IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D-2273 of 2011
and connected petitions

Date Order with signature of Judge

Present: **Ghulam Sarwar Korai and Munib Akhtar, JJ.**

For final disposal
Dates of hearing: 23, 24, 25, 26 and 30.04, and 03 and 07.05.2013.

Counsel for the Petitioners
in respective petitions:

Mr. Junaid Ghaffar; Mr. Khalid Jawed Khan;
Mr. M. Afzal Awan; Mr. Anwar Hussain;
Mr. M. Kaukab Shahabuddin; Mr. Muhammad Raza;
Mr. Umar Lakhani; Mr. Muhammad Zeeshan;
Mr. Farogh Naseem; Ms. Ismatunnisa;
Mr. Mazharul Hasan; Mr. Haider Waheed;
Ms. Fouzia Rasheed; Mr. Nazar Akbar;
Mr. Usman Shaikh; Ms. Sofia Saeed;
Mr. Waseem Shaikh; Mr. Aga Zafar Ahmed;
Mr. Muhammad Aslam; Mr. Imdad Khan;
Mr. Ali Mumtaz Shaikh; Mr. Raja Qasit Nawaz;
Mr. M. Idrees Sukhera; Mr. Saleem Akhtar;
Mr. Aqil Ahmed; Mr. Saadat Yar Khan;
Mr. Noman Jamali; Mr. Amjad Javed Hashmi;
Mr. Abdul Ghaffar; Mr. Shahjahan Jalbani;
Mr. M. Ali Merchant; Mr. Abdul Rahim Lakhani;
Mr. S. Irshad ur Rehman; Mr. M. Faraz Merchant;
Ms. Zaibunnisa; Mr. M. Altaf Mun; Mr. Mukesh Kumar Khatri; Mr. Irfan Ahmed Memon; Mr. Faisal Siddiqui;
Mr. Adnan Chaudhry; Mr. Sami Ahsan; Mr. Abdul Majeed Khoso; Mr. Abdul Majeed Khan; Mr. Khaleeq Ahmed;
Ms. Lubna Parvez; Mr. Mansoor Ali Khan; Mr. M. Ilyas Khan; Mr. Zaheeruddin Jatoi; Mr. Zamir Hussain Ghumro;
Mr. Naeem Iqbal; Mr. Waqar Ahmed; Mr. Shahab Sarki;
Mr. Khalid Mahmood Siddiqui; Mr. Muhammad Khalid;
Mr. Mr. Siraj Ali Khan; Ms. Syeda Sara Kanwal;
Mr. Haider Naqi; Mr. Zahid F. Ebrahim; Mr. Ghazain Magsi;
Mr. Muhammad Aslam; Mr. Faiz ul Hassan Shah;
Mr. Ashiq Ali Anwar Rana.

Counsel for the Respondents
in respective petitions:

Dr. Rana Muhammad Shamim; Mr. Sibtain Mehmud;
Mr. Shakeel Ahmed; Mr. Jawaid Farooqui DAG;
Mr. Mohsin Imam DAG; Ms. Masooda Siraj;
Mr. Ghulam Haider Shaikh; Mr. Haider Iqbal Wahniwal.

Along with officers from DG(I&I)-FBR and
DG(I&I)-IR:

Mr. Farhatullah Jafri, Senior Intelligence Officer;
Mr. Ghulam Younus Khan, Superintendent;
Mr. Azam Nafees, Audit Officer;
Mr. Asadullah Shaikh, Auditor; and
Mr. M. Ashfaq Khan, Audit Officer.

****

Munib Akhtar, J.: By this judgment we intend disposing off the 485 constitutional petitions listed in the Appendix, since they raise common questions regarding the interpretation and application of various provisions of the Sales Tax Act, 1990, especially in the context of tax fraud as a criminal offence. Fiscal statutes are in the main concerned with the levy, collection and recovery of taxes and duties, and establish and empower statutory authorities accordingly. However, in many of the statutes, some at least of the acts and omissions that result in the non-payment or evasion of the levy are criminalized by the creation of offences that are to be tried before a Court exercising criminal jurisdiction, and result in conviction and imprisonment if the accused is found guilty. The issues raised by the present petitions thus lie at the point where the principles of tax law and the criminal law intersect.

2. The petitioners stand accused (or, as the case may, submit that they face the danger of being accused) of having committed tax fraud. The petitions challenge three FIRs that have been registered in this regard. Proceedings have been initiated on the basis thereof before the Special Judge (as defined by section 2(32)), who by virtue of section 37F is deemed to be a Court of Sessions for purposes of the Code of Criminal Procedure ("CrPC"), the provisions of which are to apply to all proceedings before said Judge "so far as they are not inconsistent with the provisions of [the Sales Tax] Act". In respect of all the FIRs interim challans have been submitted, as well as many supplementary challans thereafter. The three FIRs are: (a) Case No. 481-DCI/7-5/FEST/INQ/10 registered on 19.01.2011 ("FIR 481"); (b) Case No. 678/DCI/STFE/Jinnah Impex/2011 registered on 09.05.2011 ("FIR 678"); and (c) Case No. 693-DCI/S.Tax/Fake Input/2011 registered on 12.05.2011 ("FIR 693"). It is to be noted that all the FIRs were registered under the Sales Tax Act as it stood prior to the amendments made therein by the Finance Act, 2011. All three FIRs were registered by officers of, as stated therein, the "Directorate General of Intelligence and Investigation-FBR". As will shortly emerge, these points are crucial for purposes of the jurisdictional objection taken by the petitioners.

3. Since a large number of petitions were heard together, submissions were made by many learned counsel for the petitioners. The submissions were complementary. Accordingly, without intending any disrespect, we will refer to the submissions generally, without separately identifying those of each learned counsel. Taking the jurisdictional objection first learned counsel drew attention to three notifications issued under the Sales Tax Act. These have been reproduced in Annex II to this judgment, and are as follows: (a) SRO 56(I)/2010 dated 02.02.2010 ("SRO 56/2010"); (b) SRO 775(I)/2011 dated 19.08.2011 ("SRO 775/2011"), which, as stated therein, took effect from

01.07.2011; and (c) SRO 776(I)/2011 dated 19.08.2011 ("SRO 776/2011"). Learned counsel submitted that section 33, which lists the various (criminal) offences that can be committed under the Sales Tax Act, found no mention in any of these notifications. More pertinently, learned counsel referred to section 30A and the various changes that had been made in this section. It was submitted that the section was first introduced into the Act in 2005 and provided for a Directorate General (Intelligence and Investigation) Customs and Excise. At the same time, section 30E was also inserted, which empowered the (then) Central Board of Revenue ("CBR"), by notification, to specify the "functions, jurisdiction and powers" of (among others) the aforesaid Directorate General. The Finance Act, 2005 also added sections 3A and 3E to the Customs Act, 1969 in exactly the same terms as sections 30A and 30E. In 2007, section 3A of the Customs Act was substituted such that it now referred to a Directorate General (Intelligence and Investigation) Federal Board of Revenue ("FBR"). At the same time, section 30A was amended such that the words "Customs and Excise" were replaced with "CBR". (The CBR of course gave way to the FBR when the Federal Board of Revenue Act, 2007 came into force.) Finally, in 2011, the words "CBR" which were up till then appearing in section 30A were replaced with the words "Inland Revenue".

4. According to learned counsel, the cumulative effect of these changes could be stated as follows. From 2005 to 2007, there was only one Directorate General of Intelligence and Investigation, which was identified by the appellation "Customs and Excise". In 2007, this Directorate General was renamed as being that of "Federal Board of Revenue" (in the Customs Act) and "CBR" in the Sales Tax Act. However, the Directorate General still remained the same. The change in 2011 in the Sales Tax Act, from "CBR" to "Inland Revenue" in section 30A however, was not merely formal but of substantial effect. This was so because as a result of this change, there were two separate and distinct Directorates General of Intelligence and Investigation from 01.07.2011 onwards. One was identified by the appellation "Federal Board of Revenue" and the other by the appellation "Inland Revenue". As presently relevant, the first had jurisdiction only for and in relation to the Customs Act, whereas the latter alone had jurisdiction for the Sales Tax Act.

5. Referring to SRO 56/2010, learned counsel submitted that it was issued in the exercise of powers under sections 30 and 30E. It purported to appoint the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue to exercise the powers of the officers of Inland Revenue in respect of the sections set out in the notification. This notification was superseded by SRO 776/2011, which was issued on

19.08.2011 and took effect from that date. SRO 776/2011, which was also issued under sections 30 and 30E, purported to appoint the officers of the Directorate General of Intelligence and Investigation-Inland Revenue to exercise the powers of the officers of Inland Revenue in respect of the sections set out in the notification. Finally, SRO 775/2011 was also issued on 19.08.2011, but purported to take effect from 01.07.2011. This notification was issued under sections 30 and 31. It purported to appoint the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue "to be" officers of Inland Revenue and to exercise the powers in respect of the sections identified in the notification. This was however, expressly only "in relation to cases initiated before or on 30th June, 2011, till the finalization of the proceedings already initiated by the Directorate General of Intelligence and Investigation-Federal Board of Revenue" (emphasis supplied).

6. Learned counsel submitted that the three notifications, SRO 56/2010, SRO 775/2011 and SRO 776/2011 suffered from the following jurisdictional defects. The first mentioned notification merely appointed the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue to exercise the powers of the officers of Inland Revenue. But those powers could only be exercised by persons who *were* the officers of Inland Revenue. It was pointed out that SRO 56/2010 had superseded SRO 48(I)/2008 dated 15.01.2008 ("SRO 48/2008"; also reproduced in Annex II hereto). That notification had also been issued under sections 30 and 30E, but crucially had stated that the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue were "to be" officers of (as then provided) Sales Tax *and* were to exercise powers in respect of the sections identified in the notification. SRO 56/2010 did not appoint the officers of the Directorate General "to be" officers of Inland Revenue. It was crucially lacking a necessary ingredient, and hence was fatally defective. The FIRs were registered by officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue. However, the FIRs could only have been registered by those who (i) were officers of Inland Revenue *and* (ii) authorized to act in terms of the relevant sections. Both conditions had to be met. SRO 56/2010 at most complied with the second condition, but on the face of it did not meet the first. Hence, the registration of each of the FIRs was invalid.

7. Continuing, learned counsel submitted that on 01.07.2011 the situation changed further. As noted above, learned counsel contended that from that date onwards, there were two separate and distinct Directorates General of Intelligence and Investigation, one (as before) being the one identified by the

appellation “Federal Board of Revenue”, the other being the one identified by the appellation “Inland Revenue”. Only the latter had jurisdiction under the Sales Tax Act. Realizing the seriousness of the problem thereby created, FBR purported to issue SRO 775/2011, appointing the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue “to be” officers of Inland Revenue in relation to proceedings already initiated by or before 30.06.2011 by that Directorate General. In order to ensure continuity, SRO 775/2011 was given retrospective effect to 01.07.2011. However, learned counsel contended, this notification was *ultra vires* the Sales Tax Act since with effect from 01.07.2011, the Directorate General of Intelligence and Investigation-Federal Board of Revenue ceased to be operative in relation to the Act. As per the amended section 30A, only the Directorate General of Intelligence and Investigation-Inland Revenue existed insofar as the Sales Tax Act was concerned. It was pointed out that the Sales Tax Act had no equivalent to section 6 of the Customs Act. The latter provision empowered the FBR to “entrust” the “functions” of any officer of Customs to any officer of the Federal Government, Provincial Government, State Bank or a scheduled bank. Hence, under the Sales Tax Act, the officers of the Directorate General of Intelligence and Investigation-Federal Board of Revenue could not even be “entrusted” the “functions” of the officers of Inland Revenue, let alone be appointed as such officers. Finally, SRO 776/2011 was also invalid even though it was issued in relation to the Directorate General of Intelligence and Investigation-Inland Revenue. This was so for the same reason as SRO 56/2010, namely that it merely appointed the officers of the said Directorate General to exercise the powers of the officers of Inland Revenue without providing that they were “to be” such officers. Thus, it was contended, all the notifications in the field being relied upon were invalid. Hence, the proceedings impugned through the petitions had been initiated (by the registration of FIRs) and were being continued (by, *inter alia*, the submission of interim and supplementary challans and issuance of notices under section 37) by officers who had no jurisdiction to do so, and hence were liable to be quashed and invalidated as such.

8. Proceeding to the merits of the case, learned counsel for the petitioners made a number of submissions. The definition of tax fraud, given in section 2(37), was referred to and analyzed. The various sections of the Sales Tax Act, which set up the value added tax (VAT) regime, were referred to. In particular, reference was made to the input-output adjustment (a point considered in detail below) that was central to the VAT system. The provisions relating to sales tax invoices were also relied upon. Referring to the FIRs, learned counsel submitted that in the column requiring disclosure of the sections of law that had been violated, a great many sections/clauses had been

listed. However, only a few clauses of section 33 created criminal offences, and it was only these that could at all fall within the jurisdiction of the Special Judge. For this reason, it was submitted, from those listed in the FIRs, only clauses (5), (11(c)) and (13) of section 33 could at all be considered. Reference to the others was completely invalid. Learned counsel also placed a great deal of emphasis on the "supply chain" (a concept considered in detail below), which was fundamental to the manner in which the VAT system worked. It was emphasized that the supply chain had to be properly identified and established and it was (if at all) only those persons who were on the chain that could be held liable for tax fraud (if at all any). In many cases, in respect of each FIR, it was submitted that the petitioner concerned could not be found on any supply chain as ascertainable from the interim challan or any supplementary challan. Referring to the FIRs, it was submitted that to the extent that any supply chain was at all indicated therein, that could be found only in opening paras. However, these were only general in nature and made no specific identification of the supply chain or who was on it. Action had been initiated or threatened against petitioners who were not linked with any accused person. Without specifically identifying the persons who were linked on the supply chain, there could be no accusation of, let alone possibility of conviction for, tax fraud. It was further submitted that the petitioners had, at the time of each relevant transaction, transacted with persons who were not blacklisted. Insofar as the petitioners were concerned, they had fully complied with the provisions and procedures established by and under the Sales Tax Act, including in particular the requirements of section 73. It was emphasized that documentation (i.e., issuance of sales tax invoices, etc.) was also crucial to how the sales tax (VAT) system worked, and the documentation of the petitioners was in order in all respects. Thus, they could not at all be accused of tax fraud.

9. Learned counsel submitted that the petitioners could be placed in five "categories": (a) those who were nominated in the FIRs; (b) those subsequently nominated in the interim/supplementary challans submitted before the Special Judge; (c) those who did not come within either of the foregoing categories, but had received notices under section 37 in which one or the other of the FIRs was specifically referred to, and they were also named (though not nominated as such) in the interim/supplementary challans; (d) those who came within category (c) save that they were not even named in the interim/supplementary challans; and (e) those from whom, whether under threat of arrest or otherwise, post dated cheques had been obtained for the amount of tax allegedly evaded on account of tax fraud.

10. Learned counsel submitted that the basic aim and purpose of the coercive provisions of a fiscal statute was the proper payment and recovery of the tax due. For this purpose, the Sales Tax Act established statutory authorities and armed them with an imposing and elaborate array of means to ensure full recovery of the tax. There was a detailed mechanism of what are commonly known as "departmental proceedings", whereby the concerned officer was fully empowered to issue a show cause notice and if the explanation provided was found wanting, able to recover the tax and also to impose a penalty. It was pointed out that the various clauses of section 33 were in fact principally (and in most cases solely) concerned with the penalties that could be imposed. Only a relatively few clauses criminalized the act or omission and even there, penalties could be imposed. The Sales Tax Act, in common with other fiscal statutes, also established a hierarchy of appellate authorities and the system of appeals ultimately concluded in a reference to the High Court. Thus, first and foremost, the focus was on the recovery of the tax by these means. Recourse to the criminal offences ought to be a weapon of last and not first resort. Yet, in the present case, rather than initiating departmental proceedings, the respondents had rushed to register the FIRs. It was submitted that these means had been adopted merely to harass, intimidate and threaten the petitioners into meeting the unlawful demands on the basis of alleged tax fraud. Under threat of the FIRs or even actual arrest, many petitioners had been forced to obtain bail from the Special Judge and had, as a condition thereof, been required to deposit post dated cheques for the amount of the alleged tax fraud. Sometimes, it appears, the cheques had been obtained by the respondents directly from the petitioners. The entire exercise was colorable and a gross abuse of the statutory powers and discretion conferred by the Sales Tax Act. It was prayed that the petitions be allowed accordingly.

