

# Tax Bulletin

April 2023

# Foreword



This publication contains brief commentary on Circulars and SROs issued during March 2023 and important reported decisions.

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**Karachi**  
**April 19, 2023**

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# Executive Summary

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2.	2023 PTD 223	<b>COLLECTION OF UN-ADJUSTABLE ADVANCE INCOME TAX IS UNLAWFUL AND UNCONSTITUTIONAL</b>  LHC held that advance tax collected from the persons who do not have the tax liability to set off that withholding or are not subject to filing of return, is beyond comprehension and contrary to the basic rights of the citizens vested under the Constitution.	7
3.	2023 PTD 186	<b>RE-ASSESSMENT OF TAXPAYERS' CASE ALREADY ASSESSED PREVIOUSLY WILL NOT RESULT IN CHANGE OF OPINION. ISSUANCE OF SHOWCAUSE NOTICE IN SUCH A CASE IS NOT BARRED BY LAW AND SHALL BE COMPLIED BY TAXPAYERS</b>  Sindh High Court has held that tax authority is empowered to re-assess or further assess the affairs of the taxpayers for the same tax year. Show cause notice issued in this respect are not barred by law nor will result in change of opinion formed through earlier assessment made by the tax authority. Taxpayers cannot bypass appellate forums below the High Court in case of adverse order or upon issuance of mere show cause notice.	8
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# Income Tax Ordinance, 2001

## Direct Tax – Reported Decisions

### **1. MONITORING OF WITHHOLDING TAXES SHALL BE CONDUCTED IN THE PRESCRIBED MANNER**

**2023 PTD 179  
APPELLATE TRIBUNAL INLAND  
REVENUE**

**MESSRS SUPER VICTORIA STORE,  
LAHORE  
VS  
COMMISSIONER INLAND REVENUE,  
RTO, LAHORE**

**APPLICABLE SECTIONS: 161 OF THE  
INCOME TAX ORDINANCE, 2001 (THE  
ORDINANCE)**

#### **Brief Facts:**

The appellant / taxpayer is an AOP deriving income from running a departmental store. The Assessing Officer (AO) examined return for tax year 2016 and monthly withholding statements filed under section 165 of the Ordinance. The AO noted that the taxpayer, being withholding agent, failed to deduct taxes while making payments against the various heads of expenses and accordingly passed the order under section 161/205 of the Ordinance against the taxpayer.

Being aggrieved by order of the AO, the taxpayer filed an appeal before the CIRA, who also confirmed the order of the AO and, accordingly, the taxpayer filed appeal before ATIR by taking plea that information or details submitted by the taxpayer during the proceedings have not been entertained by the both the authorities below.

#### **Decision:**

The ATIR accepted the appeal filed by the taxpayer and vacated the orders of the authorities below in the following manner:

- It was not established that the taxpayer is withholding agent under the provisions of the Ordinance for the purpose of deduction of taxes at source.
- AO failed to bring on record a single instance of default in terms of withholding provisions of the Ordinance.
- AO failed to take into consideration the fact that whether alleged tax amount was paid by the person whose tax was to be deducted by the taxpayer.
- Alleged tax demand is based on assumptions as no specific transactional entries have been confronted or highlighted by the AO.

### **2. COLLECTION OF ADVANCE INCOME TAX FROM PERSONS, WHO ARE NOT LIABLE TO PAY TAX, IS UNLAWFUL AND UNCONSTITUTIONAL**

**2023 PTD 223  
LAHORE HIGH COURT**

**RAO TARIQ ISLAM  
VS  
FEDERATION OF PAKISTAN  
APPLICABLE SECTIONS: 236D OF  
INCOME TAX ORDINANCE, 2001 (THE  
ORDINANCE)**

### Brief Facts:

The taxpayers through various petitions approached the Lahore High Court [the LHC] to challenge the vires of collection of advance tax in the cases where the withholders are not liable to pay income tax or file income tax return under the provisions of the Ordinance. It was also pleaded that imposing an obligation of tax collections on private persons ignoring reasonability and prejudice to the business offends the basic constitutional rights of the citizens of Pakistan.

