

Tax Bulletin

AUGUST 2023



Foreword



This publication contains brief commentary on Circulars and SROs issued during July 2023

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Karachi
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Contents

Executive Summary	04
Income Tax Ordinance, 2001	
A. SRO & Circular	08
B. Reported Decisions	09
Sindh Sales Tax on Services Rules	
A. Notifications	15
Khyber Pakhtunkhwa Sales Tax on Services Act, 2022	
A. Notification	18
Balochistan Sales Tax Act on Services, 2015	
A. Finance Act, 2023	19
Sales Tax Act, 1990	
A. Reported Decisions	28

Executive Summary

Direct Tax – SROs / Circulars			
S.No.	Reference	Summary / Gist	Page No.
1.	S.R.O. 934(I)/2023	Through this SRO, amendment made vide S.R.O. 842(I)/2023 dated July 5, 2023 in Rule 40D, Chapter IX, Part IA, Division III of the Income Tax Rules, 2002 has been approved by the FBR.	08
2.	Circular No. 01 of 2023-24	Through this SRO, FBR has issued instructions regarding mode and manner for payment of tax under section 7E of the Income Tax Ordinance, 2001 on sale or transfer of immovable property.	08
3.	Circular No. 02 of 2023	Through this SRO, FBR has issued explanation on various significant amendments brought via Finance Act, 2023 in the Income Tax Ordinance, 2001.	09
Direct Tax – Reported Decisions			
1.	(2023) 127 TAX 757	<p>UNDER SECTION 210, COMMISSIONER INLAND REVENUE (CIR) CAN DELEGATE, HIS POWERS TO AMEND OR FURTHER AMEND, UNDER SECTION 122(5A) OF THE ORDINANCE.</p> <p>Supreme Court of Pakistan in its judgement upheld the decision of Lahore High Court in which it was held that the CIR can delegate all or any of its powers and functions to any other taxation officer meaning thereby that the notification or order of delegation shall determine the extent of power to be exercised by the delegate taxation officer.</p>	09
2.	(2023) 127 TAX 763	<p>NO CAPITAL GAIN ARISES ON AMALGAMATION</p> <p>Lahore High Court in its decision held that on amalgamation, the transferor company ceases to exist and the amalgamated companies acquire a new status. Court further held that no question of capital gains on amalgamation arise because the amalgamating company does not receive any consideration.</p>	10

S.No.	Reference	Summary / Gist	Page No.
3.	(2023)127 TAX 770	<p>DELETION OF SECTION 214(D) HAS NOT CREATED A VESTED RIGHT TO AVOID AUDIT UNDER SECTION 177 OF THE ORDINANCE AFTER DELETION OF THE SAID SECTION</p> <p>The Sindh High Court held that the petitioners were not selected for audit after omission or deletion of Section 214D and they stood selected automatically due to late filing of return of income. No right or a vested right had accrued upon deletion of section 214(D) of the Ordinance.</p>	11
4.	2023 PTD 732	<p>RECONCILIATION, UNDER RULE 44(4), CANNOT BE CALLED WITHOUT FIRST ENSURING FILING OF WITHHOLDING STATEMENTS</p> <p>The Lahore High Court has held that it is the duty of tax officer to ensure before issuing notice under section 161 of the Ordinance that the withholding statements under sections 165 and 149 of the Ordinance have already been filed by the withholding agent. The court also held that if the tax required to be withheld was already paid by the taxpayer, the tax officer can only proceed to recover default surcharge from the withholding agent.</p>	11
5.	2023 PTD 758	<p>ADJUDICATING POWERS OF THE COMMISSIONER INLAND REVENUE (APPEAL) AND THE APPELLATE TRIBUNAL INLAND REVENUE AS TO REMANDING BACK OR SETTING ASIDE THE ORDERS</p> <p>CIRA cannot remand back the matter to the lower forum rather is bound to decide the matter on merits by confirming, annulling or modifying the orders of authorities below. ATIR is not allowed to annul the remand back orders of CIRA rather matters are required to be referred back to CIRA for decision on merits in accordance with law.</p>	12
6.	2023 PTD 789	<p>THE APPEAL EFFECT ORDER CANNOT BE SUBJECTED TO ISSUES EXTRANEOUS OR ALIEN TO THE APPELLATE ORDER.</p> <p>The appeal effect order cannot be subjected to issues which are not covered under the appellate order issued by the appellate authority. If the Officer feels that wrong assessment had been done, he under the law could proceed with the matter for amendment in assessment subject to prescribed limitation rather than through rectification proceedings and that too against the order of the appeal effect.</p>	13

Amendments in Sindh Sales Tax on Services Rules, 2011, vide Notification No. SRB-3-4/40/2023 Dated July 27, 2023			
S.No.	Reference	Summary / Gist	Page No.
1	Rule 9 - Deregistration	Electronic submission of Form SST-02 with the Board for Deregistration from SRB has been introduced in place of manual filing.	15
2	Rule 12 - Filing of Return	Return not e-filed within four months of the prescribed due date shall only be filed now with the permission of the relevant Commissioner-SRB.	15
3	Rule 42I - IT Services Rule 42J - Call Centre	The time limit for filing reduced rate option is relaxed from the date July 31, 2022 (already passed) to July 21 st of the financial year from which reduced rating is opted.	15
Amendments in Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 vide Notification No. SRB-3-4/41/2023 Dated July 27, 2023			
1.	Rule 1 - Withholding Agents	Changes made to the definition of withholding agents for the purpose of deduction of tax.	15
2.	Rule 2 - Definitions	Introduced definition of Active taxpayer and Active taxpayers list	16
3.	Rule 3 - Withholding rates	Amendments introduced in the rates of withholding sales tax.	16
Sindh Sales Tax Special Procedure (Online Integration of Business) Rules, 2022			
1	Entry 6 of Schedule	Minimum turnover requirement for restaurant POS integration is reduced from 10 million to 5 million.	17
Khyber Pakhtunkhwa Sales Tax on Services Act, 2022			
1	KPRA/Exemption/2023/3677	Exemption granted from KPK sales tax on services in formerly administered tribal areas from July 1, 2023, to October 31, 2023, under certain conditions.	18
Balochistan Sales Tax on Services Act, 2015			
The legislative assembly of Balochistan has approved the Balochistan Finance, Act 2023 (The Act) on July 04, 2023 whereby various changes have been introduced in various laws of Balochistan including the Balochistan Sales Tax on Services Act, 2015.			19
Indirect Tax – Reported Decisions			
1	2023 PTD 763	TERRITORY SPECIFIC EXEMPTION CANNOT BE EXTENDED TO OTHER SETTLED AREAS Peshawar High Court held that territory specific exemption for levy of taxes in respect of tribal areas (FATA & PATA) cannot be extended to apply on persons residing or doing operations in settled areas, to avail exemption from levy of sales tax under Article 247 (repealed) of the Constitution.	28

