

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I,
ISLAMABAD

STA No.42/IB/2025

M/s Madina Cash & Carry (Pvt) Ltd;
First Floor Adil Plaza, Service Road
Khanna Pul, Islamabad.
NTN:7166039-5

Appellant

Vs

Chief Commissioner Inland
Revenue, LTU, Islamabad.

Respondent

Appellant By:

Mr. Nazir Abdul Wajid, Advocate

Respondent By:

Mr. Imran Shah, DR

Date of Hearing:

17.03.2025

Date of Order:

24.03.2025

ORDER

M. M. AKRAM (Judicial Member): The appellant, a registered person, has filed this appeal as the first appeal under Section 46 of the Sales Tax Act, 1990 ("**the Act**") against the sealing order dated March 7, 2025, passed by the learned Chief Commissioner Inland Revenue, LTU, Islamabad. The order pertains to Chapter XIV-AD of the Sales Tax Rules, 2006, and is issued in accordance with SRO 164(I)/2025 dated February 17, 2025. The appeal is based on the grounds outlined in the accompanying memo of appeal.

2. The appellant, a registered taxpayer and an integrated POS Tier-1 retailer operating under the business name of M/s Madina Cash & Carry (Pvt) Limited is facing action based on a complaint by the Prime Minister's Performance Delivery Unit (**PMDU**). The complaint alleges that the appellant issued invoices without QR codes or non-POS invoices for transactions at different business premises. The details of the transactions are as follows:

Address	Date	Invoice No. and Time	Amount
Phase-IV, Gohuri Town, Near Kalma Chowk, Islamabad.	22/09/2024	262, 8.27PM	815
Scheme-3 Branch, Rawalpindi.	02.03.2025	163, 1:52 PM	9,544

Based on these allegations, the Deputy Commissioner IR, Unit-10, Zone-II, LTO Islamabad, decided to take action against the appellant, proposing the sealing of the appellant's business premises under sub-rule 4 of Rule 150 ZEO of the Sales Tax Rules, 2006 in conjunction with SRO 164(I)/2025 dated 17th February 2025. The assessing officer drafted an order to seal both business premises, which was then presented to the Additional Commissioner Inland Revenue (Add CIR), Range-I. The proposal was forwarded to the Commissioner, Zone-II, who approved it and sent the file to the Chief Commissioner for final approval. The Chief Commissioner passed the impugned order to seal the appellant's business premises on 07.03.2025. As a result, the business premises were sealed by the designated team of officers. Dissatisfied with this action, the appellant filed an appeal before this tribunal under Section 131 of the Income Tax Ordinance, 2001, raising multiple grounds of objection.

3. The case was scheduled for a hearing on 11.03.2025. On that date, the appellant's authorized representative (AR) raised serious objections regarding both the impugned order and the procedural steps followed by the revenue authorities. In light of the seriousness of the matter, the learned Departmental Representative (DR) was instructed to appear before the court with the complete record, and the hearing was adjourned to 12.03.2025. On 12.03.2025, the learned DR appeared but only provided a copy of the order sheet. Upon reviewing the order sheet, several concerns arose, prompting the tribunal to direct the DR to present the complete

record in order to verify the allegations made by the appellant's AR. As a result, the hearing was rescheduled for 17.03.2025.

4. During the hearing on 17.03.2025, the appellant's AR requested to withdraw the appeal, indicating that the appellant no longer wished to pursue it. However, the learned DR appeared with the complete record and presented his arguments. He also requested to submit his arguments in writing. The record provided by the DR was retained by the tribunal for further review.

5. We have heard the parties and reviewed the record. The request made by the learned AR to withdraw the appeal is not allowed for the reason that in our view, the discretion to allow the withdrawal of an appeal, particularly when it involves serious legal questions, should be exercised with caution and in line with principles of justice. While an appellant has the right to withdraw an appeal, the court must carefully consider the broader consequences, especially when significant legal issues are involved. It is well-established that when an appeal raises important legal questions that could have far-reaching effects, the court may have an obligation to ensure these issues are addressed, even if the appellant wishes to withdraw. Allowing the withdrawal in such cases could leave unresolved legal matters, which could lead to uncertainty or inconsistent application of the law in the future. Therefore, in cases where substantial legal questions are at play, it is reasonable for the court to evaluate whether the matter should proceed, in order to maintain legal clarity and serve public policy. In such circumstances, the court may either refuse to allow the withdrawal or encourage the appellant to reconsider. Reliance may be placed on **Commissioner of Income Tax and Wealth**

Tax, Rawalpindi Vs Messrs Zulfiqar Ahmed, (2015 PTD 649). Given the substantial legal issues involved in this case, we have decided to proceed with the appeal and address it on its merits.