It is important to note that there are number of instances where advance tax is collected from the persons (e.g. on account of mobile bills) who do not have the liability to set off that withholding or are not subject to filing of return. The Tenth Schedule is examined, insertion of which is admission of legal position that a person not required to file return and pay tax, cannot be subjected to advance tax. The procedure in its Rule 2 is impracticable and unreasonable, whereby the person receiving the bill (withholding agent) or the person from whom the tax is to be collected, is burdened to issue notice to the Commissioner for knowing whether a person is liable to file return and wait for thirty days before finalizing the bill, with or without collection of advance tax.

### Decision:

The LHC accepted the petitions, continued the interim relief already granted in the subject petitions and directed the respondents to work on relevant amendments in the Ordinance and submit the report within ninety days from the date of judgment. The LHC pronounced the following highlights of the subject matter in hand:

- Burden of tax compliance to collect and deposit another's tax without any remuneration or concession in tax liability needs to be revisited by the Government and tax administrators as well.

- Collection of advance tax without considering its adjustment against the tax liability is confiscatory and expropriatory.
- The act of the Parliament, levying a tax, should not offend any of the fundamental rights guaranteed by the Constitution.

### **3. RE-ASSESSMENT OF TAXPAYERS' CASE ALREADY ASSESSED PREVIOUSLY WILL NOT RESULT IN 'CHANGE OF OPINION'. ISSUANCE OF SHOWCAUSE NOTICE IN SUCH A CASE IS NOT BARRED BY LAW AND SHALL BE COMPLIED BY TAXPAYERS**

**2023 PTD 186  
SINDH HIGH COURT**

**RELIANCE PETROCHEM INDUSTRIES (PVT.) LTD  
VS**

**FEDERATION OF PAKISTAN**

**APPLICABLE SECTIONS:** 122 (5A), 177 and 122(9) of the Income Tax Ordinance, 2001

### Brief Facts:

Taxpayer company filed its return of income for tax year 2014. Tax department issued show cause notice under section 122 (5A) of the Ordinance and thereafter closed the assessment through order under section 122(5A) of the Ordinance. Later on, tax department selected the taxpayer for audit and issued notice under section 177 along with show cause notice under section 122(9) of the Ordinance for the same tax year. Feeling aggrieved, the Petitioner filed the instant constitutional petition before the Honorable Sindh High Court contending following grounds:

- a) Assessment order under section 122(5A) of the Ordinance has already been passed by the tax authority. Audit under section 177 of the Ordinance cannot be conducted and show cause notice under section 122(9) of the Ordinance cannot be issued for the same tax year as this would result in change of opinion formed through earlier assessment order.



b) On the question of maintainability of petition, it was contended that since the assessment order has already been passed for the same tax year, issuance of another show cause notice under section 122(9) read with section 177 of the Ordinance was illegal and also an abuse of process of law. Therefore, the petition is maintainable.

#### **Decision:**

The Sindh High Court decided the case in favor of tax department, in the light of its earlier judgments and a judgement of Supreme Court of Pakistan, as follows:

- a) The impugned show cause notice is neither barred by law or abuse of power nor the instant case is of change of opinion.
- b) The petitioner is directed to appear before tax authority and file proper reply of all queries raised in the show cause notice; whereas, the tax authority is directed to consider all replies along with documents and decide the matter strictly in accordance with law through a well-reasoned and speaking order within one month's time.

#### **4. DEEMING PROVISIONS UNDER SECTION 7E AND EXCLUSION OF CERTAIN PERSONS FROM LEVY OF TAX UNDER THE SAID SECTION IS ULTRA VIRES TO THE CONSTITUTION**

**LAHORE HIGH COURT  
WRIT PETITION NO. 52559 OF 2022.  
MUHAMMAD OSMAN GULL.  
VERSUS  
FEDERATION OF PAKISTAN ETC.**

#### **Brief Facts:**

Through this judgement, the Honorable Lahore High Court decided 1057 writ petitions challenging competence of the Federal Government to levy tax on immovable property through insertion of section 7E vide Finance Act, 2022. Tax at the rate of 20% was levied on deemed income i.e. 5% of the Fair