S.No.	Reference	Summary / Gist	Page No.
2	2023 PTD 817	<p>NOTIONAL EXCISE DUTY CANNOT FORM THE PART OF RETAIL PRICE FOR LEVY OF SALES TAX</p> <p>The Tribunal held that notional amount of FED cannot be included in fixing retail price, for the purpose of levy of sales tax. The Tribunal also stressed upon adhering to limitation of time provided under the law while passing the orders.</p>	29
3	2023 PTD 825	<p>DEFINITION CANNOT OVERRIDE CHARGING SECTION OF LAW</p> <p>Sindh High Court in confirming the levy of further tax on taxable supplies being made to all unregistered persons including those who are liable to be registered, held that the definition given in a statute can not override the provisions of the charging section of the law.</p>	29

Income Tax Ordinance, 2001

A. SRO / Circulars

1. S.R.O. 934(I)/2023

Under the existing Rule 40D, it is provided that a taxpayer, importing goods relevant to activity of the taxpayer which is exempt under the Ordinance or subject to hundred percent tax credit under section 100C, can apply to the Commissioner for issuance of exemption certificate under section 159 of the Ordinance.

Through this SRO, FBR has proposed amendment in Rule 40D (2)(a) of the Income Tax Rules, 2002 and have substituted the phrase "under section 100C of the Ordinance" with the phrase "the Ordinance", to cater the taxpayers which are subject to hundred percent tax credit under other sections of the Ordinance, including section 65F of the Ordinance introduced through Finance Act, 2021.

B. Circular

1. Circular No. 01 of 2023-24

Section 236C of the Income Tax Ordinance 2001, provides that any person responsible for registering, recording, or attesting transfer of any immovable property has been designated as the person responsible ('transferring authority') to collect advance adjustable Income tax from the seller or transferor. The rate of tax collection is 3% of the gross amount of the consideration received by the seller or transferor appearing on the Active Taxpayers' List (ATL) and 6% in case of seller / trans

ATL seller / transferor.

Through Finance Act, 2022 section 7E was introduced whereby, for tax year 2022 and onwards, every resident person has been treated to have derived as income, an amount equal to 5% of the fair market value of the capital asset situated in Pakistan subject to exclusions of the capital assets provided under sub-section (2).

The said deemed income is chargeable to tax at the rate of 20% (i.e. effective rate 1% of fair market value of immovable property).

Finance Act, 2023 has introduced sub-section (2A) in section 236C of the Ordinance which places a bar on transferring authority for registering, recording or attesting transfer of immovable property unless the seller or transferor has discharged his tax liability under section 7E of the Ordinance. Through this circular, FBR has issued instructions for payment of tax under section 7E of the Ordinance in the cases where seller or transferor is appearing on Active Taxpayers' List (ATL) and where the seller or transferor is a non-ATL person. The Circular also prescribes the Form of the Certificate to be presented by the seller / transferor to the registering / recording / attesting authority for transfer of property. The Circular provides following instructions as to discharge of tax under section 7E:

(i) Where the seller or transferor is on ATL

The said seller or transferor will provide evidence to the transferring authority that he has discharged his liability under section 7E in any of the following modes:

- (a) If the seller / transferor has not already paid the tax under section 7E along with his income tax return filed for TY 2022, then such person is required to pay the due amount of tax payable under section 7E of the Ordinance and produce evidence to the transferring authority. For this purpose, a separate payment challan (CPR) has been provided in FBR online payment system. The payment made into government treasury through CPR in this regard will be treated as evidence for the purpose and to the extent of newly inserted sub-section (2A) of section 236C of the Ordinance; or
- (b) If the seller / transferor has already declared the said property in his declaration under section 7E filed along with his income tax return for tax year 2022 or the said seller / transferor is not required to pay tax under section 7E due to any stay granted by any court of law or authority, then the seller / transferor will furnish a certificate annexed as Form 'A' to the Circular duly issued by the Commissioner Inland Revenue holding jurisdiction over the seller / transferor. The certificate issued by the Commissioner Inland Revenue will be treated as evidence for the purpose and to the extent of newly inserted sub-section (2A) of section 236C of the Ordinance;

For the purpose of issuance of above certificate, the seller/transferor will fill the requisite particulars in prescribed Form 'A' and submit the same to the Commissioner Inland Revenue holding jurisdiction over the person. The Commissioner Inland Revenue will examine the particulars and will accordingly issue the certificate. The said certificate will be issued by the Commissioner Inland Revenue within 7 days of the receipt of the pre-filled form 'A' submitted by the seller/transferor.

If property owner is more than one person, each person shall discharge liability under section 7E for his or her respective share in the said property in any of the modes described above.

(ii) Where the seller/transferor is a non-ATL person

Such person is required to pay the due amount of tax payable under section 7E of the Ordinance and provide evidence to the transferring authority. For this purpose, a separate payment challan (CPR) has been provided in FBR online payment system. The payment made into government treasury through CPR in this regard will be treated as evidence for the purpose and to the extent of newly inserted sub-section (2A) of section 236C of the Ordinance.

For details and particulars of Form 'A', please refer the link below:

<https://download1.fbr.gov.pk/Docs/2023721217646921CircularNo.1of2023-2024.pdf>

2. Circular No. 02 of 2023

Through this circular, FBR has issued explanation on various significant amendments brought via Finance Act, 2023 in the Income Tax Ordinance, 2001. For details, please refer the link below:

<https://download1.fbr.gov.pk/Docs/2023726177262062ExplanatoryCircular.pdf>

C. Reported Decisions:

1. UNDER SECTION 210, COMMISSIONER INLAND REVENUE (CIR) CAN DELEGATE, HIS POWERS TO AMEND OR FURTHER AMEND, UNDER SECTION 122(5A) OF THE ORDINANCE.