11. Learned counsel for the respondents strongly opposed the petitions. Again, since a number of learned counsel made submissions, we will, without intending any disrespect refer to the submissions generally, without separately identifying those of each learned counsel. Learned counsel submitted that the para-wise comments filed in CP Nos. D-2273/2011, D-2189/2011 and D-519/2012 were to be treated as applicable to all the petitions. Learned counsel submitted that in addition to the three FIRs referred to above (which were all registered at Karachi), there was also a fourth one, registered at Lahore in 2010. In all the FIRs, the jurisdictional point had been raised. In addition, notices under section 37 of the Sales Tax Act, issued with reference to the proceedings initiated, had also been challenged. It was submitted that insofar as the FIR registered at Lahore was concerned, this Court had no jurisdiction with regard thereto. That FIR had in fact been challenged in the Lahore High

Court, and learned counsel referred to the proceedings that had taken place in that Court with regard thereto.

12. As regards the three FIRs referred to above, learned counsel submitted that the jurisdictional point raised was without substance. Reference was made to *Director, Investigation and Intelligence Customs, Excise and Sales Tax v. Muhammad Nawaz and another* PLD 2003 Lahore 493 (DB) and it was submitted that the jurisdictional point had been settled by the Lahore High Court. Reliance was placed, in particular, on paras 11 to 13 of the decision. Referring to the notifications noted above, learned counsel submitted that for present purposes, the starting point would be SRO 48/2008. This was the operative notification, and at that time section 30 had referred to officers of Sales Tax. Subsequently, this section was substituted such that it referred to officers of Inland Revenue. SRO 56/2010 was only issued to reflect this change. It did not, and was not intended to, bring about any substantive change. Thus, SRO 56/2010 had been validly issued and was effective and operative accordingly. As regards SRO 775/2011, learned counsel submitted that it had only a limited operation and was intended simply to enable the officers of the Directorate General Intelligence and Investigation-Federal Board of Revenue to continue dealing with the cases that had already been initiated as on 30.06.2011. Cases initiated after that date were to be handled by the officers of the Directorate General Intelligence and Investigation-Inland Revenue, in terms of SRO 776/2011. Learned counsel submitted that section 33 did not, as such, require to be mentioned in the notifications. The relevant sections of the Sales Tax Act were set out and the notifications were effective accordingly. Without prejudice to the foregoing submissions, it was contended that in any case any irregularity, defect or even illegality in the registration of the FIRs or the investigation did not and could not affect the jurisdiction of the Special Judge or the taking of cognizance by him of any report submitted, whether by way of interim challan or supplementary challan. In this regard, learned counsel referred to sections 340 and 344 CrPC. It was submitted that the petitions required resolution of serious factual controversies, which could not be undertaken in constitutional jurisdiction. It was also contended that the petitioners had adequate alternate remedies available and the petitions were liable to be dismissed on this basis as well.

13. Learned counsel further submitted that the tax fraud had been perpetrated on the basis of “flying” invoices or “fake” invoices or by using both. A flying invoice was one in which there had been no supply of goods, but an invoice had been issued ostensibly showing that payment had been made and tax had been paid at some stage, although the “payment” was subsequently recouped by the fraudsters and the Reveue defrauded by

claiming a refund on the basis of the invoice. A fake invoice was one in which neither any goods were supplied nor payment made or tax paid. Learned counsel emphasized that there had to be an underlying transaction by way of sale of goods and it was not simply a matter of looking at the ostensible supply chain and the trail of sales tax invoices. Without the underlying transaction, it was all a sham. Learned counsel also submitted that reference had been made in the FIRs/challans to "beneficiaries". Explaining the use of this term, it was submitted that a "beneficiary" was one who for purposes of the output-input adjustment or claiming the right to refund of input tax used a sales tax invoice that was not supported by an underlying actual transaction of goods, or the deposit of corresponding amount of output tax. Referring to FIR 678, learned counsel submitted that this involved fake invoices, which purported to show import of goods although none were imported. Learned counsel submitted that the material gathered by the respondents clearly showed a prima facie case of tax fraud, and that was enough for purposes of registration of the FIRs. It was emphasized that the cases registered were not "blind" FIRs, i.e., ones in which no accused had been nominated. In each, a number of persons stood accused, and as the investigation proceeded more culprits came to light and were nominated accordingly. Learned counsel also referred to the para-wise comments and in particular to the factual portion of the comments in CP D-2273/2011 and the detailed annexures thereto. It was submitted that these established the supply chain, and the detailed analysis of the same (reproduced in the annexures in the shape of color coded printouts) showed the tax fraud that had been perpetrated. Learned counsel also submitted that the tax fraud unearthed ran to billions of Rupees and in such circumstances, the invoking of the criminal law was fully justified. The deterrent effect of the action taken was also emphasized. It was prayed that the petitions ought therefore to be dismissed. Learned counsel for the petitioners exercised their right of reply. We may note that both sides also referred to certain decisions and written synopses were also filed in a number of cases.

14. We have heard learned counsel as above, examined the record and considered the case law and written synopses. For convenience, the relevant provisions of the Sales Tax Act are gathered in Annex I to the judgment, while the three FIRs noted above (i.e., FIR 481, FIR 678 and FIR 693) are reproduced in Annex III. We begin with the jurisdictional point. For convenience, the following abbreviations will be used hereafter:

- "DG (I&I)-C&E" refers to the Directorate General Investigation and Intelligence-Customs and Excise;

▪ "DG (I&I)-FBR" / "DG (I&I)-CBR" refers (as the case may be) to the Directorate General Investigation and Intelligence-Federal Board of Revenue/CBR; and

▪ "DG (I&I)-IR" refers to the Directorate General Investigation and Intelligence-Inland Revenue.

15. As submitted by learned counsel for the petitioners, section 30A was inserted in the Sales Tax Act by the Finance Act, 2005, which also inserted an identically worded section 3A in the Customs Act. At the same time, a section 30E and section 3E, also identically worded, were respectively inserted into these statutes. Section 30A and section 3A at that time referred to the DG (I&I)-C&E. There can be no doubt that this was the same Directorate General, subject to the control and supervision of the CBR. The Finance Act, 2007 made a change in section 30A inasmuch as the words "Customs and Excise" were substituted with "CBR". At the same time, section 3A of the Customs Act was substituted to read as follows:

> "**3A. Directorate General of Intelligence and Investigation, Federal Board of Revenue.-** The Directorate General of Intelligence and Investigation shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors and such other officers as the Board may, by notification in the official Gazette, appoint."

Thus, the Sales Tax Act referred to the DG (I&I)-CBR whereas the Customs Act referred to the DG (I&I)-FBR. However, there can be no doubt that this was one and same Directorate General. The reason behind the difference in the descriptions need not detain us. It suffices to note that section 18 of the Federal Board of Revenue Act, 2007 specifically provided that references to the CBR in any law "shall be read as a reference to the Federal Board of Revenue". Thus, references to DG (I&I)-CBR and DG (I&I)-FBR referred to the same authority, were completely interchangeable and nothing turned on whether one or the other description was used.

16. It was in terms of the foregoing statutory position that SRO 48/2008 was issued by FBR in exercise of powers conferred by sections 30 and 30E of the Sales Tax Act (see Annex II for the text). It must be kept in mind that at that time, section 30 referred to various officers of "Sales Tax", and not "Inland Revenue" (see Note 2 to section 30 as reproduced in Annex I). As stated in the notification, it appointed the designated officers of the DG (I&I)-FBR "to be" officers of Sales Tax in their own designations, to exercise the jurisdiction conferred by various sections of the Act as set out therein. It is necessary to see whether this notification was validly issued under sections 30 and 30E. Nothing turned on the fact that the notification spoke of officers of the DG (I&I)-FBR, whereas section 30A referred to the DG (I&I)-CBR; as

explained above, this was the same Directorate General. When section 30 is examined, it empowered the FBR (and of course prior thereto, the CBR) to appoint "any person to be" an officer of Sales Tax. Now, section 2(21) of the Sales Tax Act contains a definition of "person". Interestingly, it is an exhaustive definition (i.e., uses "means") and not an inclusive one as found, e.g., in the laws relating to customs and federal excise. From the definition it is clear that only one category, of individual, could at all be used in relation to section 30 in the present context. Thus, at first glance it would seem that only an individual could be appointed as an officer of Sales Tax.

17. When section 30E is considered, it empowered the FBR to specify the "functions, jurisdiction and powers" of the Directorates General specified in the "preceding sections", one of which was of course section 30A relating to the DG (I&I)-CBR. The "jurisdiction" and "powers" referred to in section 30E could only mean those under the various sections of the Sales Tax Act. But such jurisdiction and/or powers were only exercisable by officers who were, in 2008, those of Sales Tax. When section 30A itself is considered, it specified that the DG (I&I)-CBR comprised of various categories of officers (Director General, Director, etc.). Taking all these provisions together, it will be seen that a problem arose if the definition of "person" in section 2(21) were to be applied literally to section 30. If only individuals could be appointed as officers of Sales Tax, then no one could be appointed by reference to an office. But this would negate the express statutory power conferred on FBR by section 30E, which enabled it to confer jurisdiction on various Directorates General, each of which was specified as comprising of various categories of officers. In our view therefore, a combined reading of sections 30, 30A and 30E necessarily required that an officer of Sales Tax could either be (a) an individual, or (b) a designated officer of the DG (I&I)-CBR (and, of course, also of the other Directorates General referred to in sections 30B to 30DD, though that is not relevant for present purposes). In other words, even though section 2(21) purports to contain an exhaustive definition of "person", in respect of section 30 the opening words of section 2 ("unless there is anything repugnant in the subject or context") would apply. In our view, it would be clearly repugnant to the subject and context of sections 30, 30A and 30E and, in particular, nugatory of the last mentioned provision, to apply the definition given in section 2(21).

18. At the same time it is important to keep in mind that the FBR could not, by virtue of section 30E, simply empower the designated officers of the DG (I&I)-CBR to exercise the powers of officers of Sales Tax under the Act, or entrust such powers to them. The officers of Sales Tax were distinct from the officers of the DG (I&I)-CBR (or any other Directorate General). As

submitted by learned counsel for the petitioners, the Sales Tax Act has no equivalent to section 6 of the Customs Act. (This is subject to one comment made in para 32 below.) In terms of the Sales Tax Act, FBR therefore had to specifically do two distinct things: firstly, it had to declare the designated officers of the DG (I&I)-CBR "to be" officers of Sales Tax, and once it had done so it could, secondly, confer "jurisdiction" or "powers" on them in relation to various sections of the Act. Of course, this could be done by means of one notification, and this is exactly what SRO 48/2008 achieved. It both appointed the designated officers of DG (I&I)-FBR "to be" officers of Sales Tax (the first step) and conferred jurisdiction and powers on them in respect of the various sections as set out therein (the second step). This notification was therefore properly issued and effective accordingly.

19. SRO 48/2008 was superseded by SRO 56/2010 (for text, see Annex II). When the sections of the Act specified in the last columns of the tables in each notification are compared, they are found to correspond more or less exactly. By then of course, section 30 had been substituted, such that the officers to be appointed in terms thereof were now officers of Inland Revenue. The crucial difference was that while SRO 56/2010 did refer to officers of Inland Revenue, it did *not* (unlike SRO 48/2008) appoint the designated officers of DG (I&I)-FBR "to be" such officers. (For reasons already given, the reference to DG (I&I)-FBR rather than DG (I&I)-CBR was immaterial.) The notification simply empowered the latter to "exercise" the powers of officers of Inland Revenue. Learned counsel for the petitioners made much of this difference, especially the failure to appoint the officers of the Directorate General "to be" officers of Inland Revenue. Learned counsel for the respondents on the other hand submitted that SRO 56/2010 was merely intended to bring the notified designations in line with the statutory changes; otherwise, the position established as before was to continue.

20. We have carefully considered these rival submissions. We accept the submission by learned counsel for the respondents that SRO 56/2010 was intended to be only of a clarificatory nature. However, at the same time, as explained above, the FBR could not simply empower the officers of the DG (I&I)-FBR to exercise powers and jurisdiction under the Sales Tax Act. They had necessarily "to be" appointed as officers of (previously) Sales Tax and (now) Inland Revenue. Both conditions had to be met. Since on the face of it SRO 56/2010 contained no such language it was, on a literal reading, invalid as contended. However, this result provides no assistance to the petitioners. This is so because if SRO 56/2010 were invalid, then it would be a nullity in law. But that would simply mean that SRO 48/2008, purportedly superseded by it, would, in law, continue to exist and hold the field. The fact that SRO

48/2008 referred to officers of Sales Tax whereas by 2010 section 30 referred to officers of Inland Revenue would not matter. This was because of section 72A, which was inserted in the Sales Tax Act at the same time. This section provided, in effect, that references to officers of Sales Tax "wherever occurring in this Act and the … notifications issued thereunder" were to be construed as references to officers of Inland Revenue. Thus, even if SRO 56/2010 were done away with, a combined reading of SRO 48/2008 and section 72A would ensure that there would remain a valid notification in the field that fulfilled the required conditions: it both appointed the designated officers of the DG (I&I)-FBR "to be" officers of Inland Revenue and conferred powers and jurisdiction on them in respect of the specified provisions of the Act.

21. The foregoing discussion takes us to 30.06.2011. The changes made by the Finance Act, 2011 must now be considered, as well as the other two notifications to which we were referred, SRO 775/2011 and SRO 776/2011. The Finance Act made no changes to section 3A of the Customs Act. That section therefore, as before, continued to refer to the DG (I&I)-FBR. In section 30A of the Sales Tax Act however, the acronym "CBR" was substituted with the words "Inland Revenue". Thus, section 30A now referred to DG (I&I)-IR. In our view, learned counsel for the petitioners correctly contended that this now referred to a wholly different Directorate General. In other words, there were now two separate Directorates General in existence: DG (I&I)-FBR and DG (I&I)-IR. While this is clear from a bare reading of the two sections, it is also confirmed, *inter alia*, by a visit to the website of the FBR (www.fbr.gov.pk; accessed 13.03.2014). There, the two Directorates-General are listed and referred to separately. Each has its own webpage and is headed by a different officer. The "core functions" listed for the DG (I&I)-IR are distinct from the "charter of functions" that the DG (I&I)-FBR is to perform. (It may however be noted that the "charter of functions" of the latter includes the function "to investigate cases of Sales Tax and Federal Excise made out by the Directorate General prior to 30th June, 2011"—the very point in issue in these petitions.)

22. SRO 775/2011 and SRO 776/2011 were issued on 19.08.2011 by the FBR in this changed statutory framework (for text, see Annex II). SRO 775/2011 was issued with reference to sections 30 and 31, of which the latter is not relevant for present purposes. As noted above, this notification purported to appoint the officers of the DG (I&I)-FBR "to be" officers of Inland Revenue retroactively to 01.07.2011, and to exercise the powers in respect of the sections set out in the notification, though only in relation to cases already initiated as on 30.06.2011 till the finalization of the proceedings.

Tellingly, in SRO 775/2011 FBR did not invoke the powers conferred by section 30E. This was so for good reason. Section 30E only empowered the FBR to determine the jurisdiction, etc. of the Directorates General specified in the "preceding sections", and none of those now referred to the DG (I&I)-FBR/CBR. The question is whether the FBR could, in the changed statutory framework, still appoint the officers of the DG (I&I)-FBR "to be" officers of Inland Revenue by directly invoking section 30? In our view, the answer must be in the negative. The FBR had no such power. To recapitulate our conclusions with regard to the "person" who could be appointed an officer of Inland Revenue under section 30: such person could either be (a) an individual (either named directly or by reference to or virtue of his appointment as an officer of Inland Revenue under any other fiscal statute), or (b) a designated officer of any of the Directorates General referred to in sections 30A to 30DD. No other "person" could or can, in our view, be appointed as an officer of Inland Revenue. Since the officers of the DG (I&I)-FBR no longer fell in any of these categories post-Finance Act, 2011, it necessarily followed that their appointment as such by directly invoking section 30 was invalid. SRO 775/2011was therefore *ultra vires* the Sales Tax Act, being beyond the powers of the FBR.

23. SRO 776/2011 sought to supersede SRO 56/2010. Like the latter, it was issued in exercise of powers conferred by sections 30 and 30E. The sections of the Sales Tax Act set out in the two notifications were virtually identical. While SRO 56/2010 had referred to officers of the DG (I&I)-FBR and Inland Revenue in the relevant columns of its table, SRO 776/2011 referred to the officers of the DG (I&I)-IR and Inland Revenue in the corresponding columns of its table. It is clear that the intention in issuing SRO 776/2011 was, as before, to align the notified designations with the statutory changes. However, equally as before, SRO 776/2011 did not declare the designated officers of the DG (I&I)-IR "to be" officers of Inland Revenue. In our view, it therefore suffered from the same defect as identified in relation to SRO 56/2010, and like that notification, was likewise invalid. Thus, in the sequence of the three notifications, SRO 48/2008, SRO 56/2010 and SRO 776/2011, the latter two were invalid. As already stated, that would mean that, in law, SRO 48/2008 still held the field. It will be recalled that in relation to SRO 56/2010 we have concluded that its invalidity made no substantive difference: the result was merely that in law SRO 48/2008 was never superseded, and this notification was valid and effective in all respects (see para 20 above). Since SRO 776/2011 was also invalid for the same reason, the question is whether in the post-Finance Act, 2011 scenario, SRO 48/2008 could likewise be regarded as valid and effective? More precisely, could the reference to the DG (I&I)-FBR in SRO 48/2008 now be regarded as a

reference to the DG (I&I)-IR? An affirmative answer would mean that as before there would be a valid and effective notification in the field. In our view, the answer ought to be in the affirmative. This conclusion finds support from section 18 of the General Clauses Act, 1897, which states in material part as follows in subsection (1):

> "In any … Act … it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries … to express its relation to the functionaries…."

