

Tax Bulletin

April 2022

Foreword



This publication contains brief commentary on Circulars and SROs issued during March 2022 and important reported decisions.

This publication contains general information only, and Yousuf Adil, Chartered Accountants, is not by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor

Yousuf Adil accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

This publication can also be accessed on our Website.

www.yousufadil.com

Karachi
April 12, 2022

Contents

Income Tax Ordinance, 2001

A. Notification/Letter 04

B. Reported Decisions 04

Sales Tax Act, 1990

A. SROs and STGO 09

B. Reported Decisions 11

Sindh Sales Tax on Services Act, 2011

Reported Decisions 16

Punjab Sales Tax on Services Act, 2012

Reported Decision 18

Federal Excise Act, 2005

Reported Decision 19

Income Tax Ordinance, 2001

A. Notification / Letter

1. Valuation of Immovable Properties

The Federal Board of Revenue (FBR) vide various SROs has revised the value of immovable properties of various cities in Pakistan including Karachi. These SROs can be accessed on FBR's website <https://www.fbr.gov.pk/ShowSROs?Department=Income%20Tax>

2. Adjustment of Income Tax Refund Against Workers Welfare Fund Liabilities

FBR vide letter No. C.No. 1(10)ST-L&PE/2020/64664-R dated March 28, 2022, has rescinded the earlier letter No. 4(33)-Rev.Bud./99 dated February 17, 2000, which allowed adjustment of WWF liability from the income tax refunds of the taxpayer. As a result, the WWF liability will now be required to be paid irrespective of the income tax refund status.

B. Reported Decisions

1. (2022) 125 TAX 27 Appellate Tribunal Inland Revenue (ATIR) M/S Marhaba Textile Limited VS Commissioner Inland Revenue

Applicable Sections: 18, 21, 111, 122, 147 and 177 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

An appeal was filed by the taxpayer (the Appellant) before the ATIR against the order of the Commissioner Inland Revenue Appeals (CIRA) whereby the earlier order passed by the Deputy Commissioner Inland

Revenue (DCIR) under section 122(5) of the Ordinance was confirmed.

The appeal was filed by the taxpayer on the following grounds including that:

- i. The DCIR failed to issue an audit report under section 177(6) of the Ordinance, after concluding audit proceedings initiated under section 177 Ordinance.
- ii. The DCIR failed to issue notice under rule 68 of the Income Tax Rules, 2002 and under section 122(5) of the Ordinance specifying the clauses which were applicable in the taxpayer's case.
- iii. Prerequisites of amendment of assessment proceedings i.e. definite information as defined under section 122(8) were not followed.
- iv. No specific notice under section 111 was issued for making the addition under section 111 of the Ordinance.

Decision

The ATIR decided the appeal in **favour of the taxpayer**, vacated the Order of the DCIR and held as follows:

- i. Audit report under section 177(6) is mandatory.
- ii. The Order passed under section 122(1)/(5) of the Ordinance suffers from various infirmities and does not meet the legal requirements as stipulated in sections 177 and 122 of the Ordinance.
- iii. For making addition under section 111 of the Ordinance, the DCIR was required to issue a specific and separate notice asking for the required

explanations. Merely confronting a taxpayer through a notice under section 122(9) of the Ordinance does not fulfill the legal requirements of section 111 of the Ordinance.

Concept of what is definite information (e.g. it cannot be given a universal meaning, it has to be construed in each case, it does not require further probe, etc.) and what is not a definite information (e.g. any incomplete information that requires further inquiry, debatable information, etc.) is discussed in detail in the decision. Readers are advised to read the complete case law for better understanding.

**2. (2022) 125 TAX 164
Sindh High Court
Commissioner Inland Revenue VS
Mahvash and Jahangir Siddiqui
Foundation**

Applicable Sections: 122, 133, 177, and 214C of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

The petition was filed by the Commissioner Inland Revenue (CIR) against the favourable order of the Appellate Tribunal Inland Revenue (ATIR).

Audit proceedings were initiated against the taxpayer under section 177 of the Ordinance, which were concluded without fulfilling the prerequisites of section 177(6A) of the Ordinance.

Decision

The Court decided the matter in **favour of the taxpayer** and rejected the tax department's appeal by stating that a mandatory requirement was not fulfilled i.e. no audit report was issued to the taxpayer containing audit observations. Furthermore, considering the time constraints for

completion of the audit proceedings being barred by limitation, the amended order under section 122(1)/(5) of the Ordinance was passed in haste without affording a reasonable opportunity of being heard to the Appellant.