**(2023) 127 TAX 757
SUPREME COURT OF PAKISTAN**

**ALLIED BANK LIMITED
VS
THE COMMISSIONER OF INCOME
TAX, LAHORE**

**APPLICABLE SECTIONS: 2(13), 120,
122, 127 AND 210 OF THE INCOME
TAX ORDINANCE, 2001 (THE
ORDINANCE)**

Brief Facts:

The taxpayer filed its return of income for Tax Year 2013, deemed to be an assessment order under section 120 of the Ordinance. The Additional Commissioner Inland Revenue (ADCIR) amended the assessment order, after issuing show-cause notice under section 122(5A) of the Ordinance. Being aggrieved by the decision of ADCIR, the taxpayer filed appeal before the Commissioner Appeals on legal and factual grounds. The taxpayer argued that since assessment order under section 120 of the Ordinance is passed by the Commissioner Inland Revenue, therefore, it can be amended by CIR and the power to amend cannot be delegated to authority lower than CIR. The Commissioner Appeals decided the matter on legal ground against the taxpayer. The taxpayer then filed appeal before the Appellate Tribunal Inland Revenue (ATIR) which was decided in favour of the department. Later, the taxpayer filed income tax reference before the Lahore High Court, which also decided the matter against the taxpayer. The taxpayer then filed a reference before the Honorable Supreme Court of Pakistan wherein the following question of law was raised:

Whether the powers of the Commissioner under Section 122(5A) of the Ordinance can be delegated to the Additional Commissioner Inland Revenue under Section 210 of the Ordinance.

Decision:

The Supreme Court of Pakistan decided the reference application against the taxpayer on the following basis:

- Section 122(5A) of the Ordinance requires that an opportunity of being heard shall be provided to the taxpayer after which the CIR may amend the assessment order if it is prejudicial to the interest of revenue.
- Section 210(1A) of the Ordinance empowers the Commissioner to delegate all his powers and functions conferred upon the Commissioner except for the power of delegation.
- Section 211(1) of the Ordinance then further fortifies that where by virtue of an order under Section 210 of the Ordinance, an officer of the Inland

Revenue exercises a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.

- The question of law has also already been dealt by a three Member Bench of Supreme Court of Pakistan in an unreported judgment rendered in the case of Bank of Punjab, wherein the assumption of jurisdiction by the Additional Commissioner under Section 122(5A), through delegation, has been affirmed.

2. NO CAPITAL GAIN ARISES ON AMALGAMATION

**(2023) 127 TAX 763
LAHORE HIGH COURT**

**COMMISSIONER INLAND REVENUE,
LAHORE
VS
M/S SHEZAN INTERNATIONAL
LIMITED**

**APPLICABLE SECTIONS: 21(k), 37,
35, 75, 97, 120 and 133 OF THE
INCOME TAX ORDINANCE, 2001
(THE ORDINANCE)**

Brief facts:

The respondent taxpayer in the instant case filed its return of income of Tax Year 2004 which was amended on the grounds of being prejudicial to the interest of revenue. Addition on account of capital gains under Section 37 of the Ordinance was made due to amalgamation transaction of the fully owned subsidiary company with the respondent company. The taxpayer filed appeal before the Commissioner Appeals who confirmed the addition on account of capital gains. Commissioner Appeals while dealing with the issue of capital gains on merger, observed that the value of assets received in lieu of shares is the consideration received against the cancellation of shares, and that the respondent-company became the owner of assets of the subsidiary company after scheme of amalgamation was affected. Feeling aggrieved, the taxpayer filed appeal before the ATIR who deleted the addition confirmed by the Commissioner Appeals. Consequently the department filed petition before the Lahore High Court on the ground that the ATIR was not justified in deleting the

addition without having any material before it for the purpose of cross-checking in order to satisfy the parameters provided in Section 97 of the Ordinance.

Decision:

LHC decided the petition in favour of the taxpayer on the following basis:

- No financial transaction has taken place between the merging companies.
- In the scheme of merger arrangement, there does not take place any sale, disposition, exchange or relinquishment or extinguishment of any right on the part of the amalgamating companies that gives rise to any income or gain resulting in a taxable event.
- Where the amalgamating company, which is a hundred percent subsidiary, merges with the holding company (amalgamated company), no question of any profit or gain would arise because the amalgamating company (wholly owned subsidiary), on amalgamation ceases to exist, and its identity merges completely with the amalgamated company
- Conditions enumerated under section 97 of the Ordinance were fully fulfilled.

3. DELETION OF SECTION 214(D) HAS NOT CREATED A VESTED RIGHT TO AVOID AUDIT UNDER SECTION 177 OF THE ORDINANCE AFTER DELETION OF THE SAID SECTION

**(2023)127 TAX 770
SINDH HIGH COURT**

**M/S. UNITED CARPETS LTD AND OTHERS
VS
PAKISTAN AND OTHERS**

APPLICABLE SECTIONS: 119, 122, 122(a), 137, 177, 214(1)(a), 214(1)(b), 214D, 214D(a), 214D(b), 214E OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

Notices under section 177, 122 read with section 214D of the Ordinance were challenged through several constitutional petitions which were decided through the instant combined judgment by the Sindh High Court (the SHC). The petitioners argued that the Section 214(D) was inserted through Finance Act, 2015 and was thereafter, deleted through Finance Act 2018. Therefore, no further audit proceedings can continue after omission of section 214(D) of the Ordinance as a vested right has accrued to the petitioners after omission of Section 214(D) and the impugned Notices were issued without lawful authority. On the other hand, the tax department denied the accrual of any vested right to the petitioners and argued that the automatic selection of petitioners' cases for audit was due to failure to file returns of income and payment of due taxes within the stipulated time.

Decision:

The SHC dismissed the petition and decided the case in favour of tax department while holding that the petitioners were not selected after omission or deletion of Section 214(D) as they stood selected automatically. No right or a vested right had accrued in the facts and circumstances of the case. The SHC did not entertain the objections so raised in respect of the impugned notices. Whereas, the respondents were directed to proceed further against the petitioners on the basis of respective notices already issued.

4. RECONCILIATION, UNDER RULE 44(4), CANNOT BE CALLED WITHOUT FIRST ENSURING FILING OF WITHHOLDING STATEMENTS

**2023 PTD 732
LAHORE HIGH COURT**

**COMMISSIONER INLAND REVENUE LAHORE
VS
MESSRS MARWAT ENTERPRISES PVT. LIMITED LAHORE**

APPLICABLE SECTIONS: 161, 162 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) RULE 44(4) OF INCOME TAX RULES, 2002

Brief Facts:

The proceedings for monitoring of withholding taxes under section 161 / 205 of the Ordinance were concluded against the taxpayer company by the tax officer. Commissioner Inland Revenue (Appeals) confirmed the order passed by the tax officer. Feeling aggrieved, the company filed appeal before ATIR which was allowed; hence, the instant tax reference was filed before the Lahore High Court (the LHC) by the tax department. The LHC pronounced a combined judgement in 31 income tax references which were identical in nature whereby following questions of law were put before the Court:

- a) Whether under the facts and circumstances, the ATIR was justified to ignore that Commissioner had not verified payment of tax liability under section 161(1b) of the Ordinance, which is mandatory?
- b) Whether under the facts and circumstances, the ATIR ensured the guidelines and direction given by the August Supreme Court of Pakistan in Commissioner Inland Revenue zone-I vs MCB Bank Limited (2021 SCMR1325) are complied with?
- c) Whether under the facts and circumstances, the Commissioner could issue notice requiring reconciliation notice under Rule 44(4) of the Income Tax Rules, 2002 without ensuring biannual or annual statements under the Rules?

