



PAKISTAN TELECOMMUNICATION COMPANY LIMITED

OFFICE OF THE/Group Head (Cost Management)/ FINACE PTCL

3RD FLOOR, "E" BLOCK, PTCL H/Qtrs. G-8/4 ISLAMABAD

No 74 / GM (COST) /Power

18.1.2022.

The Additional Director

Office of The Registrar

NEPRA, 2nd Floor, OPF Building

Sector G-5/2 Islamabad.

Handwritten notes:
For W/O B.C.P.
- AD (CT)
Copy to
- SA (Tech)
- SA (M&E)
- m.f. - DRO-2
- LACKIP
cc: Chairman
v.c/m (M&E)
- MCCA (T)
- M (Lis)

Subject: REJOINDER TARIFF PETITION FILED BY PAKISTAN TELECOMMUNICATION COMPANY LIMITED (PTCL) FOR REVISION OF TARIFF FROM COMMERCIAL TO INDUSTRIAL.

Reference this office letter No No 72 / GM (COST) /Power dated 13.12.2021 and No 73/ GM (COST) /Power dated 06.01.2022.

Dear Sir,

It is submitted that A Writ Petition No 42/09 under Article 199 of the constitution of Islamic Republic of Pakistan 1973, was filed in the Lahore High Court Lahore by the PTCL VS Govt of Punjab etc The decision in open court was announced on 19.06.2009, copy of decision is attached herewith.

As per decision Pakistan Telecommunication Company Limited (PTCL) declared as industrial unit. It is also supported that Telecom Sector is declared as industry,

Now as Government of Pakistan has *declared Telecom Sector as an Industry, Through Finance bill 2021, an amended is made in section 2(29C) of the Income Tax Ordinance, 2001 and new clause "c" is inserted which declares Telecom Sector as an Industry.*

DA/AS ABOVE.

Signature
SYED SHARAFAT HUSSAIN SHAH
Power Consultant.
Room No 210 2nd Floor
PTCL HQ`s Sector G-8/4 Islamabad.
Contact# 0301-5575514
E-mail: sharafat.hussain@ptcl.net.pk

Tariff Division Record

Dy No.....*SL9*.....
Dated.....*24-1-22*.....

REGISTRAR
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24/1/22

IN THE LAHORE HIGH COURT, LAHORE

For Supreme Court Use

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WRIT PETITION NO. 42/09.

PRESENT.

MR. JUSTICE KH. FAROOQ SAEED

PETITION Under Article 199 of the Constitution of Islamic
Republic of Pakistan, 1973., praying that

PRAY & PARTY NAMES & ORDER ATTACHED.

25768

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: *W.P. 42-2009*

P.T.C.L.

Versus *Govt. of Punjab etc*

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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10.04.2009 Ch. Anwar ul Haq-I, Advocate for the petitioner,
Ch. Rizwan Mushtaq and Rana Ameer Ahmad Khan, AAGs.
Mr. Muhammad Nawaz Waseer, standing counsel.
Akram Ashraf Gondal, Director Excise and Taxation, Lahore
Region-A.

The writ petition has been filed to impugn the order dated 16.12.2006 of the Executive District Officer (Revenue), Lahore.

2. The brief facts of the present case are that the petitioner-Company was issued PT-I Form assessing the said property w.e.f. 1.1.2000 to 30.6.2000 and another through 2002,2003 to 2006 dated 26.1.2006. The petitioner being aggrieved filed appeal dated 23.3.2006 under Section 10(1) of the Act which was dis-allowed vide order dated 30.5.2006 by Excise and Taxation Officer. The petitioner challenged the order dated 30.5.2006 before this Court through W.P.No.6955/06. This Court directed the petitioner to avail the departmental remedy vide its order dated 23.11.2006. However, while directing the petitioner to avail of the said remedy, the appeal of the petitioner was restored before the concerned authority i.e. Executive District Officer (Revenue) and he was directed to rule-upon through a well reasoned order as to why telephone exchange or other property owned