**3. 2021 PTD 1321 = (2022)125
TAX 170
Lahore High Court
M/S Ramzan Sugar Mills Limited
VS Federal Board of Revenue**

Applicable Sections: 120, 121, 122, 122(4), 122(9) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

The taxpayer filed a petition against the notice issued under section 122(9) read with section 122(4) of the Ordinance, on the plea that the notice was issued with malafide intention for amendment of the assessment which stood finalized under section 120 of the Ordinance after submission of the return of income. The taxpayer further argued that the notice issued for the production of certain information was against the spirit of section 122 and is, therefore, unlawful. On the other hand, the tax department argued that the petition is not maintainable being pre-mature as only certain information was sought from the taxpayer and no adverse order, by any lower forum, was passed against the taxpayer.

Decision

The High court **rejected the taxpayer's petition** and decided the case as follows:

- i. Seeking records and information under section 122 of the Ordinance, is well within the jurisdiction of FBR as well as the government officers appointed under the Ordinance and such actions require no interference by the Courts.
- ii. FBR only required certain information and has not passed any adverse order against the taxpayer. Further,

alternate remedies (in the shape of appeals before CIRA and ATIR, etc.) are available to the Petitioner who may approach the Court in a Tax Reference after utilizing all those remedies.

- iii. The taxpayer was directed to provide the documents/record/information to the Tax Officer.

**4. 2021 PTD 1705 = (2022)125 TAX 193
Lahore High Court
Commissioner Inland Revenue VS
M/S Zahid Jee Fabrics Limited**

Applicable Sections: 114, 114(6), 120, 122, 122(3), 122(5A), 122(9), 133, 177 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

The tax department filed a petition against the order passed in favour of the taxpayer by the ATIR, whereby the order passed under section 122(5A) of the Ordinance was vacated on the ground that the tax officer was not justified to disregard the revised return filed by the taxpayer under section 114(6) of the Ordinance i.e. the revised return is to be treated as amended assessment order under section 122(3) of the Ordinance.

On the other hand, the tax department was of the view that the taxpayer could not revise the return during the assessment proceedings and such revision may be declared as invalid.

Decision

The High court **rejected the tax department's petition** and decided the case as follows:

- i. Revised return filed under section 114(6) of the Ordinance shall for all purposes of this Ordinance to be considered an amended assessment order issued to the taxpayer by the

Commissioner on the day on which the revised return was furnished in terms of Section 122(3) of the Ordinance. The only way to proceed for the tax department is through the said amended assessment as the return previously filed loses its efficacy and becomes irrelevant to the extent of the omission / wrong statement therein.

- ii. Treating the revised return as invalid for the purpose of amendment of assessment is beyond the jurisdiction of the tax department as such treatment is not supported by any provision under the Ordinance.
- iii. The ATIR has rightly vacated the Orders of the assessing officer as well as the first appellate authority.

**5. 2022 PTD 290
Sindh High Court
M/S OBS Pakistan (Pvt.) Limited
VS Federation of Pakistan**

Applicable Sections: 170, 170(2), 221 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

Taxpayers filed petitions in respect of notices issued under section 221 of the Ordinance wherein the tax officers on the basis of FBR's circular dated May 25, 2021, declined the adjustment of Workers' Welfare Fund [WWF] liabilities against the income tax refunds placing reliance on the Hon'ble Supreme Court's (SC) decision reported as 2017 PLD 28, wherein it was held that the levy under the WWF Ordinance is a fee and not a tax. The following questions were raised in the petition:

- i. Whether the impugned circular dated May 25, 2021, has a retrospective effect?
- ii. Once the deemed assessment has been made and/or the order under section 170(3) of the Ordinance has been passed, could the original

assessment order be amended under section 221(1) of the Ordinance?

- iii. Can WWF adjustment be reversed without making a refund allegedly due to the taxpayer as it is only against refund claim which came for consideration for the adjustment of WWF?

Decision

The High Court **accepted the taxpayer's petition** and decided the case as follows:

- i. The circular dated May 25, 2021, issued by FBR under the Ordinance, is lawful; however, its effect is prospective.
- ii. Rectification of a mistake in terms of Section 221 of the Ordinance is limited i.e. rectification is only possible in cases where there is a mistake apparent from the record and floating on the surface such as clerical or calculation error, and which do not require any devoted efforts to correct. Besides, in cases where there could conceivably be two views or opinions, the same fall outside the scope and ambit of rectification of mistake. Since answers to the questions raised by the petitioners require interpretation of law after deliberation and application of mind, this exercise cannot be carried out under section 221 of the Ordinance. It is an exercise far beyond the scope of rectification of mistakes under section 221 of the Ordinance.
- iii. The impugned notices issued under section 221 of the Ordinance claiming WWF prior to the issuance date of the Circular dated May 25, 2021, are illegal and unlawful for the purposes of Section 221 of the Ordinance.