Decision:

The LHC decided the matter as under:

- a) Section 161(1b) casts an obligation upon the tax officer to satisfy itself that the tax due from the person has already been paid. Tax liable to be withheld by a withholding agent, cannot be recovered when the tax due is already paid by the relevant taxpayer, being recipient of payment subject to withholding tax.
- b) The instant case shall be deemed to be pending before the Commissioner; however, before proceeding further in the case following directions given in judgments reported as **2022 LHC 6508**

and **2021 SCMR 1325** were directed to be followed by the Commissioner:

- (i) There must, at least initially, be some reason or information available with the Commissioner for him to conclude that there was, or could have been, a failure to deduct.
- (ii) All the tax authorities have to do, for the purpose of section 161, is to identify the payments, whether singly or in lump sum (i.e.) as part of a broader class or category of such payments.
- (iii) The triggering event for issuance of notice is a failure to either collect tax or deduct it.
- (iv) The Commissioner has to point out a payment to cast burden wholly or solely on the taxpayer.
- (v) After issuance of notice, the first thing need to be verified is, whether tax, required to be deducted or collected, of a person has been paid or not. If tax liability for the relevant tax year is found paid/ discharged, the commissioner can proceed only to impose default surcharge and penalty.
- (vi) Reconciliation, under Rule 44(4), cannot be called without first ensuring filing of statements under this Rule.

- c) It is duty of the Commissioner, as tax administrator to ensure that biannual or annual withholding statements are filed within the time stipulated by the statute. Commissioner is equipped with the power of imposing penalty, if statutory obligation is not fulfilled by any taxpayer. Had the Commissioner fulfilled the duty of ensuring compliance for filing statements, at the earliest, notice under section 161 would never have been issued.

5. ADJUDICATING POWERS OF THE COMMISSIONER INLAND REVENUE (APPEAL) AND THE APPELLATE TRIBUNAL INLAND REVENUE AS TO REMANDING BACK / SETTING ASIDE THE CASES

**2023 PTD 758
LAHORE HIGH COURT**

**COMMISSIONER INLAND REVENUE,
RTO, GUJRANWALA
VS
MESSRS CRYSTAL DISTRIBUTORS**

**APPLICABLE SECTIONS: 111, 122(1),
128(5), 129, 132 AND 133 OF THE
INCOME TAX ORDINANCE (THE
ORDINANCE)**

Brief Facts:

The taxpayer (the respondent) e-filed income tax return (ITR) for the tax year 2016 which was considered as deemed assessment order under the Ordinance. Subsequently, the Assessing Officer (the AO) issued show cause notice confronting certain discrepancies in the subject ITR and considered deemed assessment erroneous insofar as prejudicial to the interest of revenue and amended the assessment through issuance of an amended assessment order.

Being aggrieved by order of the AO, the taxpayer filed an appeal before the CIRA who partially confirmed the order and partially remanded back the case to the AO for fresh proceedings. Thereafter, the taxpayer preferred appeal before ATIR which deleted the additions made by the AO and deleted the CIRA order accordingly. However, the department, being not satisfied, filed a reference application before the Court seeking interpretation of the following questions of law revolving around the case in hand:

- Whether or not CIRA is allowed to remand back the case to the authority below.
- Action taken by the ATIR i.e. annulment of orders passed by the authorities below is clear violation of section 24A of the General Clauses Act, 1987.

Decision:

The Court set aside the orders passed by the CIRA and ATIR and directed the CIRA to decide the matter in light of the observations explained as under:

- CIRA can only confirm, modify or annul the assessment order after examining evidences, as considered necessary,

rather than remanding the case to a lower forum. These powers of CIRA appear to be in line with the legislative policy to curb prolonged and protracted litigation at the cost and inconvenience of taxpayer.

- ATIR should have set aside the remand back order of CIRA and refer the case back to CIRA to decide it on merits or ATIR should have proceeded and decided the case on merits itself.

6. THE APPEAL EFFECT ORDER CANNOT BE SUBJECTED TO ISSUES EXTRANEIOUS OR ALIEN TO THE APPELLATE ORDER.

**2023 PTD 789
APPELLATE TRIBUNAL INLAND
REVENUE**

**COMMISSIONER INLAND REVENUE,
RTO FAISALABAD
VS
MESSRS CRESCENT TEXTILE MILLS,
LTD**

**APPLICABLE SECTIONS: 124 AND
221 OF THE INCOME TAX
ORDINANCE (THE ORDINANCE)**

Brief Facts:

The taxpayer is a limited company deriving income from running a textile mill, besides other sources of income. The self-assessment for the tax year 2008 was amended and concluded through assessment proceedings through an assessment order by the Assessing Officer (AO). Being aggrieved, an appeal was filed before CIRA who provided relief to the taxpayer on certain matters.

Subsequently, the AO considered that income after appeal effect has not been worked out correctly and, accordingly, issued show cause notice to the respondent for rectification under section 221 of the Ordinance. In response thereto, the submissions of the taxpayer were found untenable and AO proceeded to pass the impugned rectification order.

Feeling aggrieved, the taxpayer again filed an appeal before CIRA who annulled the said rectification order and directed the AO to allow carry forward of business losses and to compute WWF if chargeable. However, the department challenged the CIRA's order before ATIR by way of filing an appeal.

Decision:

The ATIR dismissed the appeal filed by the tax department and decided the case in the following manner:

- Once the matter has gone under the test of appeal, subsequently, the appeal effect order cannot be subjected to issues extraneous or alien to the appellate order.
- CIRA has rightly noted and observed that the AO has proceeded to make amendment in the garb of rectification and contravened his lawful jurisdiction.
- In light of verdicts of the apex courts, scope of rectification of mistake is limited to only those mistakes apparent floating on the surface of the order which was not the case in hand because satisfactory evidence as such was not appearing in the record file.