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by the Corporation, could not be treated to be those held by the Industries. Further while giving above, direction, the learned Court also observed that the respondents had not given any reason to decline the benefit of the Notification dated 20.4.2004. Still further that the department was interpreting the word "Industry" in a very strict manner to confine it only to a factory. The approach, on the face of it, is considered as nullity for the purposes of aforesaid Notification of the Govt. of Pakistan, Ministry of Industries and Petroleum "An Industry according to the Chamber 21st Century Dictionary, Revised updated Edition, 1999 means, "not only a business of producing goods but also organized commercial exploitation or use of natural or national assets, such as historical buildings, famous people". Also that an "Industry" is a branch of manufacturing and trade which produces a particular product". As an example the dictionary refers to a "Tourist Industry". The said authority in continuation of the direction, given by this Court, has ultimately given a finding vide its order dated 16.12.2008 through which again the claim of the petitioner has been rejected. However, the order has been decided after due appreciation of the arguments of the petitioner.

3. Now before this Court, the petitioner has repeated the same arguments. The claim is that the property which is a Telephone Exchange and offices of PTCL, presently situated

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at Egerton Road, Lahore, is an industry by virtue of Notification No.(11)2004InvLL dated 20.4.2004. Above notification has been issued by the Ministry of Industries and Petroleum, Govt. of Pakistan. It has classified the Telecom sector including cell-phone operation as "**Industry**". The Property Tax Department after carrying out the spot visit increased certain rebates but refused to treat the property as an industry in term of Notification dated 20.4.2004. The argument in support of the refusal is that the Federal Government has no authority to regulate the assessment of the property tax being a Provincial subject matter. Further argument of the department is that if PTCL building premises is held to be an industry than all services like the travel agents tourist operators etc. shall also come within the definition of "**Tourism Industry**" and the property in their holding shall also become entitled to the said relief.

4. The petitioner states that the definition given by this Court of the '**Industry**' is comprehensive and should have been applied in letter and spirit. This Court has come out with a very logical definition of the term "**Industry**". It is now in every one's knowledge that tourism is one of the most flourishing industry of the world. However, the agreement of this Court with the said definition needs further dilution in the light of the relevant law and rules.

The term "**Industry**" is not defined in the statute itself, the ordinary dictionary meaning, therefore, shall

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prevail. Further, in the present case, the valuation table by the respondent/Govt. of the Punjab through SO No. TAX (E & T) 3-38/91/P-1 dated 13.10.2001 Issued under Section 7, practically has also taken care of this situation. The Government of Punjab has full authority of preparing and applying the valuation list. The said list has bifurcated the property into eight different categories. The classification in which the petitioner wants its assessment is category No.7. It speaks of Industrial unit which in the case of property tax is the one where manufacturing process is carried out. The said term has not been defined in the said Property Tax Act. The same, therefore, shall be defined in the context it has been used. In fact, in order to understand the real import of a term used in a statute, it is necessary to examine the statute itself as an aid to its interpretation. Reliance is placed on Messrs City Bank N.A., Karachi vs. The Commissioner of Income Tax, Central Zone-C, Karachi (1994 PTD 1271) and Hafeezuddin and 2 others vs. Badaruddin and 2 others (PLD 2003 Karachi 444). Further, where no statutory definition of a word is available, dictionary meanings should be adopted. Reliance is placed on Wall ud Din vs. Muhammad Tufail and others (1994 MLD 159). However, it being never safe to adopt them strictly as the same in enactments are controlled by language as a whole and are not to be read in isolation.

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6. In the light of the above judgments, reference to category 7 under which above property statedly falls shall be relevant. The said para speaks as follows:-

INDUSTRIAL UNITS Residential rates (self or rented as the case may be) prescribed in the valuation table with following conditions:-

Upto 1 ACRE -	Above
Rate	
Next 4 ACRE-	Reduction of 20% in the above rate.
Exceeding 5 ACRE -	Furt, Her Reduction of 20% in the above rates

Industrial Unit

7. The phrase "**Industrial Unit**" has not been defined in most of the dictionaries. The same, therefore, is discussed as follows:-

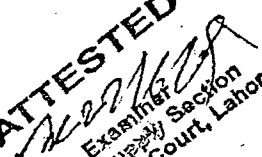
Industrial

8. As per the *Law Lexicon, the Encyclopedia Law Dictionary, Reprinted Edition, 2006 by WADHWA*, it means "*of or pertaining to an industry*".