6. We now address the impugned order issued by the Chief Commissioner Inland Revenue (CCIR). Upon hearing the parties' arguments and reviewing the case record, the following questions have emerged for the court's consideration:

Q1:- Did the impugned decision dated March 07, 2025, to seal the taxpayer's business premises, without issuing a show-cause notice or verifying the alleged invoices, contravene the principles of natural justice and procedural fairness?

Q2:- Did the Commissioner's decision to seal the taxpayer's business premises under Rule 150ZEO and impose a penalty under Section 33 of the Sales Tax Act, 1990, appropriately reflect the principle of proportionality in relation to the alleged tax evasion?

To effectively resolve the issues, the applicable law Rule 150ZEO of the Sales Tax Rules, 2006 amended by SRO 164(I)/2025 dated 17th February 2025 is reproduced below which was followed by the revenue department while passing the impugned order:-

"150ZEO. Procedure for sealing of business premises of integrated tier-1 retailers.-The business premises of such person as mentioned in sub-rule (1) of rule 150ZEN shall be liable to be sealed in the manner prescribed as under:-

(1) the Commissioner Inland Revenue, in whose **territorial jurisdiction** the business premises of tier-1 retailer is located, may initiate proceedings for sealing of the business premises on the basis of information that such person was found involved in the issuance of tax invoice that does not carry the invoice number or QR Code as prescribed, bears duplicate

invoice number or counterfeit QR Code, the invoice is defaced, or there is any other evidence of tempering;

(2) The information referred to in sub-rule (1) may be acquired in the following manner,-

- (i) reported as unverified on "Tax Asaan" application or POS Dashboard;
- (ii) physically available or acquired through mystery shopping as referred to in sub-section (2) of section 56C of the Act; or
- (iii) through any other reliable source.

(3) The Commissioner Inland Revenue concerned shall verify any invoice through invoice number or QR code before declaring it unverified;

(4) Where the Commissioner Inland Revenue has evidence as provided under sub-rule (3). that a tier-1 retailer has "involved in issuances of unverified invoice, or if store becomes disconnected with the FBR data base for forty eight hours, or invoices of offline period not entered in the system in next twenty four hours or device does not keep record of invoices during offline period, as the case may be", the Commissioner Inland Revenue shall seek the approval of the Chief Commissioner Inland Revenue in writing for sealing of the retailer's business premises besides mentioning the team of officers and officials that shall carry out the process of sealing of the said business premises:

Provided in case the unverified invoices belong to a business premises of tier-1 retailer having jurisdiction in some other field formation, the Commissioner Inland Revenue concerned shall seek approval from the Chief Commissioner Inland Revenue in whose jurisdiction the integrated tier-1 retailer falls besides mentioning the team of officers and officials that shall carry out the process of sealing of the said business premises;

(5) The Chief Commissioner Inland Revenue, in whose jurisdiction the integrated tier-1 retailer falls, shall on receipt of request for approval as mentioned in sub-rule (4), "either allow or disallow the sealing of such business premises" and, in case of allowing sealing of business premises, shall also notify the team for carrying out the process of sealing immediately:

Provided where the jurisdiction of tier-1. retailer falls in some other field formation, the concerned Chief Commissioner shall request the Board for notification of the team;

(6) The Chief Commissioner Inland Revenue in whose jurisdiction the integrated tier-1 retailer falls, shall decide whether one or more branches

are to be sealed depending on the unverified invoices issued by the respective branches; and

(7) The sealing order shall be communicated by the concerned Chief Commissioner Inland Revenue to the Member (IR-Operations) for information and a copy thereof shall be sent to Chief (POS) for record.

8) The business premises of the registered person may be sealed on any violation made by registered person."

7. In accordance with the aforementioned rule, the simplified step-by-step procedure for sealing the business premises of a Tier-1 retailer is outlined below for thorough consideration:

1. Triggering the Process:

The **Commissioner Inland Revenue (CIR)** may start the process of sealing a business if:

- i. The retailer issues invoices without a number or QR code.
- ii. The retailer uses duplicate invoice numbers or counterfeit QR codes.
- iii. The invoice is defaced or altered.
- iv. There is other evidence of tampering with the invoices.

2. Gathering Information:

The CIR can obtain this information in the following ways:

- i. From the "Tax Asaan" app or POS Dashboard if invoices are marked as unverified.
- ii. Through **mystery shopping** (checking the retailer in person).
- iii. From any other reliable source.

3. Verification of Invoice:

Before taking action, the CIR must verify the invoice (using the invoice number or QR code) to check if it's unverified or tampered with.

4. Seeking Approval for Sealing:

If the CIR finds that the retailer is involved in issuing unverified invoices or has failed to connect to the FBR database (**for 48 hours**), or if invoices from an offline period are not entered into the

system in the **next 24 hours**, the CIR must seek written approval from the **Chief Commissioner Inland Revenue (CCIR)** to seal the business premises.