Sindh Sales Tax on Services Rules

A. Notification

AMENDMENTS IN SINDH SALES TAX ON SERVICES RULES, 2011

1. SRB-3-4/40/2023 Dated July 27, 2023

a. E-filing of application for deregistration - Rule 9:

Earlier, the deregistration procedure required manual filing of Form SST-02 with the Sindh Revenue Board (the Board) or an authorized officer of the SRB.

Consequent to the amendment, the application will be required to be filed electronically on the Form SST-02 exclusively to the Board. This means that the entire process of deregistration will now be conducted online which may result into expeditious disposal of deregistration applications.

b. Filing of return after 4 months only with the permission of Commissioner - Rule 12:

Through the amendment, a new sub rule has been inserted in Rule 12, whereby, if a return is not e-filed within a period of four months after the prescribed due date, the taxpayer will need to seek permission from the concerned Commissioner-SRB (having jurisdiction) before electronically filing the overdue return.

c. Relaxation provided in time limit to file option for reduced rate in case software of IT based system development consultants and Call Centers - Rule 42I & Rule 42J:

For existing service providers of IT and Call Centre Services, the limit to opt out for reduced rate of 3% (with no input admissibility) instead of 13% standard rate, through filing of option in the prescribed form, was earlier available only till July 31, 2022.

The said time limit has now been relaxed. As a result, the said service providers may now file the said option by 21st day (i.e. July 21st) of the financial year form which they opt for such reduced rate.

AMENDMENTS IN SINDH SALES TAX SPECIAL PROCEDURE (WITHHOLDING) RULES, 2014

2. SRB Notification No. SRB-3-4/41/2023 Dated July 27, 2023 (effective from September 01, 2023)

Certain amendments have been introduced to the Sindh Sales Tax Special Procedure (Withholding Rules), 2014 (SSTWR) as discussed below which have been made effective from September 01, 2023.

a. Withholding Agents - Rule 1 (2):

Following changes are made to the existing scope of withholding agents and their obligations for the purpose of withholding of Sindh sales tax as per the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (SSTWR):

i. Extension in scope of exclusion from 100% withholding requirement in case of non-corporate road transporters:

Currently, a person acquiring services of intercity transportation of goods by road from 'logistic companies' that own at least 25 goods transport vehicles of carriage of goods by road, was not obliged to withhold 100% of the applicable Sindh sales tax.

Through the amendment, the scope of such exclusion from requirement of 100% sales tax withholding is broadened to include therein the services acquired from non-company logistic service providers as well by replacing the words 'logistic companies' with 'logistic service providers'.

As a result, all corporate and non-corporate road transporters that own at least 25 goods transport vehicles would be subject to general provisions of withholding.

ii. Requirement of 100% withholding in case of services acquired from Non Active service providers:

Currently, taxable services acquired by withholding agents from unregistered persons are subject to 100% sales tax withholding. The scope of such 100% withholding is now extended to include therein services acquired from persons who ceased to be an active taxpayer in terms of the list specified by SRB.

iii. Person acquiring services of Truck aggregator shall be a withholding agent:

A new sub clause (ia) is inserted whereby a person who is not otherwise a withholding agent but acquires services of truck aggregator, shall now become a withholding agent.

iv. Person not based in Sindh but has enrolled as withholding agent with SRB, shall be a withholding agent:

A new proviso is inserted to enhance the scope of withholding agents whereby a person resident in Pakistan but doesn't have a place of business within Sindh will only be recognized as a withholding agent if that person has electronically signed up as withholding agent, has obtained login credentials and is e-depositing the sales tax withheld in designated account of SRB.

b. Rule 2: Definitions:

Through this amendment, the following new definitions are inserted to the SSTWR:

- i. (1A) "Active taxpayer"** means a registered person as defined in clause (1A) of section 2 of the Sindh Sales Tax on Services Act, 2011 (SST Act).

- ii. (1B) "Active taxpayers list"** means the list of persons prepared and maintained in terms of section 25B of the SST Act.

c. Rule 3: Responsibility of withholding agent:

i. Government Departments to withhold 4/5th of the Sales tax charged

A new sub rule (4A) has been added to rule 3, which requires government departments, autonomous bodies, state owned enterprises, and regulatory bodies [identified in clause (a) to (c) of sub rule 2 of Rule 1] to withhold 4/5th (i.e. 80%) of the sales tax charged on sales tax invoice issued by a registered person which earlier were subject to general requirement of 1/5th (i.e. 20% sales tax withholding).

ii. Alignment of provision requiring 20% withholding

Further amendment is made in rule 3(3), by virtue of which, an inconsistency has been removed in the exiting provision that required withholding of 1/5th (i.e. 20%) of the sales tax in all cases except for certain specified services covered under clause (f) including advertisement, renting of immovable property etc. in which case 100% withholding is required despite existence of 100% withholding requirement in case of certain other services covered under (g) to (j) as per sub-rule (5A).

As a result, the persons mentioned in clause (f) to (j) of sub rule 2 of Rule 1 will continue to withhold 100% sales tax on procuring the specified services as per existing sub rules 5 and 5A, whereas the government departments shall be liable to withhold 4/5th of the sales tax in all cases. The rest of the services acquired by all withholding agents (except for government departments) shall be subject to withholding of 1/5th of the sales tax charged.

- iii. The comparison of exiting and revised withholding requirements as per the SSTWR in case of services acquired from registered service providers is given as under:

S. No	Withholding Agent	Sales Tax Withholding	
		Existing	Revised
(a) to (e)	Government Departments, autonomous bodies and public sector organizations	1/5 th or 20% of the Sales tax charged	4/5 th or 80% of the Sales tax charged
(d) and (e)	Organizations funded by Government; Companies as defined under the Act	1/5 th or 20% of the Sales tax charged	1/5 th or 20% of the Sales tax charged
(f)	FBR/SRB registered persons being recipient of advertisement, auctioneers, renting, transportation, advertising agents services	100% of the sales tax charged on such services <i>(excluding in case of logistic companies' that own at least 25 goods transport vehicles)</i>	100% of the sales tax charged on such services <i>(excluding in case of logistic service providers that own at least 25 goods transport vehicles)</i>
(g) to (j)	SRB Reg. persons, receiving services from unregistered persons, SRB Reg. persons receiving services of insurance agents,	100% STWH in case of specified services	100% STWH in case of specified services (including Truck aggregators)
	Persons using services of cab aggregators (now including truck aggregators) Persons procuring services of contractors and construction liable to reduced rate	1/5 th or 20% of the Sales tax charged in case of other services acquired from registered persons	1/5 th or 20% of the Sales tax charged in case of other services acquired from registered persons
	<i>Note: in case of inactive ATL status of the service provider, 100% STWH shall be made in all cases as applicable in case of services acquired from unregistered persons.</i>		

3. Sindh Sales Tax Special Procedure (Online Integration of Business) Rules, 2022 SRB Notification No. SRB-3-4/42/2023 DATED JULY 31, 2023

Schedule:

Through the amendment, the minimum turnover criteria for POS integration for services provided by restaurants during the immediately preceding twelve tax periods is reduced from 10 million to 5 million.

