

**SHC declares SRO 584(1)/2017 illegal**

KARACHI: The Sindh High Court (SHC) has declared SRO 584(1)/2017 dated 01.07.2017 illegal, stating that the said SRO was issued without lawful authority and restrained the federal government and the Federal Board of Revenue (FBR) from demanding any duty in terms of SRO 584(1)/2017.

A division bench of the SHC, comprising Justice Aqeel Ahmed Abbasi and Justice Zulfiqar Ahmed Khan, in a written order, which was released on Tuesday, also ruled that the amendment introduced through the Finance Act, 2017 in Section 3(2)(b) and Section 4(c) of the Sales Tax Act, 1990, whereby, the words "Federal Government" have been omitted and substituted with "Board with the approval of the Federal Minister Incharge" is totally illegal and in violation of the judgment of the Supreme Court in the case of Mustafa Impex as well as judgment passed by a divisional bench of this court in the case of Premier Systems v. Federation of Pakistan & others (208 Pr. 861).

The SHC bench gave this judgment in the petitions filed by Al Razzq Fibres Ltd., Saya Weaving Mills Pvt Ltd and Zaman Textile Mills Ltd and others versus the Federation of Pakistan and the FBR.

Through their petitions, the petitioners mainly challenged the vires of SRO 584(1)/2017 dated 01.07.2017 as well as vires of the amendment in Section 3(2)(b) of the Sales Tax Act, 1990, under which the said SRO was notified brought about through the Finance Act 2017, for being unconstitutional and an attempt to circumvent and defeat the spirit of law declared by the Supreme Court in the case of Mustafa Impex, Karachi, and others vs. The Government of Pakistan and others.

They requested the court to declare sub-section (2) (b) of Section 3 of the Sales Tax Act, 1990 ultra vires of the Constitution of Pakistan, 1973, as it purports to confer the power to levy further sales tax upon the FBR with approval of the Federal Minister-in-Charge.

The petitioner also prayed the court to declare that under Article 90 of the Constitution of Pakistan, the executive authority of the Federation could only be exercised by the Federal Government acting through the Cabinet and declare that the impugned notification, bearing S.R.O. No.584(1)/2017 dated 01.07.2017, is ultra vires of the provisions of the Constitution of Pakistan, 1973, and quash the same.

They also pleaded the court to declare that the respondents are not liable to take any action pursuant to the S.R.O. No 584(1)/2017 dated 01.07.2017, including but not limited to levy, imposition, collection and/or recovery of sales tax on the supply of goods to unregistered persons by the petitioners.

The bench in its decision declared amendment in Section 3(2)(b) read with Section 4(c) of the Sales Tax Act 1990 through the Finance Act 2017 to the extent of substituting the words "Board with the approval of Federal Minister Incharge" ultravires to Constitution,

and contrary to the law, hence of no legal effect and SRO 584(1)/2017 dated 01.07.2017 issued in terms of and in purported exercise of powers conferred by the amendment in Section 3(2)(b) and Section 4(c) of the Sales Tax Act, 1990, particularly adding of a new condition XIV to SRO 1125(1)/2011, is declared to be ultra vires the Constitution, and is of no legal effect.

The court restrained the federal government and the FBR from demanding any duty in terms of SRO 584(1)/2017 dated 01.07.2017 from the petitioners.