9. Industry is defined by *Lexicographers* to be habitual diligence in any employment, either bodily and mental, which is the chief business of a merchant, as to the transportation of goods, which is the chief business of an express carrier. As a general meanings "**industry**" therefore, basically is 'use of

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habitual diligence' be that bodily^{or} mental. It is thus not a fit word for defining the term '*industrial*'. It is true that the said word pertains to an industry but it cannot be allowed to be used for all businesses by observing that every action in any work involves mental labour in same form. Can one call use of diligence in preparing a case by a legal counsel to be a work by an industry for the purpose of a taxing statute? The answer shall be an emphathetic '**No**'. The taxing charging statutes are promulgated to create a charge in respect of a particular income or property. The charge comes with a general application on all subjects coming within the parameters provided therein. Any relief, reduction or exemption to a person class or persons is a special privilege to some among all. It amounts to giving relief of tax at the cost of others in whose case the same may proportionately increase. In such cases benefit of doubt goes to the favour of the Revenue but not the tax payer. Reliance is placed on *Hudabiya Engineering (Pvt.) Limited vs. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90)*.

10. However, since in this case, it is not '*industry*' which has been given facility of subsidized rates but '*Industrial Unit*' which has been defined as pertaining to industry, locating the history of the said word becomes necessary.

Connotation, industrial as per "*Oxford English Dictionary* with an interpretation of a new *English*

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Dictionary on Historical number, printed at the Clarendon Press in 1961, the word "**Industrial**" has earlier been used in 1904 was in the following sentence:-

"Of a quality suitable only for industrial use"

Again, in 1904, "**Industrial Alcohol Committee**...appointed to enquire into the use of duty free Alcohol for Industrial purposes". In 1911, "**Napoleon** failed to see that he fought not for a nation of shop keeper a commercial state-but a nation of capitalist and artisans-Industrial state". Looking from the angle of use of above term in English Language in earlier times, one can decide without any doubt, in mind that the term "**Industrial**" cannot be used with commercial activities and is attached with the work that involves capital and artisans. It has got nothing to do with matters relating to services like Doctors, Lawyers; Shop keepers dealing with the local purchase and sales etc. Furthermore, the phrase like "Industrial Labour, Industrial Courts, Industrial Exhibition, Industrial Fatigue, Industrial Insurance, Industrial Revolution and Industrial Unit etc." Obviously, adds to the proposition that the term is meant for some production or manufacturing process through the involvement of systematic labour. mentioned herein before.

12. Regarding "**Unit**", the meanings are very simple. The word stands for one out of many having a separate identifiable structure within a large number of a such and similar or a bigger structure. Use of the phrase "**Industrial**

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Unit", therefore, stands for a separately identifiable place where some production activity of the artisans, is carried out.

13. It is a settled principle of law that borrowing definition from some other statute is never safe. However, since, it is not disputed that words and phrases should be understood by its reference to the law and its construction in the said statute, the definition of the above phrase as adopted in K.G.Old, Pringpal, Christian Technical Training Centre, Gujranwala vs. Presiding Officer, Punjab Labour Court, Northern Zone and 6 others (PLD 1976 Lahore 1097)

being relevant is reproduced as follows:-

"Industry" and "Industrial Unit". Given their plain ordinary dictionary meaning words used to define Industry, words which have been always, and are even now, a part of the definition, viz., Business, Trade, Manufacture, Calling, Service, Occupation are of the widest amplitude and include in their sweep every conceivable human activity which is not casual, recreational or a past time. Literal construction certainly leads to that and to no other. However, one accepted principle of interpretation is that use in a statute, amending or otherwise, of a term which has received a judicial construction gives rise to the presumption that the term is used in that sense.

The moment the expression "Industrial unit" comes up for interpretation one is reminded of the aggregate or the group or

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the genre of which it is a part. It is not sufficient that there should be an industrial unit. What is required in addition is that it should exist for industry and not for any other non-industrial purpose. Thus a scheme for rehabilitation of destitute women, or disabled and infirm men, or the blind may have as its integral part workshops or industrial units but as its existence would not be for industry it would not fall within the definition of industry.

It is, therefore, not sufficient that there be an industrial unit. What is required is that such industrial unit, office, firm, shop must be for industry and for no other purpose. Hence the word "industry" will have the same meaning as in the definition. Such a construction imputes no redundancy or surplusage to the Legislature. On the contrary it explains the fullest significance of the expression industrial unit and industry.