Market Value of a capital asset. Capital asset is defined in the said section in such a way that only immovable property fell in the ambit of said levy of tax subject to certain exemptions. Following arguments were taken by the petitioners:

- a) Petitioners claimed that the taxation under Section 7E is ultra vires of Federal Legislature's field of competence, listed in Entries 50 (post eighteenth amendment) and 47 of Fourth Schedule to the Constitution.
- b) Federal government made an attempt to overcome impediment, by employing legal fiction, created through 18<sup>th</sup> constitutional amendment, whereby, immovable property was completely ousted from Federal legislature's competence. Therefore, Entry no. 47 cannot include, through employment of legal fiction i.e. by insertion of Section 7E, tax on immovable property under the garb of deemed income from immovable property.
- c) Exclusions of certain persons under clause (d) of sub-section (2) of section 7E has resulted in discriminatory treatment among the taxpayers in the light of several reported judgments.

#### **Decision:**

The Lahore High Court decided that the deeming provision under section 7E which treats fair market value of immovable property as 'income' is ultra vires to the constitution. Further, the LHC held that exclusion of certain persons from taxation under section 7E is not consonance with Article 25 of the constitution, being discriminatory. Therefore, the Court allowed the petition to below extent and held that:

- (i) To treat the market value of immovable property as income under Entry 47 is beyond the competence of Federal Legislature, hence is declared as ultra vires.

(ii) Tax on capital value of assets (excluding immovable properties) is well within the competence of Federal Legislature under Entry no. 50; however, the said entry requires Capital Value of Assets to be valued as a whole and taxed inseparably (i.e. both movable and immovable capital assets). Whereas, the provisions of Section 7E does not bring movable capital

assets within its folds. Federal Government may carry out curative legislation to bring the taxation of Capital Value of Assets within the mandate of Entry no. 50.

(iii) Exclusion of persons under clauses (i), (iii) and (iv) of Section 7E (2) (d), is discriminatory, offending the Article 25, therefore, are declared ultra vires.

# Sales Tax Act, 1990

## A. Sales Tax General Orders (STGOs)

### I. STGO No. 08 of 2023, DATED MARCH 10, 2023

#### 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 as defined in section 2(43A) of Sales Tax Act, 1990 (ST Act).

Vide the subject STGO, a list of further 100 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by March 10, 2023. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of February 2023 would be disallowed up to 60% as per sub-section (6) of section 8B of the ST Act, without any further notice or proceedings, thus creating tax demand by the same amount.

Any of the notified retailers who claims itself to have been wrongly notified as Tier-1 Retailer and whose input tax adjustment has been reduced by 60%, may file online application on IRIS portal for removal of this restriction following the procedure laid down in STGO No. 17 of 2022, dated May 13, 2022 and the Commissioner would decide the case in this regard.

### II. STGO No. 09 of 2023, DATED MARCH 15, 2023

#### Sales Tax Refund to Manufacturers of Five Export Oriented Sectors Textile Carpet Leather Surgical & Sports Goods

FBR, after detailed deliberation and consultation with Customs authorities, Textile Exporters Association of Pakistan, Hosiery Manufacturer Association, IOCO Directorate, Consultants on Textile Sector study and Inland Revenue officers, has upgraded automated Sales Tax e-Refund System ("FASTER") to ensure certainty, transparency and truthfulness in processing of sales tax refunds.

Following alterations/upgradations will be applicable since the return filed in March 2023:

- i. Value addition check shall be 15% both for exports and local supplies for filing of Annex-H for current tax period.
- ii. The total amount of refund paid against the claims filed and processed shall not exceed the lower of:
  - a. the amount of input tax actually consumed in goods as exported/supplied at zero-rated rate; or
  - b. 12% of the exports.

Inadmissible inputs in terms of Section 8 of the Sales Tax Act, 1990 shall not be allowed during processing of refunds through FASTER.

- iii. Input tax adjustment shall not be allowed to the manufactures of the five export-oriented sectors on goods not pertaining to their business activity. For this FBR has identified a list of 717 of such negative items which inter-alia include various taxable services.
- iv. Suppliers who are blacklisted or have an abnormal tax profile shall not be processed by FASTER.