- i. If the unverified invoices belong to a retailer in another jurisdiction, the CIR must seek approval from the CCIR in that jurisdiction.

5. **CCIR's Decision:**

The CCIR must approve or reject the sealing request. If the sealing is approved, the CCIR will immediately notify the team that will carry out the sealing process.

6. **Sealing Multiple Branches:**

If there are unverified invoices from multiple branches, the CCIR will decide whether to seal just one branch or all branches of the retailer.

7. **Notification:**

Once the sealing order is approved, the CCIR will inform the **Member (IR-Operations)**, and a copy will be sent to the **Chief (POS)** for record-keeping.

8. **General Note:**

The business premises of the registered person can be sealed for any violation related to their tax obligations.

This is the process the Commissioner follows when deciding to seal the business premises of a tier-1 retailer.

8. Now, we turn to address Question 1.

Procedural Controversy

Upon a thorough review of the record, it has become evident that the tax authorities committed several procedural errors in their actions that led to the sealing of the appellant's business premises. These procedural deficiencies, which directly contravene the relevant provisions outlined above, will be examined and discussed in detail below.

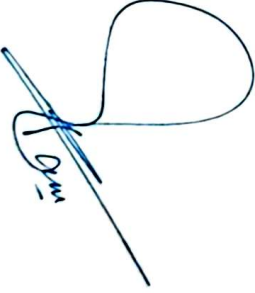
- i. The record shows that the sealing proceedings were initiated by the Deputy Commissioner IR, Unit-10, Zone-II, LTO Islamabad. Not only did the Deputy Commissioner initiate the proceedings, but they also drafted the order proposing the sealing of the appellant's business premises. This order was then presented to the Additional Commissioner Inland Revenue, and further approval was sought from the Commissioner and the Chief Commissioner.

According to Rule 150ZEO (1) of the Sales Tax Rules, 2006, it is explicitly stated: ***"The Commissioner Inland Revenue, in whose territorial jurisdiction the business premises of a tier-1 retailer are located, may initiate proceedings for sealing the business premises based on available information..."***



The phrase **"Commissioner Inland Revenue"** clearly identifies the designated authority responsible for initiating the sealing process. The legislative intent is clear in assigning this significant responsibility exclusively to the Commissioner Inland Revenue, ensuring proper oversight and adherence to due process. There is no mention of the Deputy Commissioner Inland Revenue in this context. Therefore, the initiation of sealing proceedings by the Deputy Commissioner constitutes a clear procedural error, rendering the action unlawful. It is a well-established principle in administrative law that when a statute designates a specific authority for a particular action, any deviation from this mandate, without proper statutory authorization, is considered ultra vires and invalid. Furthermore, it is an immutable legal principle that any defect in the assumption or exercise of jurisdiction by the authorities

is incurable. This principle is supported by precedents such as **Director General Intelligence and Investigation FBR v. Sher Andaz and 20 Others** (2010 SCMR 1746), **Director General Intelligence and Investigation and Others v. M/s AL-Faiz Industries (Pvt.) Limited and Others** (PTCL 2008 CL 337, S.C.), and **Collector, Sahiwal and 2 Others v. Muhammad Akhtar** (1971 SCMR 681).

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- ii. Another significant flaw in the impugned action is the lack of jurisdiction on the part of the Commissioner. The record indicates that one of the appellant's business premises, located in Scheme-3 Branch, Rawalpindi, does not fall within the territorial jurisdiction of the Commissioner, Zone-II, LTO Islamabad. Sub-rules (1) and (5) of Rule 150ZEO of the Sales Tax Rules, 2006, clearly stipulate that the Commissioner and Chief Commissioner with jurisdiction over the premises are the competent authorities to issue any sealing order. Jurisdiction is a fundamental aspect of administrative authority, and any action taken without proper jurisdiction is legally void. Therefore, this clear disregard for jurisdictional boundaries further undermines the validity of the sealing order.
- iii. Another key issue for consideration in this case is whether the Commissioner Inland Revenue (CIR) adhered to the procedural requirement under sub-rule (3) of Rule 150ZEO of the Sales Tax Rules, 2006, prior to declaring the invoices issued by the appellant as unverified and proceeding to seal the business premises. The relevant provision states:

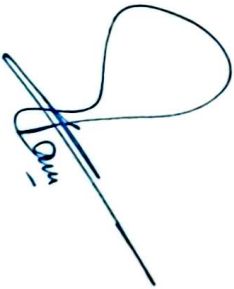
"(3) The Commissioner Inland Revenue concerned shall verify any invoice through invoice number or QR code before declaring it unverified."

A plain reading of this provision clearly mandates that the Commissioner must conduct a thorough verification of the invoices using either the invoice number or the QR code before categorizing them as unverified. This procedural safeguard is intended to prevent arbitrary or unjust actions against taxpayers. The verification process ensures that enforcement actions are based on concrete evidence, confirming any alleged non-compliance.