Khyber Pakhtunkhwa Sales Tax on Services Act, 2022

A. Notification

KPRA/Exemption/2023/3677 DATED JULY 25, 2023

Through the above notification, KPRA has exempted KPK sales tax on the services provided in formerly Federally and Provincially Administered Tribal Areas from July 1, 2023 till October 31, 2023 subject to following conditions:

1. The service providers are natural persons and bonafide residents of the above-mentioned areas;

2. The service providing businesses are located in the said areas;
3. The services exclusively originate and terminate within said areas; and
4. The component of sales tax is not included in the gross value of the service.

Aforesaid exemption is not applicable in respect of telecommunication, allied services and all projects of PSDP and ADP.

Balochistan Sales Tax on Services Act, 2015

Finance Act, 2023

The legislative assembly of Balochistan has approved the Balochistan Finance Act, 2023 (The Act) on July 04, 2023 whereby various changes are introduced in various laws of Balochistan including the Balochistan Sales Tax on Services Act, 2015.

The major changes are in the penalties, default surcharges and sales tax rates specified in the Second Schedule. Other changes are mostly in the nature of correction, extending powers to the Balochistan Revenue authority in certain cases which were previously with the Government of Balochistan.

Some important changes in the said Act of 2015 are summarized as under:

1. Definition [Section 2(89A)]

The Act has introduced following definition of Insurance Agents,

“(89A) “Insurance Agent” includes an agent as defined in clause (a) of sub-rule (1) of rule 2 of the Insurance Rules, 2017 and also includes as insurance broker as defined in clause (xxviii) of section 2 of the Insurance Ordinance, 2000 (Ordinance No. XXXIX of 2000);”

2. Retention and Production of Records and Documents [Section 32]

Through insertion of proviso to section 32(1), it has been specified that in case of issuance of refund, the requirement for maintenance of

records for ten years is to be counted from the conclusion of the financial year in which the refund is issued.

Further, the Act empowers authorized officer to access the machine where data/record is stored.

3. Waiver of Penalty [Section 50]

The powers of the Balochistan Revenue Authority to waive penalty without seeking prior approval of the Government is increased from Rs. 1,000,000 to Rs. 5,000,000.

4. Recovery of the tax not Levied or Short-levied [Section 52]

Earlier, the Authority could issue a show cause notice for tax recovery within five years of the relevant tax period. Through amendment in section 52 of the BSTS Act, the five-year period will now be calculated from the end of the financial year to which the relevant tax period pertains which makes it aligned with the time limit provided under section 11(5) of the Sales Tax Act, 1990.

5. Power to Seal the Business Premises [Section 59A]

A new section is inserted to empower an officer of the authority not below the rank of Commissioner who has reason to believe that the Act or the Rules made thereunder are not obeyed and observed at a business premises, may by an order in writing, seal that premises for a period which may extend to one month upon giving a notice in writing to this effect.

6. Reference to High Court [Section 69(7A)]

A new sub section has been inserted to section 69 which limits validity of the stay granted by the High Court to six months unless the stay order is withdrawn by the High Court or reference is decided whichever is earlier.

7. Offences & Penalties [Section 48]

Through the Balochistan Finance Act, certain penalties specified in respect of various offences including those related to obtaining registration, filing

of return, maintenance of records, tax frauds etc. are significantly enhanced.

The Act has also introduced procedure for levying penalties through insertion of new sub sections to section 48.

8. Default Surcharge [Section 49]

The Act has amended rate of default surcharge from "**interbank plus three percent**" to "**twelve percent**".

The Act has also introduced procedure for levying default surcharge through insertion of new sub sections to section 49.

9. Second Schedule

Change in tax rate:

The Act has substituted the tax rates of the following tariff headings as follows:

Tariff Heading	Description	Old Tax Rate	New Tax Rate
9801.1000	Services provided or rendered by hotels, motels, boatels, resorts, guesthouses and farmhouses.	15%	(i) 5% without input tax adjustment for non-corporate, non-franchise, non-chain businesses; and (ii) 15% for corporate, franchise and chain businesses.
9801.2000	Services provided or rendered by restaurants including café, coffee houses, food huts, ice-cream shops and eateries.	(i) 'Chainaki Restaurants':- the amount of monthly tax shall be fixed at Rs. 3,000 without input tax credit or adjustment; (ii) Other restaurants including café, coffee houses, food huts, ice-cream shops and eateries excluding chainaki restaurants: - 6%	(ii) Other restaurants including café, coffee houses, food huts, ice-cream shops and eateries excluding chainaki restaurants: - 4% without input tax credit or adjustment Explanation: - services provided or rendered by restaurants whose monthly utility bills (Electricity, Gas and Telephone) are less than

Tariff Heading	Description	Old Tax Rate	New Tax Rate
		<p>without input tax credit or adjustment</p> <p>Explanation: - For the purposes of this tariff heading, the term 'Chainaki Restaurant' means a restaurant, café, coffee house, food hut, ice cream shop and eatery where its monthly electricity consumption is not more than Rs.7,000 and the number of employees does not exceed two.</p>	<p>Rs. 20,000 per month shall be exempted.</p> <p>Provided that the restaurants providing or rendering services shall pay Rs. 15,000 per month or 4% of the taxable services provided or rendered during a month, whichever is higher, without input tax credit or adjustment.</p> <p>Provided further that the above provision of minimum tax of Rs.15,000 per month shall not apply to following restaurants which shall continue to pay sales tax at the rate of 4% of taxable services provided or rendered without input tax credit or adjustment namely;</p> <ul style="list-style-type: none"> (i) which are air-conditioned on any day in a financial year and are located within the building or premises of shopping malls or shopping plazas; or (ii) located within the building, premises or precincts of any hotel, motel, guest house or club whose services are liable to sales tax; or (iii) which are franchisers or franchisees; or (iv) having branches or more than one outlet in Balochistan"; <p>'Provided further that 2% percent will be charged, without input tax adjustment, where payment against services</p>