This provision is of course concerned with primary legislation. What it means is that if in any Act there is a reference to a functionary X (appointed under or with reference to some other statute or in exercise of other power), who is succeeded by functionary Y, then references to the former in the Act first mentioned would be taken to be references to the latter. Here, at first sight the situation appears to be somewhat different. The primary legislation (the Sales Tax Act) referred in section 30A to an authority (the DG (I&I)-CBR) having various functionaries, and empowered the FBR to issue notifications in relation to them under section 30E. FBR exercised this power, and issued SRO 48/2008. Subsequently, section 30A was amended to refer to another authority (the DG (I&I)-IR), but left unchanged the power under section 30E. Could the functionaries referred to in the previous exercise of power under section 30E (i.e., SRO 48/2008) now be regarded as references to the functionaries of the subsequent or successor authority? In our view, on a parity of reasoning with section 18(1), the answer should be in the affirmative. For present purposes, the principle established by section 18(1) can be paraphrased as follows:

> 'In any subordinate legislation (such as a notification) issued under an Act in relation to functionaries of or under the said Act, references to such functionaries shall be a reference to any successors of such functionaries of or under the said Act resulting from an amendment thereof.'

In our view, this is a principle of the interpretation of statutes that can be regarded as generally applicable. SRO 48/2008 was issued with reference to the DG (I&I)-FBR, who were functionaries under section 30A of the parent Act as it then stood. Such references must be taken to refer equally to their successors under the parent Act in terms of the amended section 30A, i.e., the DG (I&I)-IR. SRO 48/2008 therefore remained valid and effective after the changes made by the Finance Act, 2011, though now of course the reference therein to the DG(I&I)-FBR was to be read as a reference to the DG(I&I)-IR.

24. Two points may be noted. Firstly, the above analysis does not and cannot apply in relation to SRO 775. That notification was not pre-existing when section 30A was amended by the Finance Act, 2011. The references to the DG (I&I)-FBR therein were not by way of succession to an authority previously referred to in the Sales Tax Act. Rather, it was a purported continuation of the jurisdiction and powers of an authority that had ceased to of relevance for purposes of the said Act. Secondly, we recognize that our conclusion that SRO 48/2008 not merely was, but given the invalidity of SRO 56/2010 and SRO 776/2011 continues to remain, valid and effective may have a somewhat strained look to it. It involves a double act of interpretation, once in relation to the reference to officers of Sales Tax being subsequently to officers of Inland Revenue, and then in relation to the reference to officers of the DG (I&I)-FBR being subsequently to officers of the DG (I&I)-IR. While we are of course satisfied as regards the correctness of these conclusions, it would certainly be more convenient if the FBR issues a fresh notification under sections 30 and 30E, which supersedes the previous notifications, and complies with both the required conditions, i.e., declares the designated officers of the DG (I&I)-IR "to be" officers of Inland Revenue and specifies their jurisdiction, powers and functions in relation to specified provisions of the Sales Tax Act.

25. It will be convenient to pause here and summarize the conclusions arrived at so far. In our view:

a. SRO 48/2008 was validly issued and effective accordingly.

b. SRO 56/2010 was invalid, but its invalidity merely meant that SRO 48/2008 continued to hold the field. It remained effective.

c. SRO 775/2011 is *ultra vires* the Sales Tax Act.

d. SRO 776/2011 was invalid, but its invalidity merely meant that, as before, SRO 48/2008 continued to hold the field. It remained effective.

e. Notwithstanding the changes in sections 30 and 30A, SRO 48/2008 continued to remain effective for all purposes since on a proper interpretation of the various provisions referred to above, (i) the reference therein to officers of Sales Tax subsequently became a reference to officers of Inland Revenue, and (ii) the reference to the DG (I&I)-FBR subsequently became a reference to the DG (I&I)-IR.

f. Notwithstanding (e) above, it would be appropriate if FBR, in supersession of previous notifications, issues a fresh notification under sections 30 and 30E that complies with both the required conditions, i.e., declares the officers of the DG (I&I)-IR "to be" officers of Inland Revenue (section 30) and establishes their jurisdiction, etc. in relation to specified provisions (section 30E).

26. It now remains to consider the acts actually done so far (i.e., the registration of the FIRs, the interim and supplementary challans already submitted and notices issued under section 37) in light of the above analysis. Before doing so, we may highlight one point that clearly emerges from the foregoing. Since SRO 775/2011 is *ultra vires* the Sales Tax Act, the officers of the DG (I&I)-FBR cannot now proceed further with these criminal cases. Any further investigation or inquiry and any other act in the proceedings pending before the Special Judge must now be done by the officers of the DG (I&I)-IR. This is all the more reason why, as noted in para 25(f) above, that FBR should issue a fresh notification. This will lead to greater clarity.

27. The dates on which the FIRs were registered were as follows: FIR 481 was registered on 19.01.2011, FIR 678 on 09.05.2011, and FIR 693 on 12.05.2011. Thus, the FIRs were registered before the Finance Act, 2011. These FIRs were registered by officers of the DG (I&I)-FBR. In terms of the foregoing analysis, the notification that, in law, was operative at the relevant time was SRO 48/2008. The FIRs were therefore registered by officers who were lawfully entitled to do so and there can be no jurisdictional objection thereto. The first interim challans for the three FIRs were submitted, respectively, on 30.01.2011, 21.09.2011 and 31.05.2011. The challans were also submitted by officers of the DG (I&I)-FBR. For the reasons given above, there can be no jurisdictional objection in relation to the first interim challans submitted for FIR 481 and FIR 693. However, in relation to FIR 678, the first interim challan was submitted after the Finance Act, 2011 and subsequent to the issuance of SRO 775/2011. We have held this notification to be *ultra vires*, and have concluded that after the Finance Act, 2011, the DG (I&I)-FBR ceased to be of relevance for the Sales Tax Act. The submission of this interim challan may therefore, at first sight, appear to be jurisdictionally questionable. As regards the supplementary challans, they were also submitted by the officers of the DG (I&I)-FBR. A number of such challans have been submitted in each case from time to time. From the record as made available, the following position emerges: (a) in relation to FIR 481, the supplementary challans were submitted from 15.02.2011 to 17.03.2012; (b) in relation to FIR 678, the relevant dates were from 18.11.2011 to 05.10.2012; and (c) for FIR 693, the dates were from 17.11.2011 to 23.05.2012. Certain interim challans were in each case also filed after the first such challan. These were of various dates, some falling before and others after 01.07.2011. In addition, it appears that the officers of the DG (I&I)-FBR also, from time to time, issued notices to various parties under section 37 of the Sales Tax Act, some before and others after 01.07.2011. These notices were issued in connection with the ongoing inquiry of the tax fraud alleged in the FIRs. For the reasons already stated no jurisdictional objection can be taken with regard to those

interim/supplementary challans or notices under section 37 as were submitted/issued by or before 30.06.2011. However, the challans and notices as were submitted/issued after that date may, at first sight, appear to be jurisdictionally questionable.

28. We have carefully considered the jurisdictional point in relation to those interim/supplementary challans and/or notices as were submitted and/or issued on or after 01.07.2011. For reasons that will be stated later (see para 35 below) we are of the view that while these challans and notices may well have been irregularly submitted or issued that does not, in the end, affect the jurisdiction of the Special Judge or the proceedings so far taken before him or any investigation or inquiry. Thus, notwithstanding any jurisdictional infirmity, none of these interim/supplementary challans or notices issued can be regarded as having been fatally vitiated nor can a declaration be made with regard thereto as being invalid.

29. Learned counsel for the respondents contended that the jurisdictional objection had been settled by *Director, Investigation and Intelligence Customs, Excise and Sales Tax v. Muhammad Nawaz and another* PLD 2003 Lahore 493 (DB). We have carefully considered the cited case. The discussion in that case was primarily in relation to the Customs Act, though the provisions of the Sales Tax Act were also referred to. The jurisdictional objection there taken was in terms rather different from the manner in which the issue has been raised before us. The passages specifically relied upon (paras 11 to 13 of the judgment) dealt primarily with an issue that is not before us as a jurisdictional point. In our respectful view, the judgment does not assist the respondents' case in this regard although it is of relevance on another point (see para 35 below).

30. The foregoing discussion concludes the analysis on the jurisdictional point. Before proceeding to consider the other issues raised by the petitioners, something must be said of the interaction of the Sales Tax Act with the Code of Criminal Procedure. This part of the judgment serves as a necessary bridge. The judgment can thus be regarded as falling into three parts, each addressing respectively the "who", the "how" and the "what": who can be empowered to act in relation to criminal offences under the Sales Tax Act; how can he act; and what is the nature of the criminal offence that he can act in relation to. Each aspect is important in its own context. The provisions of the Act that now require consideration are principally sections 37A and 37B. As per the marginal notes of these sections, the former relates to the "power to arrest and prosecute", while the latter relates to the "procedure to be followed on arrest of a person". In both, the CrPC is expressly made applicable, subject of course

to the provisions of the Act having overriding effect in case of any inconsistency. Unfortunately, the drafting of these sections leaves a lot to be desired. They sit uncomfortably with the provisions of the CrPC and what ought to have been a smooth meshing of the two statutes is instead a rather jarring interaction. These differences cannot be ironed out easily.

31. We begin by noting an objection taken by learned counsel for the petitioners, that section 33 is not mentioned in any of the notifications. The relevant notification, in law, must be taken to be SRO 48/2008 for the reasons stated above. The objection is without force. Section 33 is concerned with offences and penalties. Its opening paragraph provides that if a person commits any of the "offences" as listed in the table thereto, he shall be liable to the "penalty" mentioned against the "offence". Now section 33, in line with equivalent provisions in other fiscal statutes, indiscriminately uses the term "offence" both in respect of those acts or omissions that only attract the imposition of a penalty, as well as those that in addition thereto have been criminalized, i.e., can result in imprisonment upon conviction by the Special Judge (or/and the levy of a fine). Insofar as the penalty that can be imposed for an "offence" is concerned, that is within the jurisdiction of the officers of Inland Revenue. We are, on the other hand, here concerned with the criminal offences. It is only if the "offence" can result in a criminal conviction that it comes within the jurisdiction of the Special Judge, and therefore only such clauses of section 33 are relevant for present purposes. The other clauses are beyond the jurisdiction of the Special Judge. It is important to keep in mind that section 33 is a substantive provision. It creates criminal offences. It is not necessary however, for the offences so created to be referred to in a notification such as SRO 48/2008. The reason for this lies in sections 37A and 37B. Subsection (1) of the former states, generally, that if the conditions therein specified are met, then an officer of Inland Revenue of the specified rank can arrest a person believed to have "committed a tax fraud or any offence warranting prosecution under this Act". The "prosecution" is obviously a reference to criminal proceedings culminating in action by or before the Special Judge. This formulation thus encompasses all the criminal offences created under section 33. Section 37A(2) provides that an arrest shall be made in the same manner as provided in the CrPC. Section 37B, again referring generally to an officer of Inland Revenue, expands on these provisions, giving in some detail the procedure to be followed after a person is so arrested and, *inter alia*, in subsection (7) empowers said officer to exercise the powers of an SHO under the CrPC. The purpose of a notification such as SRO 48/2008 is only to declare certain officers by designation (previously those of the DG (I&I)-FBR and from 01.07.2011 onwards only those of the DG (I&I)-IR) "to be" officers of Inland Revenue, and specify the sections of

the Act in terms of which they can exercise jurisdiction, etc. Sections 37A and 37B were specifically set out in the notification. The officers of the Directorate General with regard to whom these sections had been specified were therefore entitled to act as officers of Inland Revenue in respect of the prosecution of a tax fraud or any criminal offence under the Sales Tax Act. That is all that SRO 48/2008 sought to achieve and, as noted above, succeeded in doing.

32. Before proceeding further, one point may be made with regard to section 37B. Subsection (13) thereof empowers the Federal Government (though not the FBR) to "authorise any other officer working under the [FBR]" to exercise the powers of a "Sales Tax Officer" under section 37B. This provision could, in a sense, be regarded as akin to section 6 of the Customs Act. Now while the DG(I&I)-FBR ceased (as explained above) to be of relevance for the Sales Tax Act after the Finance Act, 2011, this Directorate General certainly continued to exist and its officers at all times worked under the FBR. The Federal Government could, it would therefore seem, have issued a notification under section 37B(13) in relation to the officers of the DG(I&I)-FBR empowering them to proceed (or rather, continue) the prosecutions under the three FIRs on and from 01.07.2011 onwards. No such notification was shown to us nor did learned counsel for the respondents rely on this provision. We however leave this point open and merely mention it in passing for completeness.

33. When section 37B is considered, it will be seen that unfortunately it repeatedly uses terminology found in the CrPC but in variance with the latter. Thus, subsection (11) provides that once the officer of Inland Revenue has completed the "inquiry", he shall submit to the Special Judge a "complaint" "in the same form and manner" in which the SHO submits "a report before a court". Now, the difficulty this creates is that under the CrPC, a "complaint" is something distinct and different from a police report submitted to the Magistrate upon completion of the investigation. Indeed, this is definitional, for section 4(1)(h) defines a complaint as follows:

> "Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code that some person whether known or unknown, has committed an offence, *but it does not include the report of a police officer*."

There is thus no equivalence in the CrPC between a complaint and a police report that appears to be implicit in section 37B(11), and this certainly creates confusion. Equally, subsection (6) requires the officer of Inland Revenue to immediately hold an "inquiry" when a person is arrested under

section 37A and, as noted above, subsection (7) empowers him with the powers of an SHO in this regard. However, the term “inquiry” is used in a special sense in the CrPC, and in contra-distinction to an “investigation”. As clauses (k) and (l) of section 4(1) make plain, inquiries are conducted by Magistrates (and are, in this regard, further distinguished from trials), while police officers carry out investigations. While officers of Inland Revenue (in line with what is to be found in other fiscal statutes) certainly conduct inquiries in relation to departmental proceedings under various provisions and are quite properly empowered in this regard, the use of this term in the context of an investigation to be conducted under the CrPC is unfortunate. The confusion is accentuated because an arrest under section 37A(1) can be made only if the concerned officer of Inland Revenue “has reason to believe”, “on the basis of material evidence”, that a “tax fraud or offence warranting prosecution” has been committed. Now, in some situations, the material evidence available may be compelling and actionable, and immediate action may be warranted. It may therefore be justifiable for the officer to make an arrest in terms of this section. Of course, the officer’s satisfaction (i.e., his reason for so believing) must always pass the objective test. In other situations, the gathering of the material evidence may require, and therefore result from, some inquiry preceding any action. However, once this stage has been lawfully crossed in respect of either category of situation, and the matter moves to section 37B(6), the officer cannot simply rely on the material already available. He must (“shall immediately proceed to”) “inquire” into the “charge”, for which purpose he is given the powers of an SHO. (The use of the term “charge” is again unfortunate since it is used in an entirely different sense, and at a later stage in the proceedings, under the CrPC.) The unfortunate consequence of using the term “inquiry” in section 37B(6) is now apparent. The nature of the inquiry that may, in some situations, be required before the action under section 37A(1) is taken, is different from the subsequent “inquiry” that must be carried out under section 37B(6). The former would be in the nature of departmental proceedings while the latter is an investigation into a criminal offence. This, after all, is why, when the latter stage is reached, the powers of the officer of Inland Revenue have been broadened to include those of an SHO. Had the Sales Tax Act used the term “investigation” (and its cognates) in section 37B(6), the position would have been much clearer and the distinction between what may, in certain situations, be required of, and for, section 37A(1) on the one hand and section 37B(6) on the other would be immediately apparent. This distinction can have important consequences. Thus, if the conditions of section 37A(1) are not met and this is found to be so subsequently, then the jurisdictional basis for the arrest of the accused would disappear. He would, in such circumstances and regardless of whether he is on bail or not, be entitled to suitable declaratory and other relief

in respect of his arrest in appropriate proceedings (not necessarily limited to those before the Special Judge). However, we expressly leave these points open for further consideration in an appropriate case.