However, it is apparent from the record that no such verification took place. Instead, the Commissioner relied solely on a complaint lodged through PMDU, accompanied by a photocopy of an invoice that allegedly lacked a QR code. Without carrying out an objective verification of the invoice as required by Rule 150ZEO (3), the Commissioner prematurely concluded that the appellant was non-compliant and proceeded with the sealing of the business premises.

It is a well-established legal principle that when a statute prescribes a specific procedure, it must be strictly followed. Had the invoices been properly verified, the Commissioner would have been in a position to make an informed decision, potentially avoiding the drastic measure of sealing the business premises. The Commissioner's failure to follow the mandatory verification process deprived the appellant of the procedural safeguards intended by the law, resulting in an arbitrary exercise of authority.

- iv. In this case, the appellant's business premises were sealed without the issuance of a show-cause notice, nor was the taxpayer given an

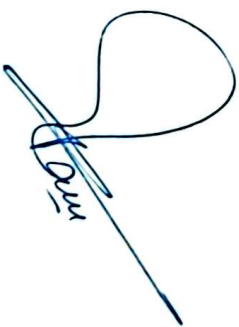


opportunity to respond to the allegations against them. This raises significant concerns regarding procedural fairness and the principles of natural justice. A fundamental tenet of natural justice is that no individual should face penal consequences without first being provided with a fair opportunity to present their case. The issuance of a show-cause notice is a crucial part of this process, as it formally notifies the taxpayer of the allegations, allowing them to respond, present evidence, and make representations before any punitive action is taken. The failure to provide the appellant with the opportunity to be heard before taking the extreme measure of sealing the business premises constitutes a clear violation of procedural fairness, the fundamental right to a fair trial and due process guaranteed by Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 and of his constitutional right to be dealt in accordance with law guaranteed by Article 4 of the Constitution.

His Lordship Mr. Justice Muhammad Afzal Zullah, speaking for the Supreme Court in **Pakistan v. Public at Large**, (PLD 1987 SC 304) referred to various injunctions of Islam and instances contained in the Holy Quran and Sunnah of the Holy Prophet (PBUH) and observed:

"Right to property and honour, in addition to life, were also declared sacred which means: not only that their violation is to be punished and/or compensated but also that it is to be prevented...All this cannot be possible without a notice and opportunity of hearing. The denial of these safeguards for doing justice would amount to Zulm [injustice] and Ziaditi [wrong doing] against oneself

as also the victim...Command [of hearing the arguments of both parties) is specific to the effect that when a public authority is to be exercised for resolving a controversy regarding rights and liabilities, the decision would not be rendered without proceedings in which the person affected is also afforded an opportunity of hearing...It is a common principle which governs the administration of justice in Islam that in case of liability with penal or quasi-penal consequences and/or deprivation of basic rights a notice as well as an opportunity of hearing, are of absolute necessity. This by itself has to be recognized as a basic right. "



Justice Sarkaria of the Indian Supreme Court also described these two facets of the rule as to the right of hearing as "universally respected" in **Swadeshi Cotton Mills v. Union of India**, (AIR 1981 SC 818) He observed that the "maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and the duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is 'a duty lying upon everyone who decides something', in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, 'convenience and justice' -as Lord Atkin felicitously put it- 'are often not an speaking terms'." Thus, it is a well-established legal principle that tax authorities cannot demand payment or impose penalties without first issuing a show-cause notice, providing the opportunity for a hearing, and determining liability in accordance with the relevant legal provisions. This has been affirmed in cases such as **Executive Engineer,**

Qadirabad Barrage Division, Qadirabad and Others v. Ejaz Ahmad (2007 SCMR 1860), **Habib Bank Limited v. Ghulam Mustafa Khairati** (2008 SCMR 1516), and **Dr. Ashfaq Ahmad Khan v. Deputy Commissioner of Income Tax, Peshawar and Others** (2012 PTD 1329).

In **Zaheer Ahmed v. Directorate General of Intelligence**, (2016 PTD 365 Karachi High Court), the court quashed the proceedings and the FIR filed against the taxpayer, ordering the de-sealing of the taxpayer's premises. The court held that the authorities had failed to follow due process of law by neglecting to issue a show-cause notice and denying the taxpayer an opportunity to respond to the allegations. A similar decision was made in **Messrs Bissma Textile Mills v. Federation of Pakistan & Others** (2002 PTD 2780).

v. The impugned order sealing the appellant's business premises was passed by the Chief Commissioner IR, whereas, under the aforementioned rule, it should have been issued by the Commissioner IR.