6. (2022)125 TAX 151 Islamabad High Court M/S Pakistan Tobacco Company Limited and Others VS Federation of Pakistan

Applicable Sections: 2(63), 4, 4B of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

The taxpayers challenged section 4B – Super Tax for rehabilitation of temporarily displaced persons, as to the process through which section 4B was promulgated i.e. this levy is for a specific purpose, for the benefit of rehabilitation of temporarily displaced persons. The levy was not meant to contribute to the Federation and could, therefore, not be deemed a tax. Since it was not a tax so the said levy could not have been enacted by introducing a provision in the Finance Act in view of Article 73(2) and (3) of the Constitution of Pakistan i.e. it could only have been promulgated by the Parliament through ordinary legislation and not through a Finance Bill.

Another argument taken by the taxpayers was that section 4B amounted to imposing an additional tax on income that constituted imputable income, and the imposition of double tax on income that had already been taxed was not permissible.

The third argument of the petitioners was that super tax pursuant to section 4B had been imposed on a narrow category of taxpayers which made it discriminatory and it was liable to be held ultra vires under Article 25 of the Constitution.

Decision

The High Court **rejected** the petition and held that Super Tax under the Ordinance is intra vires the Constitution on the following grounds;

- i. Super Tax is a nature of tax and not a fee and accordingly the legislature has rightly introduced section 4B of the

Ordinance for being a compulsory exaction of money from a specific segment of the public for the purposes of generating revenue.

- ii. Mere declaration of the special purpose of utilization of tax does not in itself transform such levy into fee or cess. The Court agrees that the Constitution in view of the language used in Article 260 contemplates the imposition of special tax and the mere declaration of a special purpose of a tax levied does not in itself transform such levy into fee or cess thereby taking it out of the scope of the tax for purposes of Article 73(2) of the Constitution.
- iii. Imposition of super tax does not tantamount to double taxation as only specified persons are subjected to super tax in view of clear words used in the taxing statute and, therefore, there is no prohibition in the Constitution that prevents the legislature from introducing a second charging section within a taxing statute through clear and equivocal words.
- iv. Double taxation is a rule of statutory interpretation. However, where a statute imposes double taxation through clear words, legislative intent must be given effect by the Courts and there is no room for interpretation of such legislative intent.
- v. Section 4B is not in breach of any fundamental right of citizens guaranteed by the Constitution, including the right to equality guaranteed under Article 25 of the Constitution.

Other reported Judgements on Section 4B - Super Tax

It is important to note that Courts have already held that Super Tax under section 4B is intra vires the Constitution through below mentioned judgements:

- i. Lahore High Court in D.G. Khan Cement Company Limited Vs. Federal Board of Revenue and other cases reported as 2018 PTD 287. This judgment was also challenged before a Division Bench of the learned Lahore High Court, which upheld the judgment of the single bench, reported as 2020 PTD 1186.
- ii. Sindh High Court in HBL Stock Fund Vs Additional Commissioner Inland Revenue case reported as 2020 PTD 1742.
- iii. Islamabad High Court in Messrs. Attock Oil Co. Ltd. Vs. Federation of Pakistan case reported as 2019 PTD 934.

Sales Tax Act, 1990

A. SROs / STGO

1. SRO no. 321(I)/2022 dated March 1, 2022 Change in Petroleum Rates

As a result of the change in OGRA notified petroleum prices, the rates of sales tax have been revised with effect from February 01, 2022 as under:

S. NO.	Description	PCT Heading	Previous ST Rates	Revised ST Rates
1	MS (Petrol)	2710.1210	0.79% ad valorem	0.00%
2	High speed diesel oil	2710.1931	3.17% ad valorem	0.00%
3	Kerosene	2710.1911	5.30% ad valorem	0.00%
4	Light diesel oil	2710.1921	0.00% ad valorem	0.00%

2. Sales Tax General Order (STGO) No. 10 of 2022 dated March 03, 2022 Tier-I Retailers - Integration with FBR's POS System

FBR has adopted practice of notifying retailers (who have not yet integrated with FBR's system) as Tier-1 Retailer [2(43A) of Sales Tax Act, 1990] through STGO. This STGO is issued every month in the first 5 days of the calendar month with effect from August 3, 2021.

Vide the subject STGO, a list of 1,421 identified Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by March 10, 2022. In case of failure to make the requisite integration by such notified

persons, their adjustable input tax for the February, 2022 would be disallowed up to 60% as per sub-section (6) to section 8B of the ST Act, without any further notice or proceedings, creating tax demand by the same amount.

if any of notified retailer claims that it is wrongly notified as Tier-1 Retailer then the person should apply to the concerned Commissioner for excluding its name from the list by March 10, 2022 and the Commissioner would decide in this regard by March 15, 2022.