34. An additional problem that the unfortunate legislative drafting has engendered is the question whether an inquiry (or more appropriately, investigation) in respect of a criminal offence created by section 33 could at all be undertaken without first arresting the accused. This problem arises because section 37A relates to the arrest of the accused, and section 37B then simply follows on from the former. With regard to the "inquiry" upon arrest, the opening words of section 37B(6), "when any person is arrested under this Act", seem to imply that without such an arrest, no investigation can be conducted. Subsection (7) compounds the problem, since its opening words, "while holding an inquiry under sub-section (6)", relate back to the latter provision, with the same result. The subsequent subsections continue with the confusion, each relating back to the one before until subsection (11) is reached, which is where the matter is placed before the Special Judge for him to take cognizance of the offence (see section 37D(1)). The various subsections are thus clearly interlinked. These provisions could imply that there must necessarily be an arrest under section 37A before criminal proceedings can be launched at all. If so, this would certainly be a surprising and unfortunate result. It would have the perverse consequence of forcing (or some might say, incentivizing) the officer of Inland Revenue to make an arrest on the ground that he must do so before he can at all proceed with the prosecution of the criminal offence. This surely cannot be right. Yet, this is the consequence that seems to arise from the confused manner in which sections 37A and 37B have been drafted. In our view, any such conclusion must be firmly rejected. While a person accused of tax fraud or any other offence prosecutable under the Act can be arrested in appropriate circumstances and if the legal requirements (including those of section 37A) have been met, it certainly does not mean that such an arrest is either a necessary precondition for the launch of a criminal prosecution/investigation or a mandatory requirement for the continuation thereof. We would emphasize that a duly empowered officer of Inland Revenue can launch the investigation and proceed with the criminal prosecution without any arrest being made at all. This is so simply by virtue of the fact that section 33 creates criminal offences, and the result obtains, in our view, from section 5(2) of the CrPC, which provides as follows:

> "**Trial of offences against other laws**: All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the

> time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Thus, the provisions of the CrPC would apply to the criminal offences created by section 33, except to the extent that there is, at any stage, anything specifically provided for in the Sales Tax Act or is inconsistent with the provisions thereof, in which case the latter would apply. A criminal investigation/prosecution under the CrPC of a cognizable offence can certainly be initiated by the police and this can be done without arresting anyone at all. The offences with which we are concerned, those under clauses (5), (11(c)) and (13) of section 33, are cognizable offences. The only difference is that in relation to the section 33 offences, it is not the police but rather the officers empowered to act under sections 37A and 37B, who would have the jurisdiction to act. The foregoing provision, i.e., section 5(2), was also relied upon by the Lahore High Court in *Director, Investigation and Intelligence Customs, Excise and Sales Tax v. Muhammad Nawaz and another* PLD 2003 Lahore 493.

35. We now come to the last question relevant for this part of the judgment, namely what is the consequence if the proceedings in relation to a criminal offence under the Sales Tax Act are initiated by an officer who has no jurisdiction in this regard or, though initiated with jurisdiction, are continued even though the officer has subsequently lost jurisdiction? What is the status of any acts done in relation to such proceedings, e.g., by way of investigation, the submission of a challan or the issuance of a notice under section 37? It will be recalled (see para 28 above) that this question arises in the present case because although on and from 01.07.2011 the DG(I&I)-FBR ceased to be of relevance for purposes of the Sales Tax Act, its officers continued the proceedings, ultimately under cover of SRO 775/2011, which was given retrospective effect, though it has now been found to be *ultra vires* the Act. Since, as we have held, the CrPC is generally applicable in respect of criminal offences under the Sales Tax Act, the answer to this question is to be found in section 156, which relates to the investigation of cognizable offences. Section 156(2) provides as follows:

> "No proceeding of a police-office in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate."

In *Umar Din v. Superintendent of Police, Incharge Anticorruption Establishment and others* PLD 1980 Karachi 158, a learned Division Bench of this Court held as follows (pg. 162):

> "The moot question in this petition is if the investigation is irregular and illegal, does it affect the jurisdiction of the Court to take cognizance of the offence or the validity of the proceedings of the Court? Answer is in the negative. Irregular investigation neither prevents the Court from taking cognizance of the offence on report submitted by a Police Officer not competent to investigate the offence nor render subsequent trial illegal."

A number of decisions were cited in support of the foregoing conclusion, and the principle is well established. A similar view was expressed in *Director, Investigation and Intelligence Customs, Excise and Sales Tax v. Muhammad Nawaz and another* PLD 2003 Lahore 493 (see at pp. 510-11). In our view therefore, the acts done and proceedings taken by the officers of the DG (I&I)-FBR on and after 01.07.2011, though irregular, are not vitiated and in particular the challans submitted or notices issued by them are not thereby rendered invalid. The proceedings so far taken by or before the Special Judge remain unaffected. However, we reiterate that further proceedings can now only be continued by the officers of the DG (I&I)-IR.

36. This brings us to the last part of the judgment, which is a consideration of the issues raised with regard to the criminal offences. As noted above, the principal offence is that of tax fraud. Tax fraud is defined in section 2(37) and as a criminal offence is dealt with in clause (13) of section 33. This criminalizes not merely the commission of tax fraud, but also causing or attempting to commit such fraud, and abetting or conniving in the commission of the fraud. Thus, the net of the criminal offence has been cast widely and the attention should, in particular, be given to the fact that both an attempt to commit tax fraud, or to abet such fraud, has also been criminalized. Section 3 of the General Clauses Act provides that the term "abet" is to have the same meaning as in the Pakistan Penal Code ("PPC"). Abetment is defined in section 107 PPC, while section 108 provides a definition of "abettor" (for text, see Annex I). The significance of abetment of tax fraud as a criminal offence will be considered later.

37. It is of course fundamental to the criminal law that the definition of an offence must be carefully scrutinized and if the offence comprises of different elements or ingredients, the prosecution must establish each before it can be said that the offence has been committed. (The equivalent exercise in tax law would be in relation to the taxing event.) The definition of tax fraud is rather complex and in our view comprises of the following elements:

> A person is said to commit "tax fraud" if he
>
> (a) knowingly, dishonestly or fraudulently

(b) without any lawful excuse (burden of proof of which excuse shall be upon him) –

(c) [does any of the following things, i.e.:]

(c1) (i) does any act or (ii) causes any act to be done; or
(c2) (i) omits to take any action or (ii) causes the omission to take any action, including the making of taxable supplies without getting registration under this Act; or
(c3) (i) falsifies or (ii) causes falsification the sales tax invoices

(d) in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder

(e) with the intention of (i) understating the tax liability or underpaying the tax liability for two consecutive tax periods or (ii) overstating the entitlement to tax credit or tax refund to cause loss of tax.

(The various "markers", (a), (b), (c1), (i), etc. have been added by us for ease of reference.)

Element (b) need not detain us, since it is in the nature of a defense. However, it is to be noted that while all criminal offences have to be proved beyond reasonable doubt and the onus of this always lies on the prosecution, if in relation to one of the "elements" (and especially if it is in the nature of a defense) the burden is reversed and cast on the accused, the latter, generally speaking, has to establish this element only to the civil standard, i.e., on a balance of probabilities.

38. When element (c) is considered it is found to comprise of three "sub-elements", any one of which suffices to comprise the element. An act or an omission, or causing any act or omission, are general in nature and their inclusion requires no explanation. The sub-elements particularly stated (i.e., making taxable supplies without being registered or falsification of sales tax invoices) are, really speaking, specific instances and their express mention is perhaps only by way of emphasis. Element (d) requires comment. It refers generally to contravention of the duties or obligations imposed by the Act, rules or instructions. But, since it is an element of a criminal offence, in each case the prosecution must specify the particular provision of the Act, rules or instructions involved. This is so because it is only then that it can be determined whether there was any duty or obligation cast and if so, whether it has been contravened as alleged. Absent such specific identification, it may be that the element is not established, and hence the criminal offence not made out as required by law. We may note that in our view it is not surprising that element (d) is stated in general terms. It cannot be doubted that the Act and the rules framed and instructions issued in terms thereof (which would include any applicable notifications) do impose a host of duties and obligations.

However, in each criminal prosecution, there must be a particularization in terms just stated.

39. The last element, (e), is perhaps the most important for present purposes. It is interesting to note that tax fraud both opens and closes with elements that include or require intent. To consider element (a) first, "knowingly" clearly has an intent aspect. If the definitions of "dishonestly" and "fraudulently" given in the PPC are kept in mind (see Annex I for text), then each of the three "sub-elements" of element (a) require intent, to a greater or lesser degree depending on the sub-element. But then element (e) also states that the accused must have the required intent. The question that naturally arises is as to why this is so. Is it simply by way of legislative "overkill" or is some other meaning discernable? As is well known, almost all criminal offences require both an *actus reus* and *mens rea*, though some can be of strict liability, where it is necessary only to establish the former (see *Nasir Abbas v. The State and another* 2011 SCMR 1966, 1970-71). Elements (a) and (e) clearly establish that the offence of tax fraud cannot be an offence of strict liability. Furthermore, there is a difference between the intent requirements of the two elements. In our view, the intent aspect of each of the three sub-elements of element (a) goes towards the act or omission that is laid at the door of the accused. The intent aspect of element (e) goes towards the result sought to be achieved. In tax fraud there must both be an act or omission (elements (c) and (d)), and such act or omission must result in certain consequences (element (e)). Both must have an aspect of intent. In other words, elements (c) and (d) must be done knowingly, dishonestly or fraudulently (element (a)) *and* with the intent of achieving the result stated in either of the "sub-elements" of element (e). It is necessary for the prosecution to show the necessary intent aspect on both counts. Of course, such intent (on either count) need not be established directly; it may stand proved from all the attendant facts and circumstances. But, both must be shown to exist.

40. Looking more closely now at element (e), it comprises, as just noted, of two "sub-elements". One is to understate or underpay the tax liability for two consecutive tax periods (sub-element (i)) and the other is to overstate the entitlement to tax credit or tax refund (sub-element (ii)), either situation to result in loss of tax. In order to better appreciate these sub-elements, which in an important sense constitute the core of tax fraud, we will have to examine the mechanism whereby the VAT regime is given effect to in the Sales Tax Act. This has been considered in some detail by a Division Bench of this Court in *Pakistan Beverage Ltd. v. Large Taxpayers Unit* 2010 PTD 2673. The position was explained as follows (pp. 2680-2682):

"10. The first point to keep in mind is that the Sales Tax Act as currently in force is a value added tax, or VAT. When sales tax is levied in VAT mode, it is charged at each stage in the supply chain as the goods move from the point of origin to the ultimate destination. At each stage, the sales tax is paid on the value added by the supplier concerned. This is done by taking the sales tax charged by the supplier for the goods sold by him (known as the output tax) and subtracting from it the sales tax paid by him for the goods purchased by him (known as the input tax). If the difference (i.e., output tax minus input tax) is positive over the relevant tax period, i.e., the output tax is more than the input tax, that means that the supplier has to pay the difference to the State. If the difference is negative (i.e., output tax is less than input tax), then the supplier is entitled to a refund of this amount, or its adjustment in the next tax period(s). It will also be noted that in respect of each transaction, other than the first and the last, the sales tax involved has a dual characteristic. For the person making the supply (i.e., the seller) it is his output tax. For the person acquiring the goods (i.e., the buyer) it is his input tax. These are but two sides of the same transaction.

11. The VAT mechanism was succinctly explained in the House of Lords in *Fleming (t/a Bodycraft)* v *HM Revenue and Customs* [2008] UKHL 2 as follows:

> "…one of the essential features of VAT … is the passing on of input tax, to be credited against output tax, along a chain of traders (for instance a supplier of components, a manufacturer, a wholesale distributor and a retailer) until the final output tax is borne by the ultimate consumer. Generally a trader's credit for input tax is obtained by deduction from his output tax, but some traders with a large turnover in zero-rated goods (such as most foodstuffs) may be "repayment traders"—that is, they regularly or occasionally pay amounts of input tax which exceed their output tax, so as to entitle them to a repayment of input tax. By contrast "payment traders" will as a rule simply deduct input tax on making their regular … returns…." (para 27, *per* Lord Walker)

12. The Constitutional Court of South Africa described the VAT mechanism in somewhat more detail in *Metcash Trading Ltd.* v *Commissioner of South African Revenue Service and another* 2002 (4) SA 317 in the following terms:

> "VAT is, as its name signifies, a tax on added value. It is imposed at each step along the chain of manufacture and distribution of goods or services that are supplied in the country in the course of business; and it is calculated on the value at the time of each such step….
>
> Although the tax is payable on a wide variety of transactions, the present discussion can be confined to the facts of this case, which involves the commercial purchase and sale of goods and can therefore serve as a straight forward example of how the system is supposed to work. The basic idea of VAT is that it is calculated on the value of each successive step as goods move from hand to hand along the commercial production and distribution chain from their original source to their ultimate user. For present purposes it can be accepted that the tax is calculated at the prescribed rate of 14% on the price at which each successive act of handing on takes place. Furthermore, the tax is not only calculated on the value of each successive supply, but is to be paid at that time. As goods move along the

> distribution chain, everyone making up the sales chain is first a recipient, then a supplier….
>
> Being a tax on added value, VAT is not levied on the full price of a commodity at each transactional delivery step it takes along the distribution chain. It is not cumulative but merely a tax on the added value the commodity gains during each interval since the previous supply. To arrive at this outcome a supplying vendor, when calculating the VAT payable on the particular supply, simply deducts the VAT that was paid when the particular goods were supplied to it in the first place. As a commodity is on-sold by a succession of vendors, each payment of VAT by each successive supplier must then represent 14% of the selling price less the 14% of the price which was payable when that commodity was acquired. According to the scheme of the Act the tax that is payable by a supplying vendor is called output tax and the tax that was payable on the supply to that vendor upon acquisition is called input tax." (paras 12-14)

> 13. It is of fundamental importance to keep in mind that in a VAT, the output-input adjustment, and payment of tax in terms thereof, is of the essence of the tax. Without such (or any equivalent) adjustment, the tax would simply cease to be a value added tax. In the case of the Sales Tax Act, the principle is given statutory effect in section 7. This is one of the basic provisions of the statute."

41. As is clear from the foregoing, and was rightly emphasized by learned counsel for the petitioners, one of the most crucial and fundamental aspects of the VAT is the "supply chain as the goods move from the point of origin to the ultimate destination". By the Finance Act, 2013, the following definition of "supply chain" has been added to the Sales Tax Act as section 2(33A):

> "'Supply chain' means the series of transactions between buyers and sellers from the stage of first purchase or import to the stage of final supply."

This definition encapsulates the descriptions of the chain of supply given in the above cited passages. Indeed, it can be regarded as declaratory of the law and hence, even though it did not exist when the tax fraud alleged in the present cases occurred, can be used conveniently. Reference hereafter to "supply chain" shall therefore be to this definition.

42. The concept of the supply chain shows that it comprises of a number of "links" ('series of transactions'), each "link" (other than, of course, the first and last) comprising of suppliers standing in a buyer-seller relationship. When this is matched with the second crucially important and fundamental aspect of the VAT mechanism, namely the output-input adjustment, it becomes clear that two successive "links" in a supply chain constitute the "block" in respect of which sales tax is payable or refund claimable (as the case may be) over a tax period. This "block" of two successive "links" is the paradigm case that is

replicated over and over again along a supply chain and is of crucial importance in understanding element (e) of the criminal offence of tax fraud. It can be represented schematically as follows:

→ A → X → B →

A, X and B are three typical suppliers along a typical supply chain. The arrows that precede and succeed A and B, respectively, indicate that these suppliers stand somewhere along the supply chain, other than the beginning or the end. A—X constitute one "link", while X—B constitute the next successive "link". The two links together constitute one "block". Now, A's output tax is X's input tax, while X's output tax is B's input tax. Thus, the output-input adjustment for X is the tax payable or refund claimable (as the case may be) over a tax period in respect of this "block". This scheme (A—X—B) was in fact extensively used during the course of the hearings, not merely by learned counsel for the respective parties but also the Court. It represents the paradigm case, is hereafter referred to as such, and will be used to analyze in more detail element (e) of tax fraud. It is important to note that there is nothing peculiar or special about this "block". Indeed, it is its very typicality that makes it the paradigm case. If one were to shift one "block" before or one "block" after A—X—B, the two "blocks" could be represented schematically as follows:

→ A1 → A → X → and → X → B → B1 →

In the schematic on the left, the output-input adjustment for A would determine the tax payable or refund claimable for the "block", whereas in the schematic on the right, the output-input adjustment for B would be so determinative. Were the three "blocks" to be shown together, the schematic would be as follows:

→ A1 → A → X → B → B1 →

It is reiterated that the foregoing patterns would repeat themselves over and over again along the supply chain.