CONCLUSION

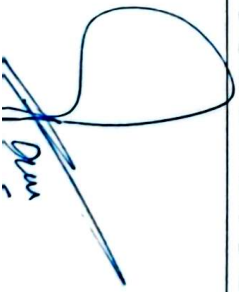
Given the procedural flaws outlined above, it is clear that the actions taken by the tax authorities in sealing the appellant's business premises violated the principles of natural justice and procedural fairness. The failure to issue a show-cause notice and allow the appellant an opportunity to respond constitutes a serious denial of their right to be heard. Additionally, the lack of invoice verification, the unauthorized initiation of the sealing process by an officer lacking the necessary authority, and jurisdictional

errors further undermine the validity of the action. These procedural breaches, which are essential to ensuring fairness and justice, render the sealing order unlawful. For the foregoing reasons, the answer to Q1 is in the affirmative.

9. Before addressing Question 2, it is important to examine the key provisions of the relevant statutes that underpin the current situation.

Sales Tax Act 1990:

S.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: -

Offences	Penalties	Section of the Act to which offence has reference
(1)	(2)	(3)
 "24. Any person, who is integrated for monitoring, tracking, reporting or recording of sales, production and similar business transactions with the Board or its computerized system, conducts such transactions in a manner so as to avoid monitoring, tracking, reporting or recording of such transactions, or issues an invoice which does not carry the prescribed invoice number or barcode [or QR code] or bears duplicate invoice number or counterfeit barcode, [or QR code or defaces the prescribed invoice number of barcode or QR code] or any person who abets commissioning of such offence.	Such person shall pay a penalty of five hundred thousand rupees or two hundred per cent of the amount of tax involved, whichever is higher. [Without prejudice to above, he shall also be liable], upon conviction by a Special Judge, to simple imprisonment for a term which may extend to two years, or with additional fine which may extend to two million rupees, or with both. [Notwithstanding above, the business premises of such person shall be liable to be sealed by an officer of Inland Revenue in the manner prescribed.] Any person who abets commissioning of such offence, shall be liable, upon conviction by a Special Judge, to simple imprisonment for a term which may extend to one year, or with additional fine which may extend to two hundred thousand rupees, or with both.	sub-section (9A) of section 3 and section 40C.

Discussion on Q2

The offence listed at serial No.24 of Column 1 under S.33 of the Sales Tax Act, 1990 is relevant to the current set of facts which states that where a person who is integrated for monitoring, tracking, reporting, or recording of sales, production and similar business transactions with the Board or its computerized system, conducts such transactions in a manner so as to avoid monitoring, tracking, reporting or recording of such transactions, shall be subject to the penalties outlined in Column 2.

For the current purposes, the provision that authorized the Commissioner Inland Revenue to seal the business premises of the taxpayer is outlined in Column 2 which is as follows: -

"[Notwithstanding above, the business premises of such person shall be liable to be sealed by an officer of Inland Revenue in the manner prescribed.]"

This provision requires careful judicial consideration regarding its operation as it is a punitive measure that directly impacts the livelihood of the individual and the operations of the business.

10. Before indulging into whether the Commissioner's decision of sealing the business premises of the taxpayer was appropriate in the circumstances beforehand, it is imperative to know what the Principle of Proportionality is.

The doctrine of proportionality serves as a fundamental principle in legal systems worldwide, ensuring that any action limiting fundamental rights or imposing penalties, is appropriate and not excessive. The proportionality test is often conducted through a **four-part framework** (sometimes called the "test of proportionality" or "Balancing Test"):

1. **Legitimate Aim:** Whether the restriction is being imposed for a legitimate purpose?
2. **Suitability (or Rational Connection):** Whether the restriction is suitable or effective in achieving the stated legitimate aim? And were there any other alternatives that could have achieved the same intended objective?
3. **Necessity:** Whether the restriction goes too far in achieving its aim?
4. **Proportionality Stricto Sensu (Balancing Test):** This final step requires a balancing of the rights being restricted against the benefits derived from achieving the objective.

The doctrine of proportionality is a critical principle in constitutional law and human rights law, ensuring that laws, administrative actions of the governmental bodies, or judicial decisions do not exceed what is necessary to achieve legitimate objectives. It serves to protect individuals from excessive or unnecessary restrictions on their rights, while also ensuring that punishments or penalties are not disproportionate to the offenses they are intended to address.

11. The right to conduct a lawful business is a fundamental right guaranteed under **Article 18** of the **Constitution of Pakistan, 1973**. Article 18 explicitly provides that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business subject to reasonable restrictions imposed by law in the public interest. This constitutional protection ensures that individuals have the freedom to pursue economic activities of their choice without arbitrary interference. Any restrictions on such rights must be proportionate, reasonable, and in accordance with due process as it is closely linked to

the right to livelihood, contributing to personal dignity, economic independence, and the overall economic development of the country.