Through this STGO, FBR has added following additional risk parameters in FASTER:

- i. FASTER shall defer proportionate input tax refund against export GD under objection.
- ii. Logical check shall be enabled in system to cross match the date of export GD with the date of purchase invoices.
- iii. Total amount of refund sanctioned and refund deferred shall not exceed the total amount of refund claim.
- iv. First claim of refund by newly-registered exporters for first twelve months shall be excluded from FASTER and be processed through STARR / ERS.
- v. Refund claim once excluded from FASTER shall not be allowed to roll back. It shall be processed only through STARR / ERS;
- vi. For refunds claim of commercial exporters, the payment of such refund shall be made after the realization of export proceeds.
- vii. Refund to the exporters against fixed assets shall not be processed through FASTER and shall be paid after verification of installation/utilization by the field formations.
- viii. Expenses incurred on utilities shall be prorated on the basis of consumption between zero rated supplies and domestic sales.

## B. SROs

### 1. SRO 297(I)/2023 DATED MARCH 08, 2023

#### **Sales tax enhanced on luxury items from 18% to 25%**

Through this SRO, the Federal Government has, through exercising powers conferred under section 3(2)(b) read with first proviso to clause (a) of Section 3(2)(a) of the ST Act, increased the applicable sales tax rate to 25% on import

and supplies of certain taxable goods (including certain Third Schedule items) and supply of certain locally manufactured taxable goods, except for the items covered under the Eighth Schedule of the ST Act in which case the applicable reduced rate as per Eighth Schedule, shall continue to apply.

We have already shared the list of such goods with our comments in our last publication dated March 10, 2023.

### 2. S.R.O. 376(1)/2023 DATED MARCH 21, 2023

#### **Special Procedure for Collection and Payment of Sales Tax (Electric Power Supply by DISCOs) Rules, 2023**

FBR has framed special procedure rules for collection and payment of sales tax on electricity by DISCOS and K Electric. The important aspects covered under the Rules are as follows:

##### **a) Filing of Sales Tax Returns:**

Every DISCO shall file monthly sales tax return declaring the amount charged in respect of electricity supplied to consumers, including the adjustment of recovered amount from defaulting consumers in prescribed format of Annexure-G.

Sales tax return shall be filed as per section 26 of the ST Act and the Rules; whereby due date for payment will be 18<sup>th</sup> of the following month for payment and 21<sup>st</sup> for filing of return, mentioned in Rule 18(9) of the Rules.

##### **b) Assistance in recovery of sales tax:**

In case of failure to pay sales tax by the customers despite application of procedures as per Consumer Service Manual, the DISCOs shall furnish in prescribed format of Annexure-A before concerned Commissioner, the details of defaulting consumers based on Equipment Removal Order and the net amount due therefrom after adjustment of security deposit. The details shall be accompanied by signed certificate from CEO of DISCO mentioning that:

- all applicable measures for recovery of the defaulted amount were taken in time along-with removal of the electricity meter;
- legal proceedings have also been initiated against the defaulter;
- no other electricity meter has been installed at the same premises in any other name; and
- no electric power is being supplied or consumed at the premises where the default occurred (excluding already existing connections in different names of separate portions of the premises as laid down under Chapter 8.2.7 of the Consumer Service Manual).

The details shall be submitted manually in excel file, till its electronic submission form is enabled.

## C. Reported Decisions

### 1. SALES TAX WITHHOLDING IS NOT APPLICABLE ON PURCHASES FROM UNREGISTERED PERSONS AFTER JULY 2020

**2023 PTD 305**

**APPELLATE TRIBUNAL INLAND REVENUE  
M/S. BEST PAPER AND BOARD (PVT)LTD  
Vs.  
COMMISSIONER INLAND REVENUE**

**Applicable Provisions:** Section 13 and Sixth schedule of the Sales Tax Act, 1990 (ST Act)

#### Brief Facts:

The Appellant was issued a show-cause notice under section 11(2) and 11(4A) of the ST Act for the period December 2017 to August 2020, alleging failure to withhold sales tax in respect of purchase of paper waste made from un-registered persons at the rate of 1% of the value of taxable supplies for the period up to June 30, 2019 and at the rate of 5% of the gross value of supplies with effect from July 1, 2019.