43. Before proceeding further, one point may be made. The supply chain that has been shown above is the simplest possible. In each "block" there are only three suppliers, being A—X—B in the paradigm case and so on. There is a simple linearity to the supply chain. In reality of course, things can be much more complicated. Thus, in the paradigm case, over any given tax period, X may well have multiple suppliers (A, C, D, E, etc.), and/or may be supplying

goods to multiple buyers (B, S, T, U, etc.). Each of these suppliers and buyers would be part of their own supply chains. Thus, any given supplier may well be on more than one (and perhaps multiple) supply chains simultaneously. In reality therefore, the patterns that may emerge can be much more complex, with a constant crisscrossing of supply chains as, e.g., they converge on a particular supplier and/or radiate out from him. This complexity, which may even resemble a tangled web, can mislead and potentially even confuse. It must be firmly kept in mind that in the end each supply chain can, both in principle and in practice, be separately distinguished, identified, isolated and analyzed. This exercise may be cumbersome but it can be, and should the circumstances so warrant must be, done. More importantly, the same principles and analysis would apply in respect of each supply chain. For purposes of the present discussion and analysis and in order to ensure clarity, we have chosen the simplest model. There is of course a difference between simplifying matters and being simplistic. The supply chain chosen falls emphatically in the former and not the latter category.

44. It will be seen that in respect of each "block" along the supply chain, it is the supplier in the middle who is of importance. In the paradigm case (A—X—B), this is X. This is because it is the middle supplier who has either to pay the tax or claim a refund on the output-input adjustment. Again, it is important to remember that there is nothing special here. Thus, each of A and B in the paradigm case would also be in the middle in some other "block" (A1—A—X and X—B—B1 as shown above) and be liable to pay tax or entitled to claim a refund accordingly. Since the liability to pay tax or claim a refund arises "block" by "block", it follows that, in considering whether in a case of tax fraud either of the sub-elements of element (e) is present, each "block" has to be considered successively, and in turn, and each "link" of the supply chain has to be so analyzed. This follows necessarily from what the sub-elements of element (e) require. Sub-element (i) is concerned with the understating or underpaying of the tax liability for two consecutive tax periods, while sub-element (ii) concerns the overstating of the entitlement to tax credit or tax refund. These situations arise only when the liability arises or entitlement is claimable and that can only happen along the supply chain in respect of each "block" in relation to the supplier in the middle thereof.

45. We turn to look more closely at the sub-elements of element (e). Taking up the second one first, the entitlement to tax credit or tax refund can arise only if the output-input adjustment produces a negative result, i.e., the output tax is less than the input tax. This "negative" can be overstated if either the input tax is falsely inflated or the output tax is so reduced, or by some combination of the two. Obviously, this would result in a loss of tax inasmuch

as the outflow from the Revenue would be greater than that lawfully payable. In the paradigm case, the result would come about by X having falsely or artificially increased his input tax claim over and above the actual figure or likewise having reduced his output tax below the actual figure or using some combination of both. The first sub-element, which applies if the tax liability is understated or underpaid, is engaged when the output-input adjustment produces a positive result, but the difference between the two has been falsely reduced. This can happen, as before, by either falsely inflating the input tax or so reducing the output tax, or by some combination of the two. Obviously, this would result in a loss of tax inasmuch as the inflow into the Revenue would be less than that lawfully due. It is important to keep in mind that, as expressly stated, sub-element (i) would only apply if the foregoing holds for two consecutive tax periods and not otherwise. This condition does not however apply in the case of sub-element (ii). It is also important to keep in mind that the sub-elements speak, respectively, of the tax liability being *understated* or tax refund claim being *overstated*. This formulation draws attention to the fact that there may be an intermingling of genuine and false claims. Thus, e.g., a tax refund claim may not be wholly bogus or false: the input tax being claimed may comprise of some actual sales tax invoices and some fabricated or falsified ones. This is of importance because the fine that can be imposed upon a conviction under section 33(13) is limited to the "tax due", i.e., the amount by which the tax liability has been understated or the tax refund claim overstated (as the case may be). (Of course, it may be the case that, e.g., the entire claim of a tax refund is false.)

46. It is crucial to appreciate that if (to take the paradigm case) X has committed tax fraud in a manner that engages either of the sub-elements, that does not at all mean that A and B are also necessarily liable. They may be without any culpability. This can be demonstrated by a simple illustration. Suppose that A, X and B are transacting business in the ordinary course. Here, the sales tax invoices issued by A to X would show the latter's input tax, and his invoices issued to B would show the output tax. Suppose that along with the genuine invoices received from A, X now starts using forged or fabricated invoices as part of his input tax. However, A and B have nothing to do with this. Clearly X's input tax would be falsely inflated, which may result in a "negative" output-input adjustment and a resultant (overstated) claim for tax credit or refund, or a reduction in the "positive" output-put adjustment, with a resultant understated and underpaid liability to tax. Although tax fraud has occurred, both A and B are innocent. The fraud is exclusive to X. Thus, simply because tax fraud has occurred in a given "block" that does not in and of itself mean that all the suppliers comprising the "block" are complicit.

47. Of course, matters may easily be more complicated than the foregoing example. Suppose, as before, that A, X and B are transacting business in the ordinary course and X is paying tax or claiming a refund (as the case may be) over successive tax periods. Now, suppose A and X enter into a conspiracy. A starts issuing falsified or fabricated sales tax invoices to X. The result, naturally, would be that the latter's input tax would be falsely inflated. As in the previous example, this may result in a "negative" output-input adjustment and a resultant (overstated) claim for tax credit or refund, or a reduction in a "positive" output-put adjustment, with a resultant understated and underpaid liability to tax. Again, tax fraud has occurred, but now both X and A are complicit. On the other hand, B is innocent. Thus, even if two of the suppliers comprising a "block" have committed tax fraud that does not in and of itself mean that the third one is also guilty.

48. We have given these examples to emphasize an important point that, in our view, has been lost sight of by the respondents. Merely because tax fraud has occurred and "infects" a particular "block", that does not mean that all the suppliers there are necessarily guilty. The role and culpability of each has to be carefully considered and tested against the definition of tax fraud, especially in relation to element (e). It may be that only one supplier (the one in the middle) is guilty of the tax fraud (the first example). It may be that two are liable (the second example). All three may have committed tax fraud. But this is a matter to be determined by a careful consideration of the facts, and the circumstances of each supplier. Any other approach may result in jumping to a conclusion that may not be warranted.

49. The foregoing must be kept in mind also because of another important aspect of the supply chain, namely that the successive "blocks" are overlapping. The three "blocks" being used for illustrative purposes have been shown in para 42 above. The final schematic shown there can be re-presented as follows:

→ {A1 → [A → <X} → B] → B1> →

The overlapping of the successive "blocks" is represented by the different bracket symbols used. Thus, "block" A1—A—X is within {curly} brackets, A—X—B is within [square] brackets and X—B—B1 is within <angle> brackets. In the example given in para 47, both A and X were guilty of tax fraud. X (in connivance with A) had falsely overstated his input tax. However, the offence was committed in relation to "block" A—X—B: it is the middle supplier who is important because it is his output-input adjustment that is relevant. Now, A and X are also part of the previous "block", A1—A—

X. Here, A is the middle supplier. Nonetheless, there may, in fact, be no tax fraud in relation to this "block". For example, A may not use the fabricated invoices issued by him to X in his own output-input adjustment. But even if he does, it is only A and X who would have conspired and be guilty accordingly. A1 would have no culpability at all. Furthermore, in this example B is innocent as well. It follows that although X is also a part of the next succeeding "block" (X—B—B1), where B is the middle supplier and it is his output-input adjustment that is relevant, both he and B1 have no culpability.

50. The nature of the supply chain and the output-input mechanism therefore necessarily means that in respect of element (e) of tax fraud, while the middle supplier in a "block" can himself commit the offence, if two suppliers are involved they must be directly connected, i.e., be a "link" on the chain. There could, of course, be a grand conspiracy involving many suppliers, but if so each must be part of successive "links" on the chain. For each "link" forming part of each successive "block", the tax fraud has to be established in the manner explained above. This is absolutely fundamental. It follows that as soon as this nexus is broken, i.e., one comes upon a supplier who is innocent though "linked" to one who is part of the conspiracy, then not only is such supplier himself not culpable, all succeeding (or preceding, as the case may be) suppliers on the supply chain are also not guilty. This is because the supply chain cannot be "jumped". Suppliers who do not stand in a "linked" relationship cannot establish a direct connection with other suppliers on that supply chain. They must go through (i.e., be "linked" because of) one or more successive suppliers that come in between. For example, in the illustrative supply chain, while X is connected to B1 this is so only by way of the "link" through B and not otherwise (more precisely, the two "links", X—B and B—B1). X and B1 cannot jump this "link", exclude B, and establish a direct connection on this supply chain. Thus, in the example given in para 47, as soon as it is established that B is innocent of the tax fraud, the nexus is broken and B1 (and all succeeding suppliers) are without culpability. Going the other way, as soon as it is established that A1 is innocent, the nexus is again broken and all preceding suppliers are without culpability.

51. Regrettably, the crucial importance of the foregoing principles has been lost sight of by the DG(I&I)-FBR whose officers have so far conducted the cases. Although literally hundreds of persons are nominated in the FIRs and the interim and supplementary challans, the most fundamental requirement, namely of rigorously and unambiguously establishing the relevant supply chains, has not been met. This exercise has either not been carried out at all or at best has been undertaken in a haphazard manner. In such efforts as appear to have been made in this regard (see, e.g., the

annexures to the para-wise comments to CP D-2273/2011), the fundamental principles involved have not been properly appreciated. Thus, if a supplier has been found to use a sales tax invoice as his input tax from a seller who in his return has not shown the transaction (as his output tax), the latter has been declared to be a "fake" supplier. It is not at all clear why this has been done. The fallacy underlying this conclusion can be easily understood from the example given in para 46 above. It will be recalled that X there started using fabricated or forged sales tax invoices as part of his input tax claims. Suppose that X used the name of some registered person, S, on these sales tax invoices. Quite obviously, X would not be on a supply chain involving S. Indeed, S may not even be aware of X's existence. But to declare S as a "fake" supplier would be clearly erroneous, indeed incomprehensible. The tax fraud has been committed by X and in the example is exclusive to him. S has nothing whatsoever to do with it. However, to drag S into the prosecution on this basis would be palpably incorrect. Another point on which the FIRs and challans are defective is the use of the term "beneficiaries". Although learned counsel for the respondents attempted to give an explanation of how this term was being used (see para 13 above), its usage is misleading. What is perhaps intended is simply to say that the person using a fake or flying invoice is as culpable as the person purportedly issuing it. But this is so because he is part of the tax fraud and not because he has "benefited" from the fraud.

52. Indeed, it seems that the error made by the officers of DG(I&I)-FBR as regards the so-called "beneficiaries" may be more fundamental (and therefore, more egregious) than that. It would seem that they are under the misapprehension that once a tax fraud has occurred on a supply chain (whether in one or more successive "blocks"), then all suppliers on that supply chain are culpable, i.e., have "benefited" from the fraud. From the record as available, it appears that the officers of DG(I&I)-FBR have sought to expand the investigation to all persons along a supply chain who were "connected" with a fraudster in this sense. This approach is patently incorrect and fundamentally flawed. The error arises in no small measure because the supply chain has not been properly mapped and established. Instead of going "link" by "link" and determining whether there was culpability at each such juncture in respect of a particular "block", the officers have proceeded in a haphazard manner, jumping from one person to the next without a proper determination of connection or linkage. As has been explained above, the supply chain cannot be "jumped". As one moves along the supply chain (to emphasize: "link" by "link", taking up each "block" successively), as soon as an innocent supplier is reached, the nexus with the suppliers committing the tax fraud is broken and this is so even if such supplier is "linked" to one who is part of the fraud. All subsequent (or antecedent, as the case may be)

suppliers on that supply chain are innocent. If at all any of them is also found culpable, that can only be on some other basis, e.g., because of some other supply chain, which "links" the supplier to the fraudsters. But again, this can only be determined if that other supply chain is established. Notwithstanding the efforts made by the officers of the DG(I&I)-FBR, this exercise has simply not been done. We may note that given the very large number of persons allegedly involved, this may require the identification, isolation and analysis of many (and perhaps even dozens of) supply chains. Many of the persons involved may well appear on more than one (and perhaps several) supply chains. As we have said, this exercise may well be cumbersome and difficult. However, it must be done. The criminal offence of tax fraud of the nature, magnitude and complexity as alleged simply cannot be made out in any other way.

53. Learned counsel for the respondents laid a great deal of emphasis on the fact that the supply chain is not simply a matter of exchanging sales tax invoices and shuffling the invoices from one supplier to the next. There has to be, in each case, an actual underlying transaction of goods, either by way of sale or import. This is of course correct. The taxing event (see the charging section 3) requires a sale or import of goods. But, with respect, this does not in any material way alter the fundamental errors that have been committed and which are noted above. The lack of any underlying transaction is evidence of the tax fraud, but it is not necessarily conclusive. Again, the point can be explained by the examples given in paras 46 and 47 above. In both examples, X used invoices that were fabricated. There was no underlying transaction of goods. However, in the first example (para 46), the fraud was exclusive to X, whereas in the second, both A and X were involved. Furthermore, as regards the first example, even though there was no underlying transaction of goods between X and S (see para 51), S was actually innocent. Even as regards A and X, the fraudulent invoices were intermingled with genuine invoices issued in relation to actual transactions. Thus, while the existence of a sales tax invoice in the absence of an underlying transaction of goods may be a good pointer towards a tax fraud, it is not necessarily or always conclusive and even here caution is called for and the matter needs to be properly investigated and facts ascertained properly.

54. In our view therefore, when the record is closely examined, it must be concluded that serious, and in many ways basic, errors have been made in the investigation, and the fundamental principles involved have either not been appreciated at all or have been imperfectly understood and/or applied. However, at the same time, it cannot be said that the record does not show any tax fraud at all. The material does indicate that this criminal offence may well

have been committed. For this reason, we cannot accede to the petitioners' prayer that the proceedings be quashed. (The FIRs of course cannot be quashed also for the reason that the challans have been submitted.) We have considered the submission by learned counsel for the petitioners that the Sales Tax Act being a fiscal statute concerned primarily with the recovery of tax, it would have been more appropriate if departmental proceedings had been initiated first to recover the lost revenue instead of recourse being had to the criminal law. We are unable to agree with this submission. Precisely because the VAT system is so heavily dependent on the supply chain functioning properly with each "link" (and hence each "block") properly submitting the necessary documents and invoices that it is imperative that any serious breach be visited with the sanction of the criminal law. Otherwise the whole system will be undermined. Much more so than other fiscal statutes, the Sales Tax Act is dependant on the various payers (i.e., the registered persons in the middle of each "block") honestly paying their portion of the tax or claiming only such refund as is warranted (as the case may). The record indicates that the allegations are of a very serious nature and these allegations cannot be lightly dismissed. Furthermore, the allegations suggest that the tax fraud was not limited to or the work of a few suppliers on one supply chain. It may be (though of course, this remains to be established) that the tax fraud (or rather, multiple such frauds) extended over many supply chains and involved a great many persons. In this context, the direct and immediate recourse to the criminal law was justifiable.

55. The cases are before the Special Judge and must, in view of the foregoing, be allowed to proceed to the appropriate conclusion. What however is required is that suitable directions be given and declarations made in light of the foregoing analysis and discussion so that the proceedings can be conducted in accordance with law. However, before we do so, certain other important points must also be addressed.

56. Firstly, the foregoing discussion has focused on the supply chain and the suppliers along that chain. The record however shows that there may be persons involved in the tax fraud who are not registered persons under the Sales Tax Act. They may not therefore, as such appear on any supply chain. Yet, there is indication from the record that some of these persons may well be among the most important of the alleged fraudsters. Some of them are described as "brokers" of fake sales tax invoices. They may even be the kingpins and masterminds, sitting like the proverbial spider at the center of the criminal web spun by them. (We hasten to add that too much should not be read into this analogy; the supply chains would still have to be determined as explained above.) These persons would be liable for the criminal offence.

They could be so liable, e.g., as abettors in terms of the extensive definitions given in sections 107 and 108 PPC. The significance and importance of connivance in or abetting the offence of tax fraud cannot be underestimated. However, proper care must be exercised even in this regard. If, e.g., abetment is being alleged, it must be clearly made out in accordance with the applicable provisions. It is also important to note that simply because such a person is connected with more than one registered person would not mean that all of these persons are "linked" in the sense explained above. The point can be understood by using the example given in para 46 above. It will be recalled that there X started using forged or fabricated invoices as part of his input tax. Suppose that such invoices were obtained by him from a so-called "broker" of forged invoices, Q. Clearly, Q is as liable as X for the tax fraud. But suppose that in addition to X, Q also supplied forged invoices to other registered persons, J, K, L, etc., who also used them as part of their respective input tax. Each of these persons (i.e., X, J, K, L, etc.) is on a separate supply chain. Merely because each is connected with Q does not however mean that they are also connected with each other. More precisely, they cannot be regarded as "linked" merely because of this connection, i.e., they cannot be regarded as being part of the same supply chain. There is in fact no common supply chain here at all. The offences committed by each in conjunction with Q would be separate offences. Q is a fraudster appearing in all the offences, but that is all. Again, we note from the record that it appears that this aspect has not been properly appreciated at all.