12. In the present case, the Commissioner IR, acting under the authority conferred by Column 2 of **Section 33 of the Sales Tax Act, 1990**, proceeded to seal the business premises of the taxpayer thus imposing a restriction on the taxpayer's constitutionally guaranteed fundamental right to conduct a lawful business. It is important to note that the decision to impose such a punitive measure was solely based on a complaint from PMDU. The alleged tax evasion amounts to only **Rs. 21** on the invoice dated September 22, 2024, which was charged by the appellant. Additionally, another invoice related to the Scheme 3 Branch, dated March 02, 2025, shows a total amount of **Rs. 9,544** without tax, while the customer paid Rs. 95,455/- against the payable amount of Rs. 9,544/-. This invoice appears to be defective in some other way. Copies of the invoices are attached as **Annexures A & B** to this order. The approach taken by the Commissioner raises serious concerns regarding the proportionality and reasonableness of his action. The House of Lords stressed in **R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720** that in all cases raising a human rights issue, proportionality is the appropriate standard of review. Similar importance was given to this test of proportionality in the case of **R. (Alconbury Development Limited) v. Secretary of State for the Environment, Transport, and the Regions (2001) 2 All ER 929** where Lord Steyn stated as follows: -

"I consider that even without reference to the Human Rights Act, 1998 the time has come to recognize that this principle (proportionality) is part of English

administrative law not only when Judges are dealing with Community acts but also when they are dealing with acts subject to domestic law"

Applying the Test of Proportionality to the present facts, it is evident that the primary justification for sealing the business premises was to ensure compliance with tax obligations and prevent further violations of tax laws. The objective was to safeguard public revenue, maintain the integrity of the tax system, and ensure that tax evaders do not continue their operations without fulfilling their tax liabilities. Such an aim, in principle, remains justified and aligned with the overarching purpose of protecting the public interest.

13. Moving to the second element, namely Suitability, it is observed that the sealing of business premises constitutes a highly coercive and severe measure. Such an action may not, in every circumstance, be the most effective means of ensuring compliance with tax obligations. The resultant repercussions may cause undue harm to both the business entity and the broader economy, undermining the objective of efficient tax collection. Therefore, it is imperative to consider whether there exist any alternative measures within the statutory framework that are less disruptive yet capable of achieving the desired compliance. In this regard, it is pertinent to refer to **Section 40B** of the Sales Tax Act, 1990, which provides an alternative mechanism for ensuring tax compliance. For ease of reference, the relevant provision is reproduced below:

Section.40B. Posting of Inland Revenue Officer: Subject to such conditions and restrictions, as deemed fit to impose, the Board, may post an Officer of Inland Revenue to the premises of the registered person or class of such persons to

monitor production, sale of taxable goods and the stock position.

Section 40B of the **Sales Tax Act, 1990** empowers tax authorities to post officers at the premises of a registered person to monitor, track, report, and verify production, sales, and stock positions for the purpose of tax compliance. This provision is designed as a proactive, less intrusive method of ensuring compliance without immediately resorting to extreme measures like sealing business premises. The Commissioner IR in the present scenario bypassed this provision and sealed the business premises of the taxpayer. It is an established legal principle that authorities must exhaust specific statutory remedies before resorting to severe measures. Section 40B serves as an intermediate step to ensure compliance without disrupting the business thus sealing the premises without invoking this mechanism indicates a failure of the Commissioner to act within the statutory framework.

Leyland and Anthony in Textbook on Administrative Law (5th Ed.

OUP, 2005) at p.331 has thoughtfully put this as follows:

"Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in everyday terms, that you should not use a sledgehammer to crack a nut)."

14. With regard to the necessity of sealing the business premises, such an action must be carefully assessed on a case-by-case basis. It should be justified by concrete evidence and a reasonable apprehension of ongoing or imminent tax evasion. It is observed that the action of sealing the business premises was undertaken solely on the basis of a complaint accompanied by a photocopy of invoices alleging tax evasion of merely

Rs.21. Without conducting a preliminary inquiry or verifying the actual extent of non-compliance, the necessity of imposing such a severe measure becomes questionable. A less intrusive method under Section 40B should have been prioritized over this punitive measure of sealing premises.

15. With regard to the final element of the "Test of Proportionality," it is necessary to strike a fair balance between two competing interests: the harm caused to society by the infringer, which justifies the imposition of penalties, and the right of the infringer to be protected from punishments that may be disproportionate to the gravity of the alleged act. While it is undeniable that penal provisions serve the purpose of deterring others from committing similar violations at the same time, such a position cannot be countenanced which would deviate from "teaching a lesson" to the violators and lead to the "death of the entity." The Supreme Court of India in Civil Appeals Nos. 5675- 5677/2007, Chairman, All India Railway Rec. Board v. K. Shyam Kumar and others have discussed

this as follows:

"Proportionality requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium..... if the court feels that it is not well-balanced or harmonious and does not stand to reason it may tend to interfere".