The Appellant contended the matter as follows:

- Payments made against purchases of raw material, used for manufacturing of paper board, such as wheat straw falling in H.S. Code 1213 (cereal straw and husk) of the Pakistan Customs Tariff which were exempt from levy of sales tax. Moreover, wheat straw was otherwise also exempted from levy of sales tax as per Sr. No. 10 of the Table-II of Sixth Schedule of the Act.
- Goods purchased were exempt or were otherwise procured from the persons falling in cottage industry as defined under section 2(5AB) who are not liable to be registered under the Act. Therefore, the appellant was not required to withhold sales tax on payments for purchases made from the persons not liable for sales tax registration under the ST Act as the goods supplied by such persons were not subject to levy of sales tax. In this regard, the appellant relied upon the judgement of SHC in case of 'Glass Bangles Manufacturers'.
- Furthermore, the condition for chargeability of withholding sales tax regarding purchases from un-registered person was amended with effect from July 1, 2020 and onwards. It is for the companies as defined in the Ordinance, 2001 (XLIX of 2001) to deduct and to withhold sales tax on the payments made to the persons other than active taxpayers. In this regard, as such, no withholding tax was to be deducted anymore from the payments made to unregistered persons instead it is collectable only from those registered persons who are otherwise; found non-active at e-portal of the Federal Board Revenue.

The assessing officer adversely adjudged without considering reply of the Appellant. Being aggrieved by the order in original, the registered person preferred an appeal before the Commissioner (Appeals) who decided the matter in favor of the tax department. The registered

person preferred a second appeal before the Appellate Tribunal Inland Revenue (ATIR).

### Decision:

The ATIR agreed with the contention of the registered person that after July 01, 2020, withholding of sales tax is applicable on payments against supplies made by registered persons being non-active on e-portal; therefore, the ATIR ordered to delete the demand created on account of default in sales tax withholding on purchases made from unregistered persons after July 01, 2020.

Regarding the purchases made before July 01, 2020, the ATIR remanded back the matter with following directions:

The assessing officer should:

- separate purchases of wheat straw and waste paper and review the matter afresh and
- verify the claim of the registered person that the purchase of paper waste was purchased from the persons falling in the cottage industry.

## 2. DECLARATION OF IMPORTED GOODS IS DOMAIN OF CUSTOMS

**2023 PTD 264**

**SINDH HIGH COURT  
COMMISSIONER INLAND REVENUE Vs.  
M/S. NEW ALLIED ELECTRONICS  
INDUSTRIES (PVT) LTD**

**Applicable Provisions:** Sections 32, 47, 11(3), 11(4), 33(5) and 45B of the ST ACT Section 79, 193 and 195 of the Customs Act, 1969.

### Brief Facts:

The respondent registered person was issued with a show cause notice under section 33(5) read with section 34 of the ST Act wherein the matter confronted was of mis-declaration of the category of imported mobile phones in terms of SRO 469(I)/2013. It was alleged that the

respondent allegedly imported smart phones but misdeclared their specification at import stage and paid Rs. 250 for each mobile set as sales tax instead of Rs. 500 as required in case of smart phones under the aforesaid SRO. The department passed the order to recover sales tax along with penalty of 5% and default surcharge.

Being aggrieved, the respondent preferred an appeal before the Commissioner – Appeals who upheld the department's order. Subsequently, second appeal was filed by the respondent before the ATIR wherein the matter was decided in favour of the respondent.

The department, being aggrieved by the order of ATIR, filed a reference application before Sindh High Court (SHC) with following questions of law:

1. Whether on the facts and circumstances of the case, the learned Tribunal was justified to hold the orders of lower forums, as void when subsections (3) and (4) of Section 11 of the ST Act provide for the recovery of sales tax short levied due to collision or deliberate act or inadvertence, error or misconstruction?
2. Whether on the facts and circumstances of the case, the learned Tribunal was justified to hold the orders of lower forums, as void when the respondent did not declare the true specification of their Cell phones as Smart Phones, where sales tax was chargeable at Rs.500 per phone under SRO 460(I)/2013?