57. Secondly, we have so far focused on tax fraud. However, as noted, there are other offences that may have been committed. In particular, attention must be given to clause (11(c)) of section 33, which criminalizes (among other acts) the "issuance" or "use" of a false or forged document. As is clear from the discussion in relation to tax fraud, it requires the use of false or forged documents as one of its elements. This is so because the output-input mechanism is central to this crime, and that requires the use of sales tax invoices, i.e., documents (the broad definition of the latter in section 2(8) should be noted). Now, it is well known that if an offence comprises of many elements, one or some of those elements may itself be a crime. A person can be charged with both such offences and tried accordingly (see section 235(3) CrPC, though if convicted of both, any punishment would be subject to section 71 PPC). The importance of this point lies in that from the record, it appears that almost all the cases in all the FIRs are alleged to involve false or forged sales tax invoices. This means that there could be more than one offence involved here: not only the offence of tax fraud, but also, e.g., the offences of the "issuance" or "use" of the false or forged invoices. (It is to be noted that the "issuance" and "use" of a false or forged invoice are separate

acts even though there may be a great area of overlap. They are thus two distinct offences.) The point being made here can be explained by using the example given in para 46, as amplified in para 56. Q, the so-called "broker" of false and forged invoices has committed the offence under clause (11c) merely by "issuing" such invoices to his "customers", X, J, K, etc. Each of X, J, K etc. may also have committed this offence, but in any case has committed the offence under clause (11c) of "using" such invoices in their respective input tax claims. And, in any case in which tax fraud does result and is (or its attempt is) established, the concerned "customer" (along with Q) would have committed the offence under clause (13). One important consequence flows from the foregoing. In the case of tax fraud, establishing, identifying and isolating the relevant supply chain is essential, but in some cases this may be a difficult exercise. However, under clause (11c) the relevant offence(s) may well be proved even if, in the end, the prosecution is unable to prove either tax fraud (or its attempt) or even establish the relevant supply chain. It is thus important to keep in mind that although the offences under clause (11c) and (13) are inter-related, they are nonetheless distinct, and important consequences can flow from this.

58. The third point is this. We have in the above discussion concentrated on tax fraud as a criminal offence, as created by clause (13) of section 33. However, it also finds mention elsewhere in the Sales Tax Act. Reference must be made to section 21 (see Annex I), which relates to de-registration and blacklisting of registered persons, and the suspension of registration. This is necessary because it appears that in at least some of the petitions, the petitioners face actual or threatened action under section 21 and they have impugned the same. Subsection (2) of section 21 (which, it is to be noted, has a *non obstante* clause that overrides the entire Act) allows the Commissioner to blacklist a person who has committed tax fraud, or suspend his registration. The consequences that follow from such action are given in subsection (3) (added in 2011). While subsection (4) (added in 2013) does not expressly refer to tax fraud it does deal with situations that are similar in many ways to what has been alleged against several persons in the criminal cases at hand. Now, action under section 21 is in the nature of departmental proceedings. Obviously, before the Commissioner can conclude that a person is guilty of tax fraud and hence liable to be suspended or blacklisted, there has to be an inquiry (which may involve notices and even access under sections 37, 38 and 38A, or action under section 40B) and an opportunity of hearing. But it is important to keep in mind that section 21 is not concerned with tax fraud as a criminal offence. There is one consequence of this that is important for present purposes. When tax fraud is dealt with as a criminal offence, it must be proved beyond reasonable doubt: that is fundamental to the criminal law.

However, when it is being dealt with in terms of section 21, it must be established only to the civil standard. While no doubt tax fraud must be clearly and unambiguously made out even here, the latter standard cannot be equated to that required under criminal law.

59. The differences in the standards of proof required for section 33 on the one hand and section 21 on the other can have important consequences. If at the end of the proceedings under section 21, the Commissioner concludes that the concerned person has *not* committed tax fraud, or makes such a finding but it is negated on the merits in any appellate or other such proceedings, then clearly the person cannot be held liable on the same facts for the criminal offence of tax fraud. The reason for this is that if something cannot be proved on the (lower) civil standard of proof, it certainly cannot be established beyond reasonable doubt (the criminal standard). Of course, the reverse is not true. Even if something cannot be established beyond reasonable doubt, it may yet be established on the civil standard. The relevance of this is at once obvious. If a petitioner is proceeded against in terms of section 21 in the same terms as alleged in the criminal cases, and the former proceedings conclude (either at first instance or ultimately) in his favor then he cannot further be proceeded against before the Special Judge in the criminal cases. No case having been made out against him as satisfies the civil standard, it necessarily follows that such a case cannot be established beyond reasonable doubt.

60. Before concluding, we would like to place on record our appreciation for the assistance provided by all the learned counsel who appeared before us for the petitioners and the respondents. In addition, we would in particular like to express our appreciation for the assistance provided by the officers from the DG(I&I)-FBR and DG(I&I)-IR. They not merely assisted learned counsel for the respondents, but assiduously answered all queries put to them by the Court and gathered in an organized manner the voluminous record for our consideration. We would like to thank Mr. Farhatullah Jafri, Senior Intelligence Officer, Mr. Ghulam Younus Khan, Superintendent, Mr. Azam Nafees, Audit Officer, Mr. Asadullah Shaikh, Auditor and Mr. M. Ashfaq Khan, Audit Officer for their efforts.

61. One final point must also be made. In the foregoing paras of this judgment, we have considered FIRs 481, 678 and 693, and proceedings relating to or emanating from them, whether by way of investigations, notices or challans submitted by or before the Special Judge and other proceedings taken by or before him. The specific directions given and declarations made in the final paragraph of the judgment are in relation to the petitions involving such issues arising out of the aforestated FIRs. However, some of the petitions

(a small minority, of which one instance is CP D-1706/2012) are concerned with one or more other FIRs registered by the officers of the DG (I&I)-IR and/or criminal proceedings initiated by the latter, as well by notices and other acts taken by them in relation to tax fraud. Nonetheless, the issues involved are common and the analysis and discussion herein above applies equally to them. Such petitions are disposed off in terms that any such FIRs, and any investigation, proceedings, notices and any other acts done or to be done by the officers of the DG (I&I)-IR shall be done strictly in accordance with law, and in particular only in a manner that is consistent with and conforms to the principles identified, explained and laid down in this judgment.

62. Accordingly, in light of the foregoing discussion and analysis, and subject to the last preceding paragraph, we dispose off these petitions in the following terms:

A. As to the jurisdictional point:

a. SRO 48/2008 is declared to have been validly issued and effective accordingly.

b. SRO 56/2010 is declared to be invalid, but its invalidity merely meant that SRO 48/2008 continued to effectively hold the field.

c. SRO 775/2011 is declared to be *ultra vires* the Sales Tax Act.

d. SRO 776/2011 is declared to be invalid, but its invalidity merely meant that, as before, SRO 48/2008 continued to effectively hold the field.

e. Notwithstanding the changes in sections 30 and 30A, SRO 48/2008 continued to remain effective for all purposes and it is declared that for the reasons as stated (i) the reference therein to officers of Sales Tax subsequently became a reference to officers of Inland Revenue, and (ii) the reference to the DG (I&I)-FBR subsequently became a reference to the DG (I&I)-IR.

f. Notwithstanding sub-paragraph (e), it would be appropriate if FBR, in supersession of previous notifications, issues a fresh notification under sections 30 and 30E that complies with both the required conditions, i.e., declares the officers of the DG (I&I)-IR “to be” officers of Inland Revenue (section 30) and establishes their jurisdiction, etc. in relation to specified provisions (section 30E).

B. As to registration of FIRs, submissions of challans and notices under section 37 in relation to the criminal cases:

g. The FIRs, and the challans submitted and notices issued on or before 30.06.2011 and any investigation carried out by or before that date were validly issued and undertaken by the officers of the DG(I&I)-FBR and within jurisdiction.

h. The challans submitted and notices issued on or after 01.07.2011 by officers of the DG(I&I)-FBR were irregular as this Directorate General had ceased to be of relevance for the Sales Tax Act on and after that date, but for reasons stated such irregularity does not vitiate their validity nor invalidate any investigation or inquiry nor render defective or invalid any proceedings taken before the Special Judge by such officers.

i. All acts and proceedings with regard to the criminal cases (including by way of any further investigation) can now be done and/or continued only by officers of the DG(I&I)-IR, duly authorized and empowered under SRO 48/2008 or any subsequent validly issued notification. References herein below to "prosecution" shall thus mean and be references to the officers of the DG(I&I)-IR.

j. If at any time the Federal Government validly exercises its powers under section 37B(13), this paragraph 62 shall apply, *mutatis mutandis*, to the officers so notified.

C. As to proceedings before the Special Judge:

k. The Special Judge has jurisdiction only in relation to those clauses of section 33 as create criminal offences.

l. The proceedings pending before the Special Judge shall be taken and continued only in the manner as herein after stated, except bail applications and proceedings in the nature of section 265-K, CrPC, which may be taken up at any time in accordance with law. However, the listing and/or hearing of the applications under section 265-K shall be subject to such case management directions as the Special Judge may deem appropriate.

m. The prosecution shall, within eight weeks, or such further time as may be granted by the Special Judge distinguish, identify, isolate and establish the relevant supply chains in respect of the transactions in relation to which challans have been submitted, in the first instance limiting the exercise only to those persons nominated in the challans, clearly showing the various suppliers along each supply chain and identifying the other persons (if any) who are accused of tax fraud as abettors, or connivers or are otherwise alleged to be involved in respect of any transaction along any supply chain amounting to any criminal offence under the clauses of section 33.

n. Once the supply chains have been established as above (or as each supply is so established, as the Special Judge may deem appropriate) the prosecution shall in respect of each such chain satisfy the Special Judge, "link" by "link", "block" by "block" in the manner as stated herein above, as to the alleged culpability of each person appearing on the supply chain and every other person (if any) alleged to be an abettor, conniver or otherwise involved in the tax fraud or any other criminal offence under the clauses of section 33.

o. The person whose matter is being so considered by the Special Judge shall be entitled to be present or represented at such consideration.

p. If the Special Judge is satisfied that, on applying the law, *inter alia*, in terms as stated and explained in this judgment, there is no probability of the person under consideration being convicted of the criminal offence of tax fraud or any other criminal offence under any clause of section 33, such person shall be discharged forthwith, whether by way of acquittal or otherwise as appropriate.

q. In considering the case of any person, the Special Judge shall, *inter alia*, take into consideration the acquittal (if any) of any person antecedent or subsequent (as the case may be) on the relevant supply chain for the reasons as explained herein above (see in particular para 50).

r. Once the supply chains have been considered as above, the Special Judge shall then proceed to consider the challans in respect of the persons not discharged or acquitted in terms as above and shall then (without prejudice to the next succeeding sub-paragraph (s)) if he is satisfied with regard to the challans proceed to try such persons in accordance with law. It is clarified that nothing in this paragraph 62 shall preclude the Special Judge from considering in accordance with law an application moved by an accused under section 265-K CrPC at or during such trial.

s. The prosecution may at any stage, but with the prior permission of the Special Judge to be given in writing, continue investigation in respect of any supply chain identified and established in terms of sub-paragraph (m), but any person nominated on the basis of such further investigation shall, before he is put to trial, be dealt with in the first instance, *mutatis mutandis,* in the manner as herein before stated. It is clarified that the investigation referred to in this sub-paragraph includes proceedings in respect of or under any notice already issued under section 37.

t. Without prejudice to the next succeeding sub-paragraph (u), the accused on each supply chain shall be tried together but separately from the accused of another supply chain unless the Special Judge, for reasons to be recorded in writing, concludes that it would be appropriate to hold one trial in respect of more than one supply chain. Thus, it is expected that there will be more than one trial and it may be that one person, if he is an accused on more than one supply chain, will be tried in like manner. For purposes of proper case management of the trial(s) or for any other direction or guidance consistently with this judgment that may be deemed necessary, the Special Judge (but only he) may apply, either himself or on the request of the prosecution or any accused, for directions from the High Court. Any such application shall be placed before the Hon'ble Chief Justice for such orders, directions or disposal as are deemed appropriate.

u. Nothing in sub-paragraph (t) shall prevent the Special Judge, for reasons to be recorded in writing, for ordering the trial of any person or persons in a manner other than that specified in the said sub-paragraph (t) if the offence(s) of which the said person or persons are to be charged do not include the offence of tax fraud. It is however clarified that no such trial shall prevent the subsequent trial, if so warranted in accordance with law, of any such person or persons for the offence of tax fraud.

v. Any person who has given (or may at any stage be required to give) post dated cheque(s) or other security may be required by the Special Judge to keep the cheque(s) from going stale in such manner as the latter may deem appropriate, but any such cheque(s) shall not be ordered to be encashed nor any such security forfeited except (i) on account of violation of any bail granted should such person be on bail; or (ii) on the conviction of the said person for any criminal offence and then only in relation to payment of any fine that may be imposed by the Special Judge.

D. As to proceedings in respect of section 37 notices already issued in relation to the FIRs and further investigations in respect of the FIRs/criminal cases:

w. These matters shall be dealt with in terms as stated in sub-paragraph (s) above.

E. As to proceedings in respect of section 37 notices issued in relation to tax fraud or any other act by way of departmental proceedings (i.e., not for a criminal offence):

x. These proceedings may be continued in accordance with law. However, if such proceedings terminate (either at the show cause or any appellate or subsequent stage) in favor of the person against whom they were initiated, and such person is also nominated in terms as herein before stated and proceedings against him are continuing before the Special Judge, the relevant order may be placed before the latter and he shall, after giving notice to the prosecution, and treating the matter before him as being under section 265-K, CrPC or of such nature, consider the person's case, *mutatis mutandis*, in terms of sub-paragraph (p). In the present context, the Special Judge shall, in particular, keep in mind para 59 of this judgment.

63. The petitions stand disposed off in the above terms. The office is directed to immediately send a copy of this judgment to the Special Judge for implementation. There will be no order as to costs.

JUDGE

JUDGE

IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D-2273 of 2011
And connected petitions

Annex I: Relevant Statutory Provisions

Part I

Sales Tax Act, 1990

[Important: The provisions (as presently relevant) are stated as per the position prior to the amendments made by the Finance Act, 2011. Any other position and/or amendments, and certain explanatory points, are stated as appropriate along with the relevant section.]

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,-

(8) "document" includes any electronic data, computer programmes, computer tapes, computer disks, micro-films or any other medium for the storage of such data

(21) "person" means,–

(a) an individual;
(b) a company or association of persons incorporated, formed, organized or established in Pakistan or elsewhere;
(c) the Federal Government;
(d) a Provincial Government;
(e) a local authority in Pakistan; or
(f) a foreign government, a political subdivision of a foreign government, or public international organization;

(33A) "supply chain" means the series of transactions between buyers and sellers from the stage of first purchase or import to the stage of final supply;

[Note: Clause (33A) was inserted by the Finance Act, 2013]

(37) "tax fraud" means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused) –

(i) doing of any act or causing to do any act; or
(ii) omitting to take any action or causing the omission to take any action, including the making of taxable supplies without getting registration under this Act; or
(iii) falsifying or causing falsification the sales tax invoices

in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax liability for two consecutive tax periods or overstating the entitlement to tax credit or tax refund to cause loss of tax;.

21. De-registration, blacklisting and suspension of registration.— (1) The Board or any officer, authorized in this behalf, may subject to the rules, de-register a registered person or such class of registered persons not required to be registered under this Act.

(2) Notwithstanding anything contained in this Act, in cases where the Commissioner is satisfied that a registered person is found to have issued fake invoices or has otherwise committed tax fraud, he may blacklist such person or suspend his registration in accordance with such procedure as the Board may, by notification in the official Gazette, prescribe.

(3) During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purposes of sales tax refund or input tax credit, and once such person is blacklisted, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such blacklisting, shall be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person.

(4) Notwithstanding anything contained in this Act, where the Board, the concerned Commissioner or any officer authorized by the Board in this behalf has reasons to believe that a registered person is engaged in issuing fake or flying invoices, claiming fraudulent input tax or refunds, does not physically exist or conduct actual business, or is committing any other fraudulent activity, the Board, concerned Commissioner or such officer may after recording reasons in writing, block the refunds or input tax adjustments of such person and direct the concerned Commissioner having jurisdiction for further investigation and appropriate legal action.