3. S.R.O. 383 (1)/2022 DATED MARCH 07, 2022 REFUND TO PHARMACEUTICAL SECTOR

Through Finance (Supplementary) Act, 2022, the sales tax exemption on import and supply of raw materials and finished products related to the Pharma sector was withdrawn with effect from January 16, 2022. Simultaneously the following items were inserted in the Fifth Schedule of the ST Act and accordingly were charged at zero rate:

- Drugs registered under the Drugs Act, 1976 (XXXI of 1976), or
- medicaments as classified under chapter 30 of the First Schedule to the Customs Act, 1969 except PCT heading 3005.0000

Resultantly, the input tax on raw materials and other indirect inputs/overheads of the pharma sector may now be claimed as refundable by pharma entities.

For this purpose, the Board has through this SRO introduced Chapter V-B to the Sales

Tax Rules, 2006 for claiming refund by pharma sector. The key features of the said rules are summarized as follows:

Application

The rules are applicable for refund claims for the periods commencing from January 16, 2022 filed by persons engaged in import and supply of zero rated Drugs and Medicaments as referred above.

Capping of refund claim

In the said rules, it has been mentioned that the refund amount claimable shall be lower of:

- the input tax consumed in zero-rated supplies; or
- the amount as per ceiling, if any, determined by the Board.

Data as per return shall be considered for refund claim

The data provided through monthly sales tax return shall be considered as the support for the refund claim and no separate electronic data shall be required. The amount mentioned in column 29 of the STR-7 form, shall be considered as the amount of refund claimed.

Filing of Annexure H (Stock Statement)

The date on which Annexure H is filed, shall be considered as the date of claim of refund. The claimant may furnish Annexure H with the sales tax return or it may be filed within 120 days of filing of return which may be extended to further 60 days by the Commissioner.

Processing of refund claim through FASTER Module

After submission of details on Annexure H, the refund claim shall be processed by Risk Management System (RMS) electronically and then routed to the processing module

referred to as fully automated sales tax e-refund pharma (FASTER Pharma).

Upon being found admissible a Refund Payment Order (RPO) will be generated and it shall be electronically communicated directly to the State Bank of Pakistan (SBP) within 72 hours of submission of the claim. SBP afterward shall instruct the respective bank to credit the refund amount in the notified account of the claimant.

Processing through STARR in case of un-cleared refunds after multiple validation checks

Where the amount of refund or part of amount of refund is unverified or inadmissible, the same shall be subject to system validation checks every week. After every validation process, the information regarding RPO generated or the objections shall be communicated by the system to the claimant and also to the concerned IRS field.

The refund claims which do not fulfill the RMS parameters or the claims on which validations checks were applied for eight times, such refund shall be processed through the STARR module as referred in Chapter V of the Sales Tax Rules, 2006.

4. S.R.O. 407(1)/2022 - dated March 08, 2022 FORM STR-7

Through this SRO, the main/summary page of the existing sales tax return form (STR-7) has been substituted mainly to incorporate disallowance of input taxes in terms of section 8(1)(m) i.e. sales to non NTN/CNIC holders and 8B(6) i.e. non-integrated Tier 1 retailers through insertion of columns 6a to 6c.

B. Reported Decisions

1. (2022) 125 TAX 137 Supreme Court of Pakistan Commissioner of Inland Revenue VS M/S Mughal Board Industry

Applicable Sections: 33, 34, 34A of Sales Tax Act, 1990 (ST Act) and S.R.O. 606(I)/2012, dated 01.06.2012

Brief Facts

In the instant case, the registered person paid the principal amount of sales tax before June 01, 2012 (being the date of amnesty notification) and claimed benefit of waiver of penalty and default surcharge u/s 33 and 34 of ST Act under the amnesty scheme announced under S.R.O 606(I)/2012 dated June 01, 2012 requiring payment of principal amount by June 25, 2012.

The Department refused to allow benefit of the amnesty on the contention that for availing the benefit of amnesty notification, the amount of sales tax should have been outstanding on June 01, 2012 being the date on which the amnesty scheme was announced. The matter was decided in favour of the taxpayer by the high court which was challenged before the Supreme Court by the Department.

Decision

The Supreme Court **dismissed** the petition on the premises that:

- a. the respondent fulfilled the conditions given in the SRO viz:
 - (i) the whole principal amount of illegally adjusted sales tax is paid by June 25, 2012, and;
 - (ii) any case, complaint or proceedings filed by the registered person before any

court of law, etc. are withdrawn by the said date.