Tariff Heading	Description	Old Tax Rate	New Tax Rate
			is received through debit or credit cards, mobile wallets or QR scanning
9805.5000	Travel agents.	15%	6% without input tax credit or adjustment
9805.5100	Tour operators,	15%	6% without input tax credit or adjustment
9805.5200	Hajj operators,	15%	6% without input tax credit or adjustment
9805.9400	Real estate agents.	15%	6% without input tax credit or adjustment
9806.2000	Property dealers.	15%	6% without input tax credit or adjustment
9810.0000	Services provided or rendered for personal care by beauty parlors, beauty clinics, slimming clinics, salons, manicure and pedicure centers.	15%	6% without input tax credit or adjustment
9811.0000	Services provided or rendered by laundries and dry cleaners.	15%	6% without input tax credit or adjustment
9814.2000	Contractor of building (including water supply, gas supply and sanitary works), roads and bridges, electrical and mechanical	(i)- Rs. 60 per square yard in case the services mentioned are rendered in relation to residential building / property; and	(i) 15%. a. 4% without input tax credit or adjustment to the extent of contracts for which payment is made from Provincial Consolidated Fund and the Federal Consolidated Fund in respect of Government civil works

Tariff Heading	Description	Old Tax Rate	New Tax Rate
	<p>works (including air conditioning), horticultural works, multi-discipline works (including turn-key projects) and similar other works.</p> <p>Excluding - Where the construction work is funded under an agreement of foreign grant-in-aid or interest free loans involves construction of consular buildings.</p>	<p>(ii)- Rs. 50 per square feet in case the services mentioned are rendered in relation to commercial building / property.</p> <p>6%, without input tax credit or adjustment to the extent of contracts for which payment is made from the Provincial Consolidated Fund and the Federal Consolidated Fund.</p>	<p>involved in the ongoing development schemes and projects launched during Financial Year 2016-17 and onwards.</p> <p>b. Zero percent (0%) without input tax credit or adjustment to the extent of contracts for which payment is made from Provincial Consolidated Fund and the Federal Consolidated Fund in respect of Government civil works involved in the ongoing development schemes and projects launched prior to Financial Year 2016-17.</p> <p>(ii)- Rs. 60 per square yard in case the services mentioned are rendered in relation to residential building / property; and</p> <p>(iii)- Rs. 50 per square feet in case the services mentioned are rendered in relation to commercial building / property.</p>
9815.1000	Medical practitioners and consultants.	15%	Rs. 3,000 per month or 2% of the gross amount of service provided, whichever is higher, without input tax credit or adjustment
9815.2000	Legal practitioners and consultants.	15%	Rs. 3,000 per month or 2% of the gross amount of service provided, whichever is higher, without input tax credit or adjustment

Tariff Heading	Description	Old Tax Rate	New Tax Rate
9815.9100	Healthcare consultants.	15%	Rs. 3,000 per month or 2% of the gross amount of service provided, whichever is higher, without input tax credit or adjustment
9816.0000	Services provided or rendered in respect of manufacturing or processing for others on toll basis or job basis.	15%	Exempt from Sales Tax on services
9817.1000	Medical diagnosing of patients including X-Rays, CT Scan, M.R. Imaging, Ultrasound, etc.	15%	2% of the gross amount of service provided without input tax credit or adjustment
9817.2000	Pathological laboratories.	15%	2% of the gross amount of service provided without input tax credit or adjustment
9817.3000	Radiological laboratories.	15%	2% of the gross amount of service provided without input tax credit or adjustment
9817.4000	Scientific laboratories.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9817.5000	Chemical laboratories.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9817.6000	Mechanical laboratories.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9817.7000	Electrical or electronic laboratories.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9817.8000	Geological laboratories.	15%	Rs. 4,000 per month or 6% of the gross amount of service provided, whichever is higher,

Tariff Heading	Description	Old Tax Rate	New Tax Rate
			without input tax credit or adjustment
9819.1000	Stockbrokers, futures brokers and commodity brokers.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.1100	Underwriters,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.1200	Indenters,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.1300	Commission agents,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.1400	Packers and movers.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.3000	Rent-a-car or automobile rental service.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.3100	Cab aggregator	15%	2% of the gross amount of service provided without input tax credit or adjustment
9819.5000	Surveyors.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.6000	Designers including fashion designers.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.7000	Outdoor photographers and videographers.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.8000	Public relation services.	15%	4% of the gross amount of service provided without input tax credit or adjustment

Tariff Heading	Description	Old Tax Rate	New Tax Rate
9819.8100	Cable TV operators,	15%	2% of the gross amount of service provided without input tax credit or adjustment
9819.8200	TV and radio production services,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.8300	Video tape production services,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.8400	Sound record services,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.8500	Technical testing and analysis services,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.9100	Copy right services,	15%	4% of the gross amount of service provided without input tax credit or adjustment
9819.9200	Art painters.	15%	4% of the gross amount of service provided without input tax credit or adjustment
9824.0000	Construction services. Excluding. - Where the construction work is funded under an agreement of foreign grant-in-aid or interest free loan or involves construction of consular buildings.	15% Reduced rate of 6%, without input tax credit or adjustment to the extent of contracts for which payment is made from the Provincial Consolidated Fund Federal Consolidated Fund.	15% a. 4% without input tax credit or adjustment to the extent of contracts for which payment is made from Provincial Consolidated Fund and the Federal Consolidated Fund in respect of Government civil works involved in the ongoing development schemes and projects launched during Financial Year 2016-17 and onwards. b. Zero percent (0%) without input tax credit or adjustment to the extent of contracts for which payment is made from Provincial Consolidated Fund and

Tariff Heading	Description	Old Tax Rate	New Tax Rate
			the Federal Consolidated Fund in respect of Government civil works involved in the ongoing development schemes and projects launched prior to Financial Year 2016-17.
9847.0000	CMT stitching services.	15%	Rs. 3,000 per month or 2% of the gross amount of service provided, whichever is higher, without input tax credit or adjustment
9854.0000	Tuition and coaching centers.	15%	Rs. 3,000 per month without input tax credit or adjustment

Sales Tax Act, 1990

A. Reported Decisions

1. 2023 PTD 763 PESHAWAR HIGH COURT

**COMMISSIONER INLAND REVENUE,
ABBOTTABAD AND ANOTHER
Vs
M/S SAIM TRADERS AND ANOTHER**

Applicable Provisions: Section 3 of Sales Tax Act

Brief Facts:

The Deputy Commissioner Inland Revenue (DCIR) in Abbottabad received a Contravention Report indicating that M/s SAIM Traders had supplied goods to M/s Norwegian Refugee Council (NRC), on which NRC has deducted 1/5th of sales tax, however, SAIM Traders has not deposited the remaining 4/5th portion of sales tax. The DCIR determined the sales tax liability which was confirmed by the Commissioner Appeals and the matter was eventually appealed to the Appellate Tribunal.