[Note 1: Subsection (3) added by the Finance Act, 2011 and subsequently amended by the Finance Act, 2013]

[Note 2: Subsection (4) added by the Finance Act, 2013]

30. Appointment of Authorities.— (1) For the purposes of this Act, the board may, appoint in relation to any area, person or class of persons, any person to be-

(a) a Chief Commissioner Inland Revenue;
(b) a Commissioner of Inland Revenue ;
(c) a Commissioner of Inland Revenue (Appeals);
(d) an Additional Commissioner Inland Revenue ;
(e) a Deputy Commissioner Inland Revenue;
(f) an Assistant Commissioner Inland Revenue;
(g) an Inland Revenue Officer;
(h) a Superintendent Inland Revenue;
(i) an Inland Revenue Audit Officer;
(ia) an Inspector Inland Revenue; and
(j) an officer of Inland Revenue with any other designation. ….

[Note 1: Clause (ia) was inserted by the Finance Act, 2011]

[Note 2: Section 30 was substituted to take its present form by Ordinance XXII of 2009, which was continued by Ordinance III of 2010, and finally permanently inserted by the Finance Act, 2010. Prior thereto, the various officers who could be appointed were designated as follows:

(a) a Collector of Sales Tax;
(b) a Collector of Sales Tax (Appeals);
(c) an Additional Collector of Sales Tax;
(d) a Deputy Collector of Sales Tax;
(e) an Assistant Collector of Sales Tax;
(f) a Superintendent of Sales Tax;
(ff) a Senior Auditor of Sales Tax;
(g) an officer of Sales Tax with any other designation.]

30A. Directorate General, (Intelligence and Investigation) Inland Revenue. The Directorate General (Intelligence and Investigation) Inland Revenue shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors and Assistant Directors and such other officers as the Board, may by notification in the official Gazette, appoint.

[Note: This section was inserted by the Finance Act, 2005, when it referred to the DG (I&I)-CE. The words "Customs and Excise" were substituted with "CBR" by the Finance Act, 2007. Thus, the reference became to DG (I&I)-CBR. Finally, by the Finance Act, 2011, the term "CBR" was substituted with "Inland Revenue" and the reference thus became to DG (I&I)-IR]

[The subsequent sections 30B to 30DD refer to certain other Directorates General, not relevant for present purposes. Sections 30A to 30DD are then followed by:]

30E. Powers and Functions of Directorate etc.- The Board may, by notification in the official Gazette, specify the functions, jurisdiction and powers of the Directorates General as specified in the preceding sections and their officers by notification in the official Gazette.

33. Offences and penalties.— Whoever commits any offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof:—

TABLE

Offences	Penalties	Section of the Act to which the offence relates
(1)	(2)	(3)
5. Any person who fails to deposit the amount of tax due or any part thereof in the time or manner laid down under this Act or rules or orders made thereunder.	Such person shall pay a penalty of ten thousand rupees or five *per cent* of the amount of the tax involved, whichever is higher: Provided that, if the amount of tax or any part thereof is paid within fifteen days from the due date, the defaulter shall pay a penalty of five hundred rupees for each day of default: Provided further that no penalty shall be imposed when any miscalculation is made for the first time during a year: Provided further that if the amount of tax due is not paid even after the expiry of a period of sixty days of issuance of the notice for such payments by an officer of Inland Revenue, not below the rank of Assistant Commissioner Inland Revenue the defaulter shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine which may extend to amount equal to the amount of tax involved, or	3, 6, 7 and 48

	with both.	
11. Any person who,— … (c) Knowingly or fraudulently makes false statement, false declaration, false representation, false personification, gives any false information or issues or uses a document which is forged or false.	Such person shall pay a penalty of twenty five thousand rupees or one hundred *per cent* of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to three years, or with fine which may extend to an amount equal to the amount of tax involved, or with both.	2(37) and General
13. Any person who commits, causes to commit or attempts to commit the tax fraud, or abets or connives in commissioning of tax fraud.	Such person shall pay a penalty of twenty five thousand rupees or one hundred *per cent* of the amount of tax involved, whichever is higher. He shall, further be liable, upon conviction by a Special Judge, to imprisonment for a term which may extend to five years, or with fine which may extend to an amount equal to the loss of tax involved, or with both.	2(37)

37A. Power to arrest and prosecute.-- (1) An officer of Inland Revenue, not below the rank of an Assistant Commissioner Inland Revenue or any other officer of equal rank authorised by the Board in this behalf, who on the basis of material evidence has reason to believe that any person has committed a tax fraud or any offence warranting prosecution under this Act, may cause arrest of such person.

(2) All arrests made under this Act shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

(3) [Omitted by Finance Act, 2005]

(4) Notwithstanding anything contained in sub-section (1) to subsection (3) or any other provision of this Act, where any person has committed a tax fraud or any offence warranting prosecution under this Act, the Commissioner may, either before or after the institution of any proceedings for recovery of tax, compound the offence if such person pays the amount of tax due alongwith such default surcharge and penalty as is determined under the provisions of this Act.

(5) Where the person suspected of tax fraud or any offence warranting prosecution under this Act is a company, every director or officer of that company whom the authorised officer has reason to believe is personally responsible for actions of the company contributing the tax fraud or any offence warranting prosecution under this Act shall be liable to arrest; provided that any arrest under this sub-section shall not absolve the company from the liabilities of payment of tax, default surcharge and penalty imposed under this Act.

37B. Procedure to be followed on arrest of a person.-- (1) When a Officer of Inland Revenue authorised in this behalf arrests a person under Section 37A, he shall immediately intimate the fact of the arrest of that person to the

Special Judge who may direct such Officer to produce that person at such time and place and on such date as the Special Judge considers expedient and such Officer shall act accordingly.

(2) Notwithstanding anything contained in the sub-section (1), any person arrested under this Act shall be produced before the Special Judge or, if there is no Special Judge within a reasonable distance, to the nearest Judicial Magistrate within twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Special Judge or, as the case may be, of such Magistrate.

(3) When any person is produced under sub-section (2) before the Special Judge, he may, on the request of such person, after perusing the record, if any and after giving the prosecution an opportunity of being heard, admit him to bail on his executing a bond, with or without sureties, or refuse to admit him to bail and direct his detention at such place as he deems fit:

Provided that nothing herein contained shall preclude the Special Judge from cancelling the bail of any such person at a subsequent stage if, for any reason, he considers such cancellation necessary, but before passing such order he shall afford such person an opportunity of being heard, unless for reasons to be recorded he considered that the affording of such opportunity shall defeat the purpose of this Act.

(4) When such person is produced under sub-section (2) before a Judicial Magistrate, such Magistrate may, after authorising his detention in such custody at such place and for such period as he considers necessary or proper for facilitating his earliest production before the Special Judge, direct his production before the Special Judge on a date and time to be fixed by him or direct such person to be forthwith taken to, and produced before, the Special Judge and he shall be so taken.

(5) Nothing in sub-section (3) or sub-section (4) shall preclude the Special Judge or the Judicial Magistrate from remanding any such person to the custody of the officer of Inland Revenue holding inquiry against that person if such officer makes a request in writing to that effect, and the Special Judge or the Judicial Magistrate, after perusing the record, if any, and hearing such person, is of the opinion that for the completion of inquiry or investigation it is necessary to make such order: Provided that in no case the period of such custody shall exceed fourteen days.

(6) When any person is arrested under this Act, the Sales Tax Officer shall record the fact of arrest and other relevant particulars in the register specified in sub-section (10) and shall immediately proceed to inquire into the charge against such person and if he completes the inquiry within twenty-four hours of his arrest, excluding the time necessary for journey as aforesaid, he may, after producing such person before the Special Judge or the nearest Judicial Magistrate, make a request for his further detention in his custody.

(7) While holding an inquiry under sub-section (6), the officer of Inland Revenue shall exercise the same powers as are exercisable by an officer in charge of a police station under the Code of Criminal Procedure, 1898 (Act V of 1898), but such Officer shall exercise such powers subject to the foregoing provisions of this section while holding an inquiry under this Act.

(8) If the Officer of Inland Revenue, after holding an inquiry as aforesaid, is of the opinion that there is no sufficient evidence or reasonable ground for suspicion against such person, he shall release him on his executing a bond, with or without sureties, and shall direct such person to appear, as and when required, before the Special Judge, and make a report to the Special Judge for the discharge of such person and shall make a full report of the case to his immediate superior.

(9) The Special Judge to whom a report has been made under sub-section (8) may, after the perusal of record of the inquiry, and hearing the prosecution, agree with such report and discharge the accused or, if he is of the opinion that there is sufficient ground for proceedings against such person, proceed with his trial and direct the prosecution to produce evidence.

(10) The Sales Tax Officer empowered to hold inquiry under this section shall maintain a register to be called "Register of Arrests and Detentions" in the prescribed form in which he shall enter the name and other particulars of every person arrested under this Act, together with the time and date of arrest, the details of the information received, the details of things, goods or documents, recovered from his custody, the name of the witnesses and the explanation, if any, given by him and the manner in which the inquiry has been conducted from day to day; and such register or authenticated copies of its aforesaid entries shall be produced before the Special Judge, whenever such Officer is so directed by him.

(11) After completing the inquiry, the Officer of Inland Revenue shall, as early as possible, submit to Special Judge a complaint in the same form and manner in which the officer in charge of a police station submits a report before a court.

(12) Any Magistrate of the first class may record any statement or confession during inquiry under this Act, in accordance with the provisions of Section 164 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(13) Without prejudice to the foregoing provisions to this section, the Federal Government may, by notification in the official Gazette, authorise any other officer working under the Board to exercise the powers and perform the functions of a Sales Tax Officer under this section, subject to such conditions, if any, that it may deem fit to impose.

37D.Cognizance of offences by Special Judges.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, a Special Judge may, within the limits of his jurisdiction, take cognizance of any offence punishable under this Act

> (a) upon a report in writing made by an officer of Inland Revenue or by any other officer especially authorized in this behalf by the Federal Government; or
>
> (b) upon receiving a complaint or information of facts constituting such offence made or communicated by any person; or
>
> (c) upon his own knowledge acquired during any proceeding before him under this Act or under any other law for the time being in force.

(2) Upon the receipt of report under clause (a) of sub-section (1), the Special Judge shall proceed with the trial of the accused. ….

37F. Provisions of Code of Criminal Procedure,1898, to apply.- (1) The provisions of the Code of Criminal Procedure, 1898(Act V of 1898), so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings of the court of a Special Judge and such court shall be deemed to be a court of Sessions for the purposes of the said Code and the provisions of Chapter XXIIA of the Code, so far as applicable and with the necessary modifications, shall apply to the trial of cases by the Special Judge under this Act….

72A. Reference to the authorities.— Any reference to Collector, Additional Collector, Deputy Collector, Assistant Collector, Superintendent, Senior Auditor and an Officer of Sales Tax, wherever occurring, in this Act and the rules, notifications, clarifications, general orders or orders made or issued thereunder, shall be construed as reference to Commissioner Inland Revenue, Additional Commissioner Inland Revenue, Deputy Commissioner Inland Revenue, Assistant Commissioner Inland Revenue, Superintendent Inland Revenue, Inland Revenue Audit Officer and an officer of Inland Revenue, respectively.

[Note: Section 72A was inserted by Ordinance XXII of 2009, continued by Ordinance III of 2010, and finally permanently inserted by the Finance Act, 2010]

****

Part II

Pakistan Penal Code

24. "Dishonestly": Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently": A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

107. Abetment of a thing: A person abets the doing of a thing, who:

First: Instigates any person to do that thing; or

Secondly: Engages with one or more other person or, persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procures a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully presents to A that C is Z, and thereby intentionally cause A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2: Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108. Abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same Intention or knowledge as that of the abettor.

Explanation 1: The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2: To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C, B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3: It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

Illustration

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby, cause Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing ah offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of As instigation. B has committed no offence, but A is guilty, of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(d) A intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A includes B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4: The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5: It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person to administer the poison, but without mentioning A's name. C agrees to procure the poison and procures and delivers it to B for the purpose of its being used in the manner explained. A administer the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section and is liable to the punishment for murder.

ANNEX II

GOVERNMENT OF PAKISTAN
(REVENUE DIVISION)
FEDERAL BOARD OF REVENUE
***

Islamabad, the 15th January, 2008

NOTIFICATION
(SALES TAX)

S.R.O. 48(I)/2008.— In exercise of the powers conferred by sections 30 and 30E of the Sales Tax Act, 1990, and in supersession of its Notification No. S.R.O. 471(I)/2007, dated the 9th June, 2007, the Federal Board of Revenue is pleased to appoint the officers of the Directorate-General of Intelligence and Investigation – Federal Board of Revenue, specified in column (2) of the table below to be the officers of sales tax in their own designations, within the areas of their respective jurisdictions, to exercise such powers and discharge such duties in relation to any case or class of cases falling under the provisions of the said Act specified in column (3) of the said table, namely: —

TABLE

S. No.	Designation of Officer	Provisions of the Sales Tax Act, 1990
(1)	(2)	(3)
1.	Director General/ Director	sections 25, 25A, 37, 37A, 37B, 38, 38A, 38B, 40, 45B, 46 and 47
2.	Additional Director	sections 25, 25A, 37, 37A, 37B, 38, 38B, 40, 45B, 46 and 47
3.	Deputy Director/ Assistant Director	sections 25, 25A, 37, 37A, 37B, 38, 38B and 40
4.	Superintendent/ Principal Appraiser/ Senior Auditor	sections 25, 25A, 37 and 38
5.	Senior Intelligent Officer/ Deputy Superintendent/ Appraiser/ Valuation Officer/ Auditor	sections 25, 25A, 37 and 38.

[C. No.3(3)/ST-L&P/07]

Abdul Hameed Memon
Secretary (ST&FE-L&P)

ANNEX II

GOVERNMENT OF PAKISTAN
FEDERAL BOARD OF REVENUE
(INDIRECT TAX POLICY)
****

Islamabad, the 2nd February, 2010.

NOTIFICATION
(SALES TAX)

S.R.O. 56 (I)/2010.— In exercise of the powers conferred by sections 30 and 30E of the Sales Tax Act, 1990 and in supersession of it Notification No. S.R.O.48(I)2008, dated the 15th January, 2008, the Federal Board of Revenue is pleased to appoint the following officers of the Directorate General of Intelligence and Investigation –Federal Board of Revenue, specified in column (2) of the Table below to exercise powers of the officers specified in column (3) respectively and discharge such duties in relation to any case or class of cases falling under the provisions of the said Act specified in column (4) of the said Table, namely: —

TABLE

S. No.	Designation of officer	Designation of officer of Inland Revenue Service	Provisions of the Sales Tax Act, 1990
(1)	(2)	(3)	(4)
1.	Director General or Director	Chief Commissioner or Commissioner Inland Revenue	sections 25, 25A, 25AA, 37, 37A, 37B, 38A, 38B, 40, 45B, 46 and 47
2.	Additional Director	Additional Commissioner Inland Revenue	sections 25, 25A, 37, 37A, 37B, 38B, 40, 45B, 46 and 47
3.	Deputy Director or Assistant Director	Deputy Commissioner or Assistant Commissioner Inland Revenue	sections 25, 25A, 37, 37A, 37B, 38B and 40
4.	Superintendent or Principal Appraiser or Senior Auditor	Superintendent/ Principal Appraiser or Senior Auditor Inland Revenue	sections 25, 25A, and 37
5.	Deputy Superintendent or Appraiser or Valuation Officer or Auditor	Deputy Superintendent or Appraiser or Valuation Officer or Auditor Inland Revenue	sections 25, 25A and 37

[C. No.3(3)/ST-L&P/07]

(Muhammad Sadiq)
Secretary (ST&FE-L&P)

ANNEX II

GOVERNMENT OF PAKISTAN
FEDERAL BOARD OF REVENUE
(INLAND REVENUE)
****

Islamabad, the 19th August, 2011.

NOTIFICATION
(SALES TAX)

S.R.O. 775(I)/2011:— In exercise of the powers conferred by sections 30 and 31 of the Sales Tax Act, 1990, the Federal Board of Revenue is pleased to appoint the following officers of Directorate General Intelligence and Investigation, Federal Board of Revenue, specified in column (2) of the Table below, to be the officers of Inland Revenue as specified in column (3) of the said Table to exercise such powers and discharge such duties, under the provisions of the said Act as are specified in column (4) of that Table, in relation to the cases initiated before or on the 30th June, 2011, till the finalization of the proceedings already initiated by the Directorate General Intelligence and Investigation, Federal Board of Revenue, namely:-

TABLE

S. No.	Designation of officer	Designation of officer of Inland Revenue	Provisions of the Sales Tax Act, 1990
(1)	(2)	(3)	(4)
1.	Director General or Director	Chief Commissioner or Commissioner Inland Revenue	sections 25, 25A, 25AA, 31, 32, 37, 37A, 37B, 38, 38A, 38B, 40, 45B, 46 and 47
2.	Additional Director	Additional Commissioner Inland Revenue	sections 25, 25A, 31, 37, 37A, 37B, 38, 38B, 40, 45B, 46 and 47
3.	Deputy Director or Assistant Director	Deputy Commissioner or Assistant Commissioner Inland Revenue	sections 25, 25A, 31, 37, 37A, 37B, 38, 38B and 40
4.	Superintendent or Principal Appraiser or Inland Revenue Audit Officer	Superintendent or Principal Appraiser or Inland Revenue Audit Officer	sections 25, 25A, and 37
5.	Deputy Superintendent or Appraiser or Valuation Officer or Auditor	Deputy Superintendent or Appraiser or Valuation Officer or Auditor Inland Revenue	sections 25, 25A and 37

2. This notification shall be deemed to have taken effect on the 1st July, 2011.

[C. No.2(27)BTB-ST/11-Pt]

Fahad Ali Chaudhary
(Fahad Ali Chaudhary)
Second Secretary (ST-L&P)

ANNEX II

GOVERNMENT OF PAKISTAN
FEDERAL BOARD OF REVENUE
(INLAND REVENUE)

Islamabad, the 19th August, 2011.