### Decision:

The Hon'ble Court dismissed the instant reference application, with answering the questions in favour of respondent on the premise that determining declaration of imported goods is the domain and jurisdiction of Collectorate of Customs and the dispute of classification was never raised by the customs authorities.

### 3. EXEMPTION OF SALES TAX ON SUPPLY OF ELECTRICITY TO INDUSTRIAL UNITS IN PATA

**(2023)127 TAX 338**  
**APPELLATE TRIBUNAL INLAND REVENUE**  
**M/S A.K TARIQ FOUNDRY & OTHERS**  
**VS GOVERNMENT OF PAKISTAN**

**Applicable Provisions:** Sections 3(1), 13, Entry No. 152, Table-I, Sixth Schedule of the ST Act  
 Article 18, 25 & 247(3) of Constitution of Pakistan, 1973 (the Constitution)

#### Brief Facts:

The Petitioners are the manufacturers in the former Pakistan Administered Tribal Authorities (PATA), in this petition. They challenged exclusion from sales tax exemption on supply of electricity, provided by entry No. 152, Table-I, Sixth Schedule of the Act.

The said entry excludes Steel, Ghee & Oil manufacturers and industrial units established after May 31, 2018 in Tribal areas, from availing sales tax exemption on supply of electricity.

#### Decision:

Petition was partially allowed to all manufacturing units regardless of their establishment date; however, the restriction on exemption maintained for manufacturers of Steel, Ghee & Oil being a separate class of persons. The Honorable Peshawar High Court evaluated the vires of entry No. 152, Table-I, Sixth Schedule of the Act against the Article 25 of the constitution as follows:

- The legislature under Article 18 & 25 of the Constitution, has the authority to device different tax mechanism for different class of persons and apply that mechanism unanimously among that class, but the classification/discrimination should not create a disadvantage to some persons categorized in a same class.
- The legislature under entry No. 152, Table-I, Sixth Schedule of the Act [read with Article 247(3) of the Constitution now omitted], has identified manufacturers of Steel, Ghee & Oil

in PATA as a separate class of persons and has rightfully withheld exemption of sales tax on supply of electricity to them.

- The exemption however cannot be restricted to a certain manufacturers of same class with respect to their date of establishment (before May 31, 2018) which otherwise will create an economic disadvantage to other manufacturers within the same class/category which only got registered after May 31, 2018.
- The petition of all petitioners (sole proprietors, association of persons & Companies) are valid petitions and decision is applicable on all petitioners regardless being natural or juristic persons.

### 4. ARTIFICIAL LEATHER IS LEATHER AS PER SRO 1125

**(2023)127 TAX 444**  
**SINDH HIGH COURT**  
**M/S M. IQBAL & SONS & OTHERS VS**  
**FEDERATION OF PAKISTAN & OTHERS**

**Applicable Provision:** Sales Tax Act, 1990 sections 3(1), 3(1A)

**Applicable SROs:** SRO 1125, 777 and 1070

#### Brief Facts:

The Petitioners are importers of artificial leather and the petitions filed involved controversy as to whether the imported goods i.e. Artificial Leather is covered under SRO 1125(I)/2011 dated December 31, 2011 (SRO 1125) for exemption/reduction on sales tax under the head of Leather Industries.

In 2017, the department denied exemption/reduction on sales tax on import of artificial leather on the premise that artificial leather is not covered under the term "Leather" as per SRO 1070(I)/2017. Consequently, the department framed a view that SRO 1125 does not apply to artificial leather and exemption in this respect was restrained.

Being aggrieved, the Petitioners filed appeal before Sindh High Court (SHC), meanwhile, FBR issued notification No. SRO 777(I)/2018 dated



June 21, 2018, whereby artificial leather was included in the scope of the term "Leather". However, the retrospective effect of the said SRO was in question.

