

CASE BRIEF

S. No.		
1.	Citation	<i>PKP Exploration Limited vs. Federal Board of Revenue through Chairman & Others (2021 PTD 1644)</i>
2.	Nature of case	The Petitioner through instant Writ Petition challenged a Show Cause Notice (SCN) issued by the Officer Inland Revenue under Sales Tax Act, 1990.
3.	Facts	Through the Impugned Notice the Officer asked the Petitioner to show-cause as to why demand may not be generated against it in relation to returns for tax years 2010 to 2014, wherein supply on account of locally produced crude oil/condensate has been claimed as zero rated as per Item No. (XVII) of Serial No. 04 of S.R.O. No. 549(I)/2008 dated 11.06.2008. The SCN was based on a previous Appellate Tribunal Inland Revenue (ATIR) decision in S.T.A. No. 314/LB/2014, which interpreted SRO 549(I)/2008 and held that zero-rated tax applied only when both 'import and supply' conditions were met.
4.	Issue	Whether Writ Petition is maintainable against a Show Cause Notice where the statutory law has provided alternate remedies?
5.	Petitioner's Contentions	The Petitioner argued that: (i) The SCN lacked jurisdiction and was based on an erroneous interpretation of the law and thus HC's writ jurisdiction could directly be invoked. (ii) The Impugned Notice suffered from jurisdictional defect as it was issued on the basis of decision rendered by the learned Tribunal in S.T.A. No.314/LB/2014 which misconstrued the effect of SRO No 549(I)/2008 dated 11.06.2008. --- learned Tribunal erred in not reading the "and" as "or" and in relying on such decision of the Tribunal, the Officer Inland Revenue issued the Impugned Notice in the instant case which consequently suffered

		<p>from the jurisdictional defect of misconstruing SRO No.549(I)/2008.</p> <p>(iii) The statutory remedies available under law were illusory as the ATIR's decision would be binding on the tax officials and thus the tax officials would blindly follow the ATIR's earlier decision in a similar matter.</p>
6.	Respondent's Contentions	<p>(i) The respondents (FBR and Inland Revenue officials) argued that the Sales Tax Act, 1990 provided an adequate statutory remedy (appeals process).</p> <p>(ii) They contended that a writ petition against a show-cause notice was premature and not maintainable unless there was a clear jurisdictional defect.</p>
7.	Rule of Law	<p>The High Court can exercise its constitutional jurisdiction in relation to a challenge brought against a SCN (even though statutory remedies exist), if the notice:</p> <ul style="list-style-type: none"> i. Is without jurisdiction for being issued by a person not vested with the authority under the law; ii. Is without jurisdiction for falling beyond the ambit of the empowering statute; iii. Suffers from mala fide of law or mala fide of fact; iv. The alternate remedy is inadequate and illusory; or v. Violates fundamental rights
8.	Holding or Decision	<p>(i) The Court decided the petition on the ground of maintainability while the merit of the case was not discussed. Writ Petition was dismissed on account of maintainability. The Petitioners failed to show that the impugned SCN was palpably without jurisdiction or suffered from mala fide.</p> <p>(ii) The Court ruled that ATIR decisions are not binding on tax officials for future cases.</p> <p>(iii) Articles 189, 203-GG, and 201 of the Constitution of Pakistan specify which court decisions are binding and this did not include ATIR's Judgment. ATIR does not have law-declaring authority, meaning its decisions serve only as persuasive precedents, not binding ones.</p> <p>(iv) The Court rejected the argument that alternative remedies (appeals to the</p>

		<p>Commissioner, ATIR, and High Court) were illusory.</p> <p>(v) SCN was not patently illegal or issued without jurisdiction. Petitioner must first exhaust statutory remedies (appeals under the Sales Tax Act, 1990) before seeking constitutional relief.</p> <p>(vi) Petition Dismissed.</p>
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