- b. The spirit and object of the amnesty notification is to incentivize quick recovery of stuck up tax revenue.
- c. There appears to be no bar in the notification and no possible disadvantage caused to the department, if the principal amount of sales tax is deposited before the date of the amnesty notification, rather such early payment is advantageous.

2. (2022) 125 TAX 59 Appellate Tribunal Inland Revenue (ATIR) M/S Mujahid Oil Refinery VS Commissioner, LTU Karachi

Applicable Sections: 3, 3(1A), 4, 13 of Sales Tax Act, 1990 (ST Act)

Brief Facts

In the instant case, the assessing officer created demand of further tax at the rate of 3% under section 3(1A) of the ST Act on supply of ghee and vegetable oil to unregistered persons, which was exempt from sales tax in terms of Sr. no 24 of the Table 1 of Sixth Schedule to the ST Act as well as exempt from Federal Excise duty in terms of SRO No.24(I)/2006, dated, January 07, 2006. The demand of further tax was upheld by the Commissioner Appeals on the premise that the further tax is sort of disincentive for those refusing to be registered against the express statutory requirement, hence, the further tax is chargeable on exempt supplies also.

Decision

The ATIR **allowed** the appeal and vacated the findings of the both assessing officer and the Commissioner (Appeals) regarding levy of further tax under section 3(1A) of the ST

Act on the premise that "further tax" is to be levied at 3% of value of taxable supplies made to unregistered persons. As local sale of ghee and vegetable oil was exempt from sales tax as well as FED in terms of the respective provisions as discussed above and there is no taxable value in the instant case, therefore the supplies of ghee and vegetable oil was not subject to further tax under section 3(1A) of the ST Act.

This decision has validated the position of law that no further tax is leviable where the exempt supplies are made to the unregistered persons.

**3. 2022 PTD 207
Appellate Tribunal Inland
Revenue (ATIR)
Mukhtar-ul-Haq Power
Looms VS Commissioner
Inland Revenue Appeal
(CIRA), RTO Faisalabad**

Applicable Sections: 2(5AB), 2(25), 2(14), 2(37), 3, 6, 7, 11, 14, 22, 23, 26, 33(13), 46 of Sales Tax Act, 1990 (ST Act)

Brief Facts

In the instant case, Appellant was engaged in manufacturing and supply of greige cloth on job basis against conversion/weaving charges but no sales tax was paid thereon. During scrutiny of electricity bills and income tax returns, it was observed that the appellant was liable to pay sales tax based on sales declared in the income tax returns for the financial years 2014, 2015, 2016 and 2017; accordingly, the assessing officer claimed sales tax along with default surcharge which was also maintained by CIRA.

Decision

The ATIR accepted appeal and **set-aside the order** on the ground that records relating to income tax cannot be made basis for creating sales tax liability against any

registered person without any other corroborating material evidences for undeclared sales and the learned DR has been miserably failed to bring forth any material evidence whatsoever to substantiate its allegation against the appellant.

**4. 2022 PTD 205
Sindh High Court
Louis Drefus Company
Pakistan (Pvt) Ltd vs
Federal Board of Revenue**

Applicable Sections: 71, 3 & 8 Sales Tax Act (1990):

Brief Facts

The Appellant is an importer of edible Oil and filed a petition to sought input tax adjustment on stocks available as at June 30, 2019.

Previously goods imported by the appellant were taxable under Special Sales Tax Regime, whereby the Sales Tax paid at the time of import of goods was considered to be final.

Through the budgetary measures for the Financial Year 2019-20, special procedure was abolished and instead standard sales tax regime with the right to input tax adjustment introduced with effect from 1st July, 2019.

The importers of edible oil were not given fair opportunity or advantage of adjustment of input on their stock available as at June 30, 2019.

Decision

The case was decided in the **favour of the Petitioner** where by the Honorable court mentioned that importers of edible oil shall be given fair opportunity to maintain equality and based on STGO No. 105/2019 dated September 13, 2019, sales tax paid on stock available as at June 30, 2019 was

allowed to be adjusted against output tax in subsequent months.

5. 2022 PTD 345 Sindh High Court Commissioner Inland Revenue VS Messrs Filters Pakistan (Pvt.) Ltd

Applicable Sections: 11, 11(2), 11(5), 47, 74 Sales Tax Act, 1990 (ST Act)

Brief Facts

The Company received three Show-Cause Notices (SCNs) dated August 21, 2017 under section 11(2) of ST Act, whereby the Tax officer alleged that the applicant had not charged and discharged the collection of Sales Tax at the requisite rate during the period from December 2011 to June 2012.