In the present case, the sealing of the business premises occurred during the month of Ramzan, a period when commercial activity typically peaks.

This action caused significant harm to the taxpayer, leading to financial losses, reputational damage, and operational disruption. Such repercussions can have lasting consequences for the taxpayer's business, even if the underlying tax issue is subsequently resolved. While the public interest in ensuring tax compliance is undoubtedly significant, it must be weighed against the disproportionate harm inflicted upon the taxpayer.

The Supreme Court of Pakistan in **Sabir Iqbal vs. Cantonment Board, Peshawar**, (PLD 2019 SC 189) reviewed the executive discretion exercised by the authorized officer on the grounds of proportionality along with reasonableness. The punishment of dismissal on one day's absence was found to be too harsh. For the mere absence of one day a minor penalty could have been imposed which includes admonition, rather than putting the whole career or service in peril or stake by way of dismissal from service.

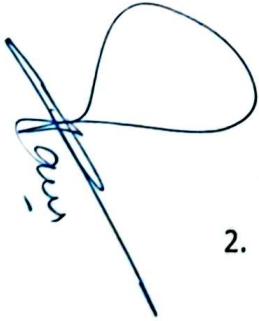
16. Furthermore, the availability of a less intrusive alternative under Section 40B of the Sales Tax Act, 1990, which allows tax authorities to monitor, verify, and ensure compliance without shutting down the business, renders the sealing of the premises even more questionable.

Sealing should be regarded as a measure of last resort, to be employed only when less invasive measures prove insufficient to protect the state's revenue interests. It is incumbent upon the authorities to adopt a balanced approach, ensuring that the need for compliance does not unduly infringe upon the taxpayer's right to conduct their business. If statutory remedies such as the recovery of dues, imposition of penalties, or other alternative measures are adequate to address the alleged violation, the sealing of premises would, in such circumstances, be deemed excessive and

disproportionate. Therefore, in light of the foregoing discussion, it is concluded that the action of sealing the business premises of the taxpayer by the Commissioner, without conducting a comprehensive assessment and without exhausting the available alternative measures, particularly the mechanism provided under Section 40B of the Sales Tax Act, 1990 is neither justified nor proportionate to the alleged violation.

17. We are of the opinion that appointing revenue staff over the business premises of the person under **Section 40B** could be a more balanced and less disruptive first step compared to immediately sealing the premises. This approach would serve both the interests of the revenue authority and the rights of the business owner, as well as prevent unnecessary economic loss to the person operating the business.

Rationale for Appointing Revenue Staff First:

- 
1. **Prevents Immediate Economic Harm:** Sealing the business premises can cause significant disruption and loss to the business, including potential harm to employees, suppliers, and customers, which may lead to economic consequences that are not easily reversed. By appointing revenue staff to monitor or oversee the business operations, the authority can ensure compliance without causing immediate and extreme financial hardship.
 2. **Less Intrusive:** Appointing revenue staff over sealing the premises is less intrusive to the daily operations of the business. This allows the business to continue functioning while ensuring that the necessary monitoring, tracking, and reporting of transactions are carried out in compliance with the law. The presence of revenue staff can act as a deterrent to further non-compliance, while still allowing the business to operate.
 3. **Preservation of Fundamental Rights:** Sealing the business premises might infringe on the fundamental rights of the business owner, particularly the right to conduct business and earn a

livelihood. By appointing revenue staff instead of sealing the premises, the authority can strike a balance between enforcing the law and respecting the business owner's rights. This approach would align with the principle of proportionality, ensuring that the response to the violation is not excessively punitive.

4. **Enforcement and Compliance:** Having revenue staff on-site would ensure that the business is monitored closely, which may encourage compliance with the regulations. It would also allow the authorities to gather real-time information and assess the nature of the violation, enabling them to take more informed and proportionate actions if further penalties or corrective measures are required.

5. **Flexible and Progressive Enforcement:** Appointing revenue staff provides the flexibility to escalate enforcement if needed. For instance, if the business continues to violate the regulations despite the presence of monitoring staff, then more severe actions such as sealing the premises or imposing higher fines can be considered. This step-wise approach allows for progressive enforcement based on the nature and persistence of the violation.

18. The review of the record further reveals that, prior to de-sealing the appellant's business premises, the Commissioner IR imposed a penalty on March 11, 2025, under Section 33(24) of the Sales Tax Act, 1990, amounting to Rs.1,000,000 (Rs. 500,000 for each premises), without issuing a formal penalty order. The appellant subsequently paid the penalty through CPR Nos. ST-20250311-0101-1225660 and ST-20250311-0101-1225662, both dated March 11, 2025. However, according to Section 33(24), the penalty is clearly specified as either Rs. 500,000 or 200% of the tax involved, whichever is higher. The provision indicates that the penalty should be assessed based on the person's actions and should not be imposed separately for each premise. Therefore, the Commissioner's

decision to impose a penalty of Rs. 1,000,000 (Rs. 500,000 for each premises) was incorrect.