The main arguments of SAIM Traders were as follows:

- that the goods were supplied to NRC, which were intended to be supplied to internally displaced persons (IDPs) FATA/PATA, the said transaction is protected from levy of income tax & sales tax under Article 247 of the Constitution of Islamic Republic of Pakistan, 1973.
- that the buyer of goods (NRC) is a 'privileged person' and therefore supplies made to NRC are zero rated in terms of Fifth Schedule of the Sales Tax Act, 1990 (the ST Act), when read with United Nations (Privileges and Immunities) Act, 1948.

- that the sales tax has neither been included in their invoices and therefore has not been collected from NRC, therefore, the action of recovering said sales tax from them is not justified.

The Commissioner Appeals rejected this claim and maintained the findings of the original order. However, all the above three grounds were later accepted by the Tribunal, leading to the decision in favour of the respondent taxpayer.

Later, being aggrieved by the decision of the Tribunal, the department filed reference against the respondent contesting following questions of law;

- a) Whether NRC was a privileged person and exempt from payment of sales tax under 5th Schedule of the ST Act?
- b) Whether supplies made by the respondents were exempt from levy of sales tax under Article 247 of the Constitution, for the reason that the subject goods had ultimately been distributed among IDPs of erstwhile tribal areas?

Decision:

The Hon'ble High Court allowed reference filed by the Department by answering the above questions of law in negative, setting aside the order of Tribunal and restored the orders-in-original. The findings of the court were as follows:

- The Court found that the NRC is not a privileged entity immune from sales tax. Collaborating with UNHCR doesn't grant the same privileges as the UN under the UN Privileges Act. The Federal Government had not granted such privileges to NRC in tax matters.

- The Court clarified that immunity from sales tax under Article 247 (repealed) of the Constitution was specific to the tribal areas and couldn't be claimed for goods used for or sold to IDPs in settled areas.

**2. 2023 PTD 817
APPELLATE TRIBUNAL INLAND
REVENUE**

**M/S PAKISTAN FRUIT JUICE CO.
(PVT.) LTD
Vs
COMMISSIONER INLAND REVENUE,
CTO, LAHORE**

Applicable Sections: Section 2(27) of the ST Act, 1990

Brief Facts:

The department passed the order, wherein the registered person was alleged of not including the notional amount of FED while determining the retail price in terms of section 12(4) of the FE Act and section 2(27) of the ST Act, resulting in a purported shortfall of FED and sales tax payments amounting to Rs. 898,344, and Rs. 3,546,255 respectively.

The registered person contended that the FED and sales tax is not to be levied on the notional amount of FED and also challenged the order on the basis of time limitation of 5 years prescribed in section 11(5) for issuing of show cause notice.

The registered person preferred appeal before the Appellate Tribunal Inland Revenue after the Commissioner Inland Revenue Appeals confirmed the demand of FED and sales tax.

Decision:

The Hon'ble Tribunal passed the order in favour of the registered person and agreed with the interpretation of the taxpayer that the notional excise duty should not be considered while determining the retail price. Reliance was placed by the Tribunal on the judgment of Hon'ble Supreme Court of Pakistan dated January 18, 2021 in Civil Appeal No. 1153 of 2015 which set aside the judgment of Hon'ble Lahore High Court in case of Naubahar Bottling

declaring the Department's valuation and methodology as clearly arbitrary, as notional excise duty has no connection whatsoever with the subject matter of excise duty, which is on the manufacture of goods. Therefore, the charge of excise duty on notional excise duty was held as clearly illegal and unconstitutional.

The Hon'ble Tribunal also decided the question of limitation, which was previously turned down by the Commissioner Appeals, holding that the order-in-original has suffered limitation of time as prescribed in section 11 and section 14 of ST Act and FED Act respectively. Both provisions contained that SCN to the person in default is to be issued within five years from the relevant date; whereas, the demand contested through the impugned SCN is for the period July 1, 2014 to September 30, 2014 however, the SCN was issued for the said period on October 24, 2019 which is after five years as provided in the statute.

**3. 2023 PTD 825
SINDH HIGH COURT**

**M/S DIGRI SUGAR MILLS LIMITED
Vs
THE ADDITIONAL COLLECTOR OF
CUSTOMS,
SALES TAX AND CENTRAL EXCISE
AND ANOTHER**

Applicable Provisions: Section 3(1A), 2(25) and 11 of the ST Act

Brief Facts:

In the instant case, a SCN was issued to the respondent for recovery of further tax on supplies made to unregistered persons, which was rebutted taking a view that since supplies were made to such unregistered persons, who were liable to be registered under the ST Act and thus covered in the definition of registered person as per section 2(25) of the ST Act; therefore, no further tax could be charged thereon.

The department disagreeing to the contentions of respondent passed the order adjudicating the recovery of the further tax not charged, along with additional sales tax and penalty,

which was confirmed in appeal by the Commissioner Appeals and maintained by the Appellate Tribunal.

Being aggrieved, reference was filed by the registered person before the Hon'ble Sindh High Court contesting the matter with the plea of determination of following questions of law:

- a) Whether further tax under subsection (1A) of section 3 of the ST Act, is payable by the supplier on taxable supplies made to persons who were liable to be registered under the ST Act but had not obtained registration?
- b) Whether additional tax under tax section 34 and penalty under section 33 of the ST Act, cannot be levied in the absence of willful default and deliberate and intentional evasion of sales tax?

Decision:

The Hon'ble High Court dismissed the reference filed by the registered person and decided the matter in favour of the department holding the view that the definition given in a statute [section 2(25) of the ST Act] could not override the charging section of the law [section 3(1A) of the ST Act] and; that a mere definition by itself could not create any charge, liability, and/or exception.

The Hon'ble High Court also guided that definition given in a statute should not be inferred to draw a contrary legal position against the stated provisions of law. On this legal plain, the willful default of the applicant was held maintained and levy of default surcharge and penalties besides further tax under subsection (1A) of section 3 of the ST Act on taxable supplies to unregistered persons, were also held recoverable.

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