The use of the expression "Business, Trade; Manufacture, Calling, Service, Employment or Occupation" in the definition of industry in Industrial Relations Ordinance is not in its ordinary dictionary meaning but in its Old, Principal, Christian Technical Training Centre, Gujranwala v. Presiding Officer, Punjab Labour Court, Northern Zone and 6 others (PLD 1976 Lahore 1097)

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14. Looking into the above discussion, if this Court looks into the work being carried out in the building under

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discussion, the conclusion shall not be difficult to draw. The petitioner in this case is an Organization which is providing service in terms of telephone connections. The building is used for fixation of machinery which connects thousands of the people who are getting services from the said telephone exchange. It has connecting staff and have offices also. It is a huge and complicated network, in which, most of the employees are Engineers and Technicians. It also have some administrative staff as well which deals with preparation and receiving the bills etc. However, major portion of the staff is placed to control and take care of the machines which is the basic services provider to a number of telephone users. There cannot be any doubt that the machinery in use, its function and its maintenance up keep and repairs, whenever required is totally the job of artisans, technicians and other qualified Engineers etc. through the skilled staff. The building being in use for the industrial purposes, is obviously an industrial unit, fully covered within the classifications, provided by the Provincial Government and is entitled to all the benefits in terms of reduced rates etc. provided therein.

15. Any building unit in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity telegraphic and telephonic

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Installation and motive power of any kind is carried out is an "Industrial Unit".

16. Writ petition, as a result, stands allowed, the petitioner is entitled to reduce rates as per category VII of the Valuation Table dated 13.10.2001. The writ petition accordingly disposed in the manner and to the extent mentioned above. }

(Signature) (Kh. Faarooq Saeed)
Judge

Announced in open Court on: 19.06.2009

(Signature) (Kh. Faarooq Saeed)
Judge

APPROVED FOR REPORTING

Jamil

TRUE COPY

In Case No:

(Signature)
Examiner J.C.B. (Copy Branch)
Lahora High Court, Lahore.

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(Signature) 27/6/09
Authorized Under Article 87 of
Qanun-e-Shahadat Order, 1984

Petition No. 85673
 Case No.
 Date of Presentation of Application 19/6/09
 Copy Fee
 Urgent Fee
 Registration and Filing Fee
 Court Fee in Application
 Total
 Name of District LAHORE
 Date of Receipt of File
 Date of Completion of Copy
 Date of Delivery of Copy

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27/6/09

BEFORE THE LAHORE HIGH COURT, LAHORE

W.P. 49/2009

Pakistan Telecommunication Company Limited (PTCL) through Mr. Rashid Ahmad, Regional General Manager, Pakistan Telecommunication Company Limited, 11-Egerton Road, Lahore.

.... PETITIONER

Versus

1. The Government of the Punjab, through its Chief Secretary, Civil Secretariat Lahore.
2. The Executive District Officer Revenue (EDOR), Lahore
3. The Collector / District Officer / Director, Excise and Taxation (Region-A), 2-A Farid Kot Road, Lahore.
4. Assessing Authority, Rating Area Zone-3, Abbot Road Circle, 2-A Farid Kot Road, Lahore.

.... RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973.

Respectfully sheweth:

1. That the addresses of the parties as given in the title of the petition are correct and sufficient for services of notices upon the parties.
2. That the petitioner is a telecommunication services providing company, operating its units through out Pakistan and one of its unit is located at 11-Egerton Road, Lahore (hereinafter referred as "Property"). This petition is being filed through Mr. Rashid Ahmad Regional General Manager, Pakistan Telecommunication Company Limited, 11-Egerton Road, Lahore. Who is well conversant with the facts and also competent to sign this writ petition.
3. That the petitioner company was originally an instrument / department of the Federal Government of Pakistan which was converted into corporation under the Pakistan Telecommunication Act XVII of 1991 and was further converted into Public Limited Company quoted on Stock Exchange with the Government of Pakistan having majority of shares, under section 34 of the Pakistan Telecommunication (Re-Organization) Act XVII of 1996 w.e.f. 16th day of October 1996.
4. That formerly buildings and lands of the petitioner company vested in the Federal Government were exempted from levy of Property Tax in terms of Section 4 of the Urban Immovable Property Tax

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