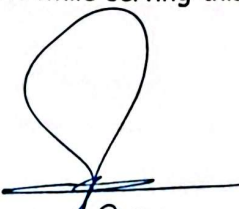
19. Upon a detailed examination of the records following the receipt of a formal complaint, a comprehensive review was conducted into the operational status of the twelve business outlets registered under the name of the appellant registered person. This assessment specifically focused on their integration and connectivity with the prescribed Point of Sale (**PoS**) system, as mandated under the applicable tax laws and regulations. The findings from this review revealed significant discrepancies and raised serious concerns regarding compliance. Specifically, it was found that four of the twelve outlets had been completely disconnected from the PoS system for a period exceeding 1,000 days. This prolonged disconnection indicates a potential long-term deviation from statutory obligations relating to real-time sales data reporting and transparency. Additionally, another four outlets were observed to have remained disconnected from the PoS infrastructure for durations ranging between 100 and 400 days. The remaining four outlets also showed disconnection from the system, although the specific duration of disconnection in these cases was not clearly established.

The recurring nature and extent of these disconnections strongly suggest one of two possible scenarios: either the appellant registered person is consistently failing to comply with the legal requirement to maintain uninterrupted connectivity with the PoS system, or there may be persistent technical shortcomings or administrative inefficiencies within the web portal system itself that are contributing to these lapses.

In light of these findings, it is imperative that the matter be investigated thoroughly from both angles. On one hand, the Registered Person's pattern of disconnection must be scrutinized to determine whether there has been a wilful evasion of compliance. On the other hand, a technical audit of the PoS system and the web portal should be conducted to identify any systemic issues or malfunctions that may be obstructing lawful adherence. Addressing both possibilities is essential to uphold the integrity of the PoS framework and to ensure uniform enforcement of compliance across all registered entities.

20. Based on the foregoing discussions, the impugned order sealing the appellant's business premises is hereby declared illegal, void ab initio, and without jurisdiction. Consequently, the appellant's appeal is accepted. The office is directed to return the departmental record, which was retained by this tribunal on 17.03.2025, to the learned DR while serving this order to him.


(IMRAN LATIF MINHAS)
ACCOUNTANT MEMBER


(M. M. AKRAM)
JUDICIAL MEMBER



Cash & Carry

سودا کا آسہ

TEL: 03125692606

Phase-4 Ghouri Town Near Kalma
Chowk Islamabad

Annex-A

Date & Time 22-Sep-24 8:27:14 PM
 Cashier: pos2 Bill No. 262
 NTN: 7166039-5 STRN 3277876120542

No	Barcode	Item Name	MKT
Excl GST	Gst%	GST Amt	Incl GST Qty Amount

Butterfly Long Pads 32pcs

690.68	18%	124.32	815	1.0	815.00
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Market Total

815

Total Saved

0

total	815.00
Cash Paid	815.00
Balance	0.00

BILL PAID
 This Bill
 Madina Cash & Carry
 Ghouri Town, ISB

No Return / Exchange of non cry & Food Products
 by Invoice for Return/Exchange within 7 days of purchase
 Check your cash and bank receipts before you leave
 no amount will be refundable for any loss or theft

TEL: 0301-5533213
051-5704450

Annex-B

Date: 2-Mar-25

1:52:17 PM

Counter: pos8

No: 163

Item	Unit Price	Qty	Unit Price	Amount
Amrood 1Kg		0.97	310	299.20
Baleen 1Kg		1.00	320	320.00
Banana 1pc		16.78	21	352.00
Chand Rice 8Kg		1.00	1,693	1,693.00
Khushaal Colla Rice 2Kg		2.00	675	1,350.00
Khushaal Dhanja Whole 20		1.00	190	190.00
Khushaal White Zeeva Who		1.00	220	220.00
Mcc Macaroni 400G		1.00	157	157.00
Mezan Banaspeji 1kg Pqvc		3.00	530	1,590.00
National Mixed Pickle 1kg		1.00	575	575.00
Pakora Mix 400G		1.00	199	199.00
Power Plus AA 1PC		1.00	130	130.00
Red Apple Large 1Kg		0.45	370	164.65
Sabroso Nuggets 870gm EF		1.00	980	980.00
Tang Orange 370gm		2.00	299	598.00
White Chana Bajrab 1Kg		1.00	295	295.00
Y/L Lipton Tea 40G		2.00	215	430.00

Total	37	9,544.85
Cash Paid		95,445.00
Balance		85,800.15

Market Total 10,380

Total Discount 841

And
More

Amount In Words :