NOTIFICATION
(SALES TAX)

S.R.O. 776 (I)/2011.— In exercise of the powers conferred by sections 30 and 30E of the Sales Tax Act, 1990, and in supersession of its Notification No. S.R.O. 56(I)/2010, dated the 2nd February, 2010, the Federal Board of Revenue is pleased to appoint the following officers of Directorate General Intelligence and Investigation, Inland Revenue, specified in column (2) of the Table below, to exercise powers of the officers specified in column (3) of the said Table and discharge such duties in relation to any case or class of cases, falling under the provisions of the said Act, as specified in column (4) of that Table, namely:-

TABLE

S. No.	Designation of officer	Designation of officer of Inland Revenue	Provisions of the Sales Tax Act, 1990
(1)	(2)	(3)	(4)
1.	Director General Intelligence and Investigation Inland Revenue or Director Intelligence and Investigation Inland Revenue	Chief Commissioner Inland Revenue or Commissioner Inland Revenue	sections 25, 25A, 25AA, 31, 32, 37, 37A, 37B, 38, 38A, 38B, 40, 45B, 46 and 47
2.	Additional Director Intelligence and Investigation Inland Revenue	Additional Commissioner Inland Revenue	sections 25, 25A, 31, 37, 37A, 37B, 38, 38B, 40, 45B, 46 and 47
3.	Deputy Director Intelligence and Investigation Inland Revenue or Assistant Director Intelligence and Investigation Inland Revenue	Deputy Commissioner Inland Revenue or Assistant Commissioner Inland Revenue	sections 25, 25A, 31, 37, 37A, 37B, 38, 38B and 40
4.	Superintendent Intelligence and Investigation Inland Revenue or Intelligence and Investigation Inland Revenue Audit Officer	Superintendent Inland Revenue or Inland Revenue Audit Officer	sections 25, 25A, and 37
5.	Deputy Superintendent Intelligence and Investigation Inland Revenue or Intelligence and Investigation Auditor Inland Revenue	Deputy Superintendent Inland Revenue or Auditor Inland Revenue	sections 25, 25A and 37

[C. No.2(27)BTB-ST/11-Pt]

Fahad

(Fahad Ali Chaudhary)
Second Secretary (ST-L&P)

ANNEX III-FIR 481

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF INTELLIGENCE AND INVESTIGATION-FBR
81-C, BLOCK-6, P.E.C.H.S. KARACHI
PHONE NO. 021-4302411. FAX NO. 021-4302413

FIRST INFORMATION REPORT

1.	Case No:	481-DCI/7-5/FEST/INQ/10
2.	Date & Place of report:	19-01-2011 at Directorate General of Intelligence & Investigation-FBR, 81-C, Block 6, P.E.C.H.S., Karachi.
3.	Name of the complainant	Jameel Ahmed Baloch, Deputy Director, Directorate General of Intelligence & Investigation-FBR
4.	Name & Address of the firm	M/s M. King International, Shop No. M-130, Jilani Centre, Kharadar and other companies
5.	Names & Addresses of the witnesses:	[Particulars of three witnesses given, officers of DG(I&I)-FBR]
6.	Names & Addresses of accused persons:	[Particulars of 4 accused persons given]
7.	Amount of Sales Tax involved:	Rs. 33,418,218
8.	Sections of law violated:	Section 2(37), 2(9), 2(14)(a), 3, 6, 7, 8, (1)(a) & (d), 8A, 22(1), 23(1), 25, 26(1) and 73 of the Sales Tax Act, 1990 punishable under section 33 ibid.

9. BRIEF FACTS OF THE CASE.

9.1. A credible information was received from a reliable source that M/s. M. King International situated at shop No. M 130 Jillani Center Kharadar, Karachi having Sales Tax Registration No. 1703280000482 are involved in issuance / receipts of fake invoices and its output is being used for claiming refund or input tax adjustment by other registered person. In pursuance of Board's approval C.No.4(4)STM/2005 dated 24th February, 2010, this Regional Office initiated investigative audit of M/s. M. King International (hereinafter referred to as the registered person).

9.2. As per registration record of Sales Tax Department the registered person for the sale tax registration on 17-09-2008 and holds the category of importer/Export/Wholesaler. A notice for production of record under Section 25 of the Sales Tax Act, 1990 vide C. No.481/DC/8-10/FEST/Inq/G.1/10/1042 dated 12-3-2010 and subsequent reminder were issued to the registered person at registered address through Pakistan State Services Courier which were returned as undelivered with comments "Office not Exists". Moreover, physical verification of the said premises was also conducted for the purpose of tracing the registered person. The verification team reported that "the said office has been closed for the last three or four years". Moreover, letter for production of record was also issued at residential

address of the owner of the registered person Mushtaq Masih S/o Sardar Masih bearing CNIC No.38403-7840098-3 at Gali No.2 Noori Gate Basti Mohalla Christian Colony, Sargodha vide C. No.481/DCI/8-10/FEST/G.1/Inq/10/1042 dated 13.5.2010 through Pakistan State Service Courier which was received back as undelivered with comments "Incomplete address", which proves that the registered person got registration on fake documents and was only engaged in the business of issuance / receipts of fake invoices and causing huge loss to national exchequer.

9.3. In order to ascertain the factual position, letters to all the suppliers (08) of the registered person were sent for verification of the taxable purchases and input tax involved therein. Out of the 08 suppliers, 04 suppliers replied that they have never supplied any goods to M/s. M. King International. Whereas 02 letters were received back as undelivered with the comments of the courier "No such consignee exists at given address or consignee office shifted" and reply in respect of the remaining 02 letters is still awaited. Thus, it is clear that the registered person has claimed / adjusted inadmissible input tax amounting to Rs.33.435 Million by declaring fake purchases of goods / raw materials / services amounting to Rs. 195,442 Million (Approx) from different suppliers during Oct 2008 to June 2009.

9.4. Furthermore, a letter to the registered person's declared bank i.e. Askari Bank I.I. Chundrigar Road, Karachi was issued to seek information regarding Account No.227905135. In response M/s. Askari Bank informed that the required bank account is incorrect which shows that the registered person had declared fake bank account. A contravention report covering tax period August 2008 to June 2009 has already been submitted in the office of the Chief Commissioner, Inland Revenue, R.T.O. Karachi for adjudication purpose. Permission to initiate criminal proceedings in this case has already been granted by the F.B.R., Islamabad vide letter C.No.4(4)STM/2005/162997-R dated 22-12-2010.

9.5. It is pertinent to mention here that during the course of investigation an Internet Café was traced from where monthly Sales Tax Returns of the registered person were uploaded on the website of the F.B.R. On inquiry from owner of the Internet Café Mr. Muhammad Shoaib S/o Ashraf, it revealed that Anees Elahi, his son Faisal Elahi and their relatives Sheikh Zahid Iqbal Sehgal Alias Biloo used to come in his café for filing the monthly Sales Tax Returns of M/s. M. King International. He further disclosed in his statement that these persons also filed the monthly Sales Tax Returns in respect of the under mentioned units:-

i. M/s. J.A. International.
ii. M/s. Amjad Traders.
iii. M/s. R.Q.F. Packages.

iv. M/s. Royal Enterprises.
v. M/s. Shahid Impex.
vi. M/s. Umer Traders.
vii. M/s. Wali Enterprises.
viii. M/s. Buyers & Amp. Buyers.
ix. M/s. Zaib Brothers.
x. M/s. Nadeem Impex.
xi. M/s. Abbasi Enterprises.
xii. M/s. NY Importer & Exporter.
xiii. M/s. Nine Star International
xiv. M/s. S.B. Enterprises.
xv. M/s. Actuate Corporation.
xvi. M/s. A.A. Enterprises.
xvii. M/s. ACME International.
xviii. M/s. S.K. Enterprises.

9.6. in view of above narrated facts, it is established that the registered person has claimed /adjusted inadmissible input tax as the suppliers from whom purchases have been shown, have never supplied the goods to M/s. M. King International. Thus by claiming / adjusting inadmissible input tax through submitting fake and fraudulent Sales Tax Returns, declaring fake bank account and issuing fake Sales Tax Invoices valuing Rs. 195336,984, involving Sales Tax of Rs. 33,418,218, the registered person has deprived the national exchequer to the tune of Rs.33,418,218 and the accused persons namely Mushtaq Masih, Anees Elahi, Faisal Elahi and Sheikh Zahid Iqbal Sehgal Alias Biloo have violated the provisions of the Sales Tax Act, 1990 as enumerated in column No. 08 of report.

9.7. Accused persons namely Faisal Elahi and Sheikh Zahid Sehgal Alias Biloo were called at the office of the Directorate General of Intelligence & Investigation F.B.R., Regional Office, Karachi on 19-01-2011 and they have been arrested after necessary confrontations and completion of legal formalities.

9.8. FIR is lodged accordingly. Further investigations are in progress and efforts are underway to arrest the owner of M/s. M. King International, namely, Mushtaq Masih, Anees Elahi and other culprits involved in this case.

(Jameel Ahmed Balouch)
Deputy Director

ANNEX III-FIR 678

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF INTELLIGENCE AND INVESTIGATION-FBR
81-C, BLOCK-6, P.E.C.H.S. KARACHI
PHONE NO. 021-4302411. FAX NO. 021-4302413

FIRST INFORMATION REPORT

1.	Case No:	678/DCI/STFE/Jinnah Impex/2011
2.	Date & Place of report:	09-05-2011 at Directorate General of Intelligence & Investigation-FBR, 81-C, Block 6, P.E.C.H.S., Karachi.
3.	Name of the complainant	Jameel Ahmed Baloch, Deputy Director, Directorate General of Intelligence & Investigation-FBR
4.	Name & Address of the units/accused persons	[Particulars of 284 accused persons/firms given]
5.	Names & Addresses of the witnesses:	[Particulars of four witnesses given, officers of DG(I&I)-FBR]
6.	Nature of offence Committed:	Commission of tax fraud by falsifying sales tax invoices
7.	Amount of Sales Tax defrauded:	Rs. 10.401 Billion
8.	Sections of law violated:	Section 2(37), 2(9), 2(14)(a), 3(1)(a) & (b), 6(1) &(2), 7(1), 8, (1)(a), (ca) & (d), 8A, 21, 22(1), 23(1), 25, 26(1) and 73 of the Sales Tax Act, 1990 punishable under section 33 (3), (5), (8), (11c), (13), (16), (18) ibid

9. BRIEF FACTS OF THE CASE.

9.1. An information was received that M/s. M. MAM Business International, 2-A, Back side, Ground Floor, Potohar, Blue Area, Islamabad, having Sales Tax Registration No. 26-00-4817-003-91, was engaged in filing fake Sales Tax returns and issuance of fake sales tax invoices. Preliminary investigation revealed that login and password of M/s. M. MAM Business International were being used by some fraudsters to file fake sales tax returns and issue fake sales tax invoices to generate illegal / inadmissible input tax adjustment / refund claims. As per initial investigation fake sales tax invoices, involving sales tax amounting to Rs.36,815,821/-, issued in the name of M/s. MAM Business International, Islamabad were used by M/s. Husnain Packages, Multan. It has also been observed that invoices issued in the names of M/s. MAM Business International and M/s. Husnain Packages, Multan were further used by five units i.e. M/s. Ajma International, M/s. Fazilat Enterprises, M/s. Munazza Enterprises, M/s. S.M. International and M/s. Aghaz Enterprises, Karachi.

9.2. Further investigation was also carried out by examining the information available at FBR's e-portal regarding the registered persons involved in the

purchases / issuance of fake invoices and information received and gathered from other sources, revealed that the illegal / inadmissible input tax have fraudulently been adjusted on the basis of fake invoices and fake / bogus import as well as the fake invoices have been issued in the name of the units / accused persons mentioned at Serial No. 01 to 129 of column No.4 above. The units / accused persons mentioned at Serial No. 130 to 282 of column No.4 above have adjusted illegal / inadmissible input tax on the basis of fake invoices issued by the units mentioned at Serial No. 01 to 129 of column No.4 and thus committed sales tax fraud.

9.3. Thus, the persons involved in running / operating the fraudster units and beneficiaries mentioned at column No.4 above, have individually and jointly committed the tax fraud by way of issuing fake sales tax invoices and adjusting illegal / inadmissible input tax on the basis of fake sales tax invoices and fake / bogus import. By committing this tax fraud they have deprived government exchequer of its legitimate revenue to the tune of Rs.10.401 Billion and have violated the provisions of Sales Tax Act, 1990 as mentioned in column No.08 above.

9.4. FIR is lodged accordingly. Further investigations are in progress.

(Jameel Ahmed Balouch)
Deputy
Director/Complainant

ANNEX III-FIR 693

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF INTELLIGENCE AND INVESTIGATION-FBR
81-C, BLOCK-6, P.E.C.H.S. KARACHI
PHONE NO. 021-4302411. FAX NO. 021-4302413

FIRST INFORMATION REPORT

1.	Case No:	693-DCI/S.Tax/Fake Input/2011
2.	Date & Place of report:	12-05-2011 at Directorate General of Intelligence & Investigation-FBR, 81-C, Block 6, P.E.C.H.S., Karachi.
3.	Name of the complainant	Jameel Ahmed Baloch, Deputy Director, Directorate General of Intelligence & Investigation-FBR
4.	Name & Address of the units/accused persons	[Particulars of 164 accused persons/firms given] (165) Other beneficiaries/Sales Tax registered persons involved in the tax fraud. (166) Other persons due to whose criminal negligence/connivance the tax fraud has been committed.
5.	Names & Addresses of the witnesses:	[Particulars of four witnesses given, officers of DG(I&I)-FBR]
6.	Nature of offence Committed:	Commission of tax fraud by falsifying sales tax invoices
7.	Amount of Sales Tax involved:	Rs. 3292.72 Million
8.	Sections of law violated:	Section 2(37), 2(9), 2(14)(a), 3(1)(a) & (b), 6(1) &(2), 7(1), 2(i)(ii), 8, (1)(a), (ca) & (d), 8A, 21, 22(1), 23(1), 25, 26(1) and 73 of the Sales Tax Act, 1990 punishable under section 33 (3), (5), (8), (11c), (13), (16), (18) ibid

9. BRIEF FACTS OF THE CASE.

9.1. On receipt of credible information that different gangs of registered persons are involved in the issuance of fake/flying invoices by way of claiming input tax against fake import and fake local purchase, the Directorate General of Intelligence & Investigation-FBR, conducted a preliminary inquiry which proved the veracity of information. Therefore, letters for verification of imports were sent to Collector Customs (PACCS) / Appraisement / Port Qasim/ Preventive, Karachi and PRAL Head Office Islamabad. All the aforesaid formations reported NIL Imports in respect of the unit / accused persons mentioned at Sr. No. 1 to 11 of column No. 4 above. The accused persons have also adjusted the inadmissible input tax by showing fake local purchase.

9.2. Further investigation was also carried out by examining the information available at FBR's e-portal regarding the registered persons involved in the purchases / issuance of fake invoices and information received and gathered from other sources, revealed that the illegal / inadmissible input tax have fraudulently

been adjusted on the basis of fake invoices and fake / bogus import as well as the fake invoices have been issued in the name of the units / accused persons mentioned at Serial No. 12 to 43 of column No.4 above. The units / accused persons mentioned at Serial No. 44 to 164 of column No.4 above have adjusted illegal / inadmissible input tax on the basis of fake invoices issued by the units mentioned at Serial No.01 to 43 of column No.4 and thus committed sales tax fraud.

9.3. Thus, the persons involved in running / operating the fraudster units and beneficiaries mentioned at column No.4 above, have individually and jointly committed the tax fraud by way of issuing fake sales tax invoices and adjusting illegal / inadmissible input tax on the basis of fake sales tax invoices and fake / bogus import. By committing this tax fraud they have deprived government exchequer of its legitimate revenue to the tune of Rs. 3291.72 Million and have violated provisions of Sale Tax Act, 1990 as mentioned in column No.08 above.

9.4. FIR is lodged accordingly. Further investigations are in progress.

(Jameel Ahmed Balouch)
Deputy Director/Complainant