The assessee argued that the said SCNs were time barred and the period mentioned under section 11(5) of ST Act had been lapsed and secondly, the sales tax was adequately charged at the applicable rate of 5%.

The assessing officer treated above explanation to be unsatisfactory and passed the adverse order which was also maintained by the Commissioner Inland Revenue Appeals (CIRA) but vacated by the Tribunal. The Commissioner being an applicant approached the High Court by filing reference application gains the order of Tribunal.

Decision

The reference made by the department against the impugned **order** issued by Appellate Tribunal **was dismissed** by the Court on following grounds:

- i. The SCNs issued on August 21, 2017 had already become time barred u/s 11(5) of the ST Act which can be issued within 5 years from the relevant date.

- ii. In this case, High Court established that the powers of the Commissioner to condone the time limit are exercisable in the matter where proceedings are pending or the notice has been initiated, which means an action has already triggered, and not at the belated stage when the time has already lapsed. As in the instant case the Commissioner condoned time for the issuance of show-cause notice alone through a letter dated November 11, 2017, it was thus a past and closed transaction and the rights were undoubtedly accrued in favour of the assessee / respondent.

6. 2022 PTD 368 Inland Revenue Appellate Tribunal M/S Saleem Battery Center Vs Commissioner IR (Appeals), RTO Faisalabad

Applicable Sections: 2(9), 3, 3(B), 6, 7, 11, 22, 23, 25, 33, 33(19), 34, 72B, 73 of the ST Act
58S, 58T of the Sales Tax Special Procedure Rules, 2007. (the Rules)

Brief Facts

The Appellant is a registered person running its business as an authorized distributor of storage batteries. The Commissioner issued show-cause notice, through which short levy of sales tax of Rs. 762,238 was confronted on supplies made by the Appellant under section 11(2) of the ST Act, along with penalty and default surcharge.

The Appellant argued that it was engaged in business of sales of Storage Batteries falling at Sr. No. 7 of the Table provided in Chapter XIII of the Rules and had to pay sales tax at the rate of 17% along with 2% extra sales tax at the time of purchase of such batteries and its subsequent supplies were exempt from 'payment' of sales tax under sub-rule

(5) of Rule 58T of the Rules; however, the assessing officer had adjudged aforementioned sales tax liability along with Penalty and Default Surcharge, by passing the order under section 34 and 33 of the ST Act which was also confirmed by the Commissioner Inland Revenue Appeals (CIRA).

Decision

The Impugned **Order of CIR(A) was set-aside** by the Tribunal while accepting the above arguments of the Appellant that the supplier is not liable to pay sales tax as per said sub rule (5) of the Rule 58T and the Appellant has not collected any extra tax as contemplated by the assessing officer u/s 3(B) of the ST Act.

7. 2022 PTD 390 Sindh High Court Commissioner Inland Revenue ZONE-I VS M/S Faizan Steel

Applicable Sections: 3, 3(1)(A), 47, 71 Sales Tax Act, 1990 (ST Act) 58H, 58F, 58G Sales Tax Special Procedure Rules, 2007 (the Rules)

Brief Facts

The Commissioner filed petition against the order of the Tribunal, wherein the Tribunal set aside the order of Commissioner to claim further tax under section 3(1A) of the ST Act from the Company, engaged in the manufacturing of re-roller / re-melter of steel and Iron products.

Decision

The high court dismissed the petition of the department on following grounds:

- i. Where the law has prescribed a particular mechanism for a particular

sector, then the same shall be followed, accordingly. Law prescribes special tax regime, therefore, the normal tax regime shall not be applied for recovery of additional sales tax under section 3(1)(A) of the ST Act

- ii. The Taxpayer makes payment of sales tax at the rate of 9 (nine) rupees per unit of electricity consumed in the production process as per Rule 58H of Chapter 11 of the Sales Tax Special Procedure Rules, 2007; therefore, further sales tax in terms of Section 3(1A) of the ST Act on supply of goods shall not be applicable.

8. 2022 PTD 392 Appellate Tribunal Inland Revenue (ATIR) United Finishing Mills Limited Vs Commissioner Inland Revenue

Applicable Sections: 8, 11, 45-B, 45B(3) Sales Tax Act, 1990 (ST Act)

Brief Facts

The appellant was registered under the Sales Tax Act, 1990 as manufacturer cum exporter engaged in making of Zero Rated supplies of textile and textile articles, thereof.

The appellant received Show Cause Notice (SCN) based on discrepancies transmitted and reported through Computerized Risk Based Evaluation of Sales Tax (CREST). In the SCN sales tax was confronted on supplies made to unregistered persons or non-verifiable invoices during July 2011 to February 2013.

The appellant failed to respond the SCN and accordingly, the order was passed against the appellant. Subsequently on an appeal of the Company filed before the Commissioner Inland Revenue Appeals (CIRA), the CIRA

remanded the matter back to the department for re-adjudication after verification.

Feeling aggrieved of the Order of CIRA, the appellant filed appeal before the Appellate Tribunal.

Decision

The ATIR set aside the assessment order and the order passed by CIRA in favour of Appellant and decided the case in following manner:

- i. CREST was enacted with effect from June 2013 and tax period for which the appellant is charged for tax pertains to July 2011 to February 2013, accordingly, the application of CREST shall not be made retrospectively, so the assessment order is void.
- ii. The CIR(A) was supplied with the relevant record sufficient for making decision on merit; however, despite having powers to enquire, the CIRA's decision of opting to remand the case back, was in contrast to section 45B(3) of the Act.

Sindh Sales Tax on Services Act, 2011 (SSTSA)

Reported Decisions

1. (2022)125 TAX 203 Sindh High Court Karchi Golf Club (Pvt) Ltd. VS Sindh

Applicable Sections: 2(79), 3, 4(3)(b) of Sindh Sales Tax on Services Act, 2011 (SST Act)
Rule 42(2)(a) of Sindh Sales Tax on Services Rules, 2011 (SST Rules)

Brief Facts

This case was related to determine whether sales tax is applicable on membership / entrance fees and subscription charges (monthly and / or annual), received by clubs, from their members.

Decision

It was decided by the honorable court that membership/entrance fees and subscription charges are not taxable on the following premises:

- i. Fees paid by members to their clubs is not an economic activity but it is a contribution for their mutual benefit on the basis of doctrine of mutuality. The **doctrine of mutuality** is premised on the theory that a person cannot make a profit from himself.
- ii. The subscription charges, membership or entrance fee give entitlement to the facility and the benefit therein. The fee is payable irrespective of the facilities are availed or not.
- iii. Membership / entrance fees and subscriptions charges (monthly and / or annual), obtained by members' clubs from their members, do not fall

within the purview of sales tax, as per reading of the Act synchronized with the doctrine of mutuality.

- iv. The Sindh Revenue Board does not have the legal sanction to recover any amounts from members' clubs, in respect of activities covered by the doctrine of mutuality, and any show cause / demand notices, or constituents thereof, issued to members' clubs in such regard are legally void.

2. (2022)125 TAX 239 Sindh High Court Sami Pharmaceuticals (Pvt) Ltd and others VS Sindh

Applicable Sections: Rule 37 and 42(E) of Sindh Sales Tax on Services Rules, 2011 (SST Rules)

Brief Facts

The petitioners in this case were either service providers or recipient of labor, manpower and human resource services who were aggrieved by Notification No. SRB-3-4/12/2017 dated June 05, 2017 issued by Sindh Revenue Board ("SRB") pursuant to which, proviso to Rule 42(E) of the Sindh Sales Tax Rules, 2011 ("2011 Rules") was deleted / omitted. As a consequence thereof, the Petitioners were asked to pay Sales Tax on such services on the gross amount of receipts, including the amounts which are reimbursed to the service providers in lieu of salaries and wages etc.

Decision

The high court decided the matter in favour of the petitioners in the following manner:

- i. The impugned action and interpretation arrived at by SRB were contrary to the SST Act itself. It is only the quantum and value of service which is taxable in these cases and not the amount being reimbursed by the service recipient.
- ii. Though the proviso had earlier provided certain clarification as to the levy of tax on services in question; however, such proviso seemed to be superfluous as even the omission of the proviso could not have any implication to require the petitioners to pay sales tax on the entire gross amount in question as it is only the quantum of service rendered and the amount thereof which could be taxed under the SST Act.
- iii. The scope of Section 72 of the SSTSA for making rules by SRB is to regulate the mechanism and to achieve the purpose of the Act; but not to impose any tax through rules

This is a very positive decision for the taxpayers, which settles the dispute regarding recovery of sales tax on expenses reimbursement. Under income tax law, the apex courts have already held that reimbursement of expenses not being service income, is not liable to withholding tax subject to the pertinent conditions that such reimbursement is substantiated with proper documentary evidences and tax is deducted on the original transactions.

