

S.No. HC/JA 28  
JUDGMENT SHEET  
LAHORE HIGH COURT, RAWALPINDI BENCH RAWALPINDI  
JUDICIAL DEPARTMENT

Writ Petition No. 2148/2022

High Court Bar Association Rawalpindi

Vs.

Federation of Pakistan etc.

**JUDGMENT**

Date of hearing	28.07.2022
For the Petitioner:	M/s. Talat Mahmood Zaidi, Malik Khurram Shahzad, Malik Mubashar Nazar, Arslan Binyamin Bhatti, Ms. Hina Nouman and Amir Shahzad Jhammat, Advocates.
For Respondents No.1 & 2:	Malik Ahtesham Saleem, Assistant Attorney General for Pakistan & Mr. Ansar Mehboob, Advocate, for IESCO with Arif-ul-Haq, XEN Cantt. and Sajid Ansari, Deputy Director Commercial.
For Respondent No.3:	Malik Itat Hussain Awan, Advocate, with Syed Ghulam Abbas Kazmi, Member Legal, FBR; Mr. Farooq Chattha, Secretary Policy, FBR; Hassan Zulfiqar, Chief Legal Officer, FBR; Mr. Yousaf Khan, SO, IR Legal, KTO Rawalpindi and Mr. Abbas Ahmed Mir, Commissioner Cantt Zone, Rawalpindi.

TESTED  
28/7/22

Tariq Saleem Sheikh, J. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner (High Court Bar Association Rawalpindi) assails the imposition of sales tax on the lawyers community and its collection through the electricity companies by including it in their monthly electricity bills. The Petitioner contends that it is beyond the scope of section 3 of the Sales Tax Act, 1990 (the "Act"), so it is illegal.

2. This Court issued notice to the Respondents and also directed the Member Legal, Federal Board of Revenue, to appear in person.

3. The Secretary, Sales Tax Policy, FBR, has submitted reply to this petition today which is placed on record. Since a question of law is

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involved in this case, it is treated as a "Pacca Case" with the consent of the learned counsel for the parties.

4. Arguments heard. Record perused.

5. Section 3 of the Act describes the scope of the sales tax. Sub-section (9) thereof is relevant for present purpose which reads as under:

(9) Notwithstanding anything contained in sub-section (1), tax shall be charged from retailers, other than those falling in Tier-1, through their monthly electricity bills, at the rate of rupees three thousand per month where the monthly bill amount does not exceed rupees thirty thousand, rupees five thousand per month where the monthly bill amount exceeds rupees thirty thousand but does not exceed rupees fifty thousand and rupees ten thousand per month where the monthly bill amount exceeds rupees fifty thousand, and the electricity supplier shall deposit the amount so collected directly without adjusting against his input tax:

Provided that the above rates of tax shall be increased by one hundred percent if the name of the person is not appearing in the Active Taxpayers List issued by the Board under section 181A of the Income Tax Ordinance, 2001 on the date of issuance of monthly electricity bill:

Provided further that the Board may through a general order prescribe any persons or class of person who shall pay upto rupees two hundred thousand per month through their monthly electricity bill.

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Provided further that the tax under this sub-section shall be in addition to the tax payable on supply of electricity under sub-sections (1), (1A) and (5):

Provided also that the Commissioner of Inland Revenue having jurisdiction shall issue order to the electricity supplier regarding exclusion of a person who is either a Tier-1 retailer, or not a retailer.

The terms "retailer" and "Tier-1 retailer" are defined in section 2(28) and 2(43-A) of the Act respectively.

6. The "retailer" is essentially a person who supplies goods to the general public for consumption. Admittedly, the lawyers are professionals who provide legal services to their clients. The supply of goods is not involved in any manner so section 3(9) does not extend to them.

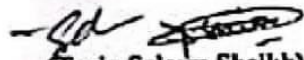
7. In view of the above, no sales tax is chargeable and collectable from the lawyers under section 3(9) of the Act, and the electricity bills issued to them for the month of July, 2022, are liable to be rectified. The Member Legal and the Secretary Sales Tax Policy, FBR, present before this Court concede this legal question.

8. The Secretary, Sales Tax Policy, FBR has assured this Court that the concerned Commissioner Inland Revenue shall issue a letter to the DISCOs for exclusion of the lawyers' commercial connections installed at

their offices from the chargeability of the impugned tax. However, he has requested that the Petitioner may be directed to provide a list containing the following particulars: (i) Name of the lawyer and his office address, (ii) CNIC number or NTN, (iii) Bar Licence number, and (iv) Reference number of the connection.

9. In the result, this petition is accepted in the following terms:

- (i) It is declared that the lawyers are not subject to the levy of the impugned sales tax leviable on the retailers in terms of section 3(9) of the Act.
- (ii) The Petitioner shall provide a list (containing the particulars mentioned in paragraph 8, above) to the concerned Commissioner of Inland Revenue for exclusion of the commercial connections installed at the lawyers' offices from the chargeability of the impugned tax. The Commissioner shall be competent to have a ground check to verify any particular case after due process.
- (iii) If any sales tax has been wrongly collected, it shall be refunded/adjusted in accordance with law.

  
(Tariq Saleem Shelkh)  
Judge

ATTESTED  
  
Esam ul Haq  
Section Officer, District Court,  
Rawalpindi Bench