mentioned supra, which are binding on this Court under Article 189 of the *"Constitution"*, this Court is of the considered view that the resolution of the issue in hand through ADR, assented by the learned counsels of both parties, is the need of day to afford parties with an opportunity for resolution of the matter through said medium under umbrella of requisite confidentiality, trust and compliance of law.

24. Hence, these petitions stand disposed of with the observation that the representative(s) of the Petitioners shall appear before the Respondent No.1/PRA on 10.06.2024, who shall, with mutual

understanding and consent of the parties shall proceed ahead with mechanism of ADR in accordance with law and esteemed guidelines of the Supreme Court of Pakistan discussed above in detail. In the meanwhile, under the Doctrine of Stopgap Arrangement as developed by this Court in the judgments cited as *"SHELL PAKISTAN LIMITED versus GOVERNMENT OF PUNJAB etc."* **(2020 PTD 1607)** and *"SHAHEEN MERCHANT versus FEDERATION OF PAKISTAN/NATIONAL TARIFF COMMISSION and others"* **(2021 PTD 2126)** no coercive measures shall be adopted against the Petitioners, till finalization of the mediation process.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

Usman*