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Tax Bulletin

DECEMBER 2024

Tax

Foreword

This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during November 2024.

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Karachi
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Income Tax Ordinance, 2001

A. Notification:

S.R.O 2041(I)/2024 dated December 10, 2024

Through this notification FBR has notified following banks as agent for the purpose of deduction and collection of tax to integrate with Synchronized Withholding Administration and Payment System (SWAPS):

S.No	NTN	SWAPS Agent
1	2554922-7	Al Baraka Bank (Pakistan)Limited
2	0801428	Allied Bank Limited
3	0709045-5	Askari Bank Limited
4	0698202-6	Bank Al-Falah Limited
5	0709857-0	Bank Al-Habib Limited
6	2238845-1	Bank Islami Pakistan Limited
7	7483933-1	Bank of China Limited
8	0700253-0	Citi Bank N.A
9	0700245-9	Deutsche Bank AG
10	2395184-2	Dubai Islamic Bank Pakistan
11	0815065-6	Faysal Bank Limited
12	0700268-8	First Women Bank Limited
13	0698187-9	Habib Bank Limited
14	0711167-3	Habib Metropolitan Bank Limited
15	3751229-3	Industrial and Commercial Bank of China
16	0700285-8	Industrial Development Bank of Pakistan Limited
17	2663703-7	JS Bank Limited
18	0700267-0	MCB Bank Limited
19	4422426-5	MCB Islamic Bank Limited
20	0787226-7	Meezan Bank Limited
21	0700271-8	National Bank of Pakistan
22	0801400-7	Punjab Provincial Cooperative Bank Limited
23	1804331-3	Samba Bank limited
24	0816469	SILK Bank Limited
25	3654008-7	Sindh Bank Limited
26	1471147-8	SME Bank Limited
27	0801438-8	Soneri Bank Limited
28	2731134-1	Standard Chartered Bank (Pakistan) Limited
29	2663705-7	Summit Bank Limited
30	0000092-2	The Bank of Khyber
31	0800543-5	The Bank of Punjab
32	0801164-8	United Bank Limited
33	2567068-9	Zarai Tarqiati Bank Limited
34	9011209	State Bank of Pakistan

SWAP agent shall be liable to collect and deposit taxes withheld under sections 153(1)(a) and 153(1)(b) of the Ordinance, through SWAP portal.

Provided that till the date is notified by the board, the SWAP agents shall continue to collect and deposit withholding taxes under sections 153(1)(a) and 153(1)(b) of the Ordinance under the current withholding tax regime.

B. Reported Decisions:

1. THE POWER TO ISSUE A REFUND DOES NOT INCLUDE THE AUTHORITY TO DISCUSS THE NATURE OF THE TAXPAYER'S BUSINESS

ITA.No.849, 850, 851,852/IB/2023

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I, ISLAMABAD

SPRINT OIL AND GAS SERVICES, FZC
VS
COMMISSIONER INLAND