### Decision:

The case was decided in favor of the Petitioners allowing exemption in case of artificial leather and a retrospective effect was given to the SRO 777 on the following basis:

- The Respondent council failed to justify as to why such exemption/ reduction on sales tax in respect of artificial leather was denied in 2017 on the basis of SRO 1070 whereas the said SRO was issued in 2011 and during this time, exemptions have been seamlessly granted.
- No basis was provided on the department's view that artificial leather is not included in the term "Leather".
- It is a settled proposition that a notification which confers a benefit or right to a person can be given retrospective effect, whereas the notification which disturbs or impairs a vested right of a person or creates a new liability cannot be applied retrospectively in the absence of a legal sanction to that effect.

### 5. Sales tax on written-off assets being covered under the ambit of taxable supply

**(2023)127 TAX 335  
ISLAMABAD HIGH COURT  
OIL AND GAS DEVELOPMENT COMPANY  
LIMITED V/S COMMISSIONER INLAND  
REVENUE**

**Applicable Provision:** Sections 2(41), 11 of Sales Tax Act, 1990

### Brief Facts:

The Petitioner was issued show cause notice requiring explanation as to why sales tax should not be recovered on sale of plant and machinery for the years 2008 and 2009, to which the Petitioner responded that the plant and machinery disposed-off had already been written

off and therefore, could not constitute 'taxable supplies'. Dissatisfied from the submission, order was issued to the Petitioner for payment of the sales tax along with penalty and default surcharge.

Having being decided against in each lower fora, the Petitioner filed appeal before Islamabad High Court seeking relief on single legal plain as whether disposal of already written-off assets constitute taxable supply.

### Decision:

Petition was decided against the Petitioner on the ground that Sales Tax Act, 1990 does not exempt the disposal or sale of written off or condemned assets to be exempt from the payment of sales tax and the same falls under the ambit of taxable supplies 2(41) of the Sales Tax Act, 1990.

### 6. EXEMPTION CERTIFICATE IS REQUIRED FOR CLAIMING EXEMPTION FROM TAX

**(2023)127 TAX 332  
SINDH HIGH COURT  
TRANS WORLD INTERNATIONAL INC  
(TWI) V/S CUSTOMS, FEDERAL EXCISE  
& SALES TAX TRIBUNAL & OTHERS**

**Applicable Provision:** Sections 11 of Sales Tax Act, 1990

### Brief Facts:

The Petitioner imported television, cameras and equipment while claiming exemption from duties/taxes. The Petitioner submitted undertaking stating that it would obtain and submit the relevant exemption certificate within fifteen days; however, the same was never submitted.

Consequently, department conducted proceedings for recovery of sales tax, which the petitioner refuted by taking shelter of SRO 593(I)/91.

The Petitioner built his case on the premise that since he has been covered under exemption from income tax as per clause (v) of SRO 593(I)/91 i.e. exemption to "persons who import plant or



machinery for execution of a contract with the Federal Government or a Provincial Government and produce a certificate from the Government”; hence should be allowed viz-a-viz exemption of sales tax.

The department did not accept the explanation and accordingly an order was issued to the Petitioner for payment of duties and taxes, which was upheld by all appellate forums until the Petitioner filed appeal before Sindh High Court seeking relief on legal cum factual plain, for the determination of circumstances that would evident the grant of income tax exemption as per clause (v) of SRO 593(I)/91 and thereby would automatically vires the tax exemption.

#### **Decision:**

Petition was decided against the Petitioner on following factual grounds:

- Petitioner accorded course of action of claiming exemption of income tax as per clause (v) of SRO 593(I)/91 contrary to his former commitment to submit relevant exemption certificate within 15 days of import of consignment.
- Petitioner remained unable to demonstrate the import of any plant and machinery in the execution of any contract with the Government that would entitle him for claiming exemption as per clause (v) of SRO 593(I)/91.
- The Petitioner failed to demonstrate the existence of any pertinent exemption certificate.

# Sindh Sales Tax on Services Act, 2011

## Notification

### **SRB-3-4/15/2023 DATED MARCH 25, 2023**

SRB through its notification has extended the applicability of earlier notification No. SRB 3-4/36/2022, to June 30, 2023. Through the original notification, SRB exempted Sindh sales tax payable on certain specified taxable services as certified by NDMA and PDMA to be meant for flood relief operations in Sindh Province.

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