Punjab Sales Tax on Services Act, 2012

Reported Decision

2022 PTD 320
Appellate Tribunal Inland Revenue (ATIR)
M/S. Shakarganj Foods Product (Pvt.) Ltd. VS
Commissioner PRA,
Faisalabad

Applicable Sections: 14, 32, 60 Punjab Sales Tax on Services Act, 2012 (PSTSA)

Brief Facts

Appellant assailed order passed by Commissioner on the ground that:

- show cause notice was issued by Additional Commissioner but the order was passed by Commissioner without mentioning the reasons for the same; and
- the order was passed in haste without reviewing submitted documentary evidence

Decision

In deciding the case regarding validity of the order, the Tribunal gave the observation that Commissioner is empowered to take up any case falling in the jurisdiction of his subordinates; however, this should be done by mentioning the reasons with proper intimation to the taxpayer, but usually this is not done by the Commissioner which practice is against the spirit of law and it can also vitiate the proceedings and such act amounts to the curtailment of a right of appeal of the appellant.

On the matter of factual verification for which proper opportunity was not provided as pleaded by the Appellant, the tribunal **set-aside the order and remanded back the case** to the **competent authority** for deciding it afresh after giving only one clear opportunity to the appellant for submitting all the required documents/evidence.

Federal Excise Act, 2005

Reported Decision

[A] 2022 PTD 266 Sindh High Court Pakistan Mobile Communications Ltd. VS Federation of Pakistan

Applicable Sections: 6A of Table-II to First Schedule Federal Excise Act, 2005 and Entry No. 49 of the federal legislative list given in Part-I of the Fourth Schedule to the Constitution of Pakistan.

Brief Facts

The petitioner challenged latest amendment in Federal Excise Act, 2005 vide Finance Act, 2021 whereby Entry 6A (levy of FED on calls exceeding 5 minutes) was introduced in Table-II of First Schedule to Federal Excise Act, 2005 (FE Act) and claimed that the amendment is ultra vires the constitution after the 18th amendment, by which tax on services is a provincial domain.

Decision

Sindh High Court allowed the petition and termed the Entry 6A to Table-II of First Schedule being ultra vires to the constitution and struck down the amendment on following grounds:

- i. 18th amendment added "exception" in entry No. 49 of the federal legislative list given in Part-I of the Fourth Schedule to the Constitution of Pakistan, which is reproduced as "Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services". This exception has two primary effects. Firstly, it recognizes provincial domain of taxing services; secondly, it has also been noted that the constitutional scheme does not envisage a sharing of a

taxing power. The real effect of the "exception" provided in entry no. 49 of the Constitution is to "shift" the taxing power in relation to the taxing event of rendering or providing of services from the Federation to the Provinces.

- ii. It is an established principle that if there is a conflict between a provision of a statute and that of constitution then the constitution shall prevail.
- iii. This court has already decided in its earlier decision that after 18th amendment, the right of taxing the services now rests with the provinces.

Contact us

For more information you may contact

Atif Mufassir

Partner - National Leader Tax & Legal
Email: amufassir@yousufadil.com

Zubair Abdul Sattar

Partner Tax & Legal
Karachi office
Email: zsattar@yousufadil.com

Rana Muhammad Usman Khan

Partner
Lahore office
Email: rmukhan@yousufadil.com

Imran Ali Memon

Partner Tax & Legal
Karachi Office
Email: immemon@yousufadil.com

Arshad Mehmood

Senior Advisor Tax & Legal
Karachi office
Email: amehmood@yousufadil.com

Sufian Habib

Director Tax & Legal
Islamabad office
Email: sufianhabib@yousufadil.com

Our offices

Karachi

Cavish Court, A-35, Block 7 & 8
KCHSU, Shahrah-e-Faisal
Karachi - 75350, Pakistan

 Phones: + 92 (21) 34546494-97
 Fax : + 92 (21) 34541314
 Email: sghazi@yousufadil.com

Islamabad

18-B/1
Chohan Mansion, G-8 Markaz
Islamabad, Pakistan

 Phones: + 92 (51) 8350601, + 92 (51) 8734400-3
 Fax: + 92 (51) 8350602
 Email: shahzad@yousufadil.com

Lahore

134-A, Abubakar Block
New Garden Town, Lahore, Pakistan

 Phones: + 92 (42) 35913595-7,
35440520
 Fax: + 92 (42) 35440521
 Email: rmukhan@yousufadil.com

Multan

4th Floor Mehr Fatima Tower,
Opposite High Court,
Multan Cantt, Multan, Pakistan

 Phones: + 92 (61) 4571131-2
 Fax: + 92 (61) 4571134
 Email: rmukhan@yousufadil.com

About Yousuf Adil

Yousuf Adil, Chartered Accountants provides Audit & Assurance, Consulting, Risk Advisory, Financial Advisory and Tax & Legal services, through nearly 550 professionals in four cities across Pakistan. For more information, please visit our website at www.yousufadil.com.

This publication contains general information only and is not intended to address the matters of any particular individual or entity. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor. No representations, warranties or undertakings (expressed or implied) are given as to the accuracy or completeness of the information in this publication, and nor the Firm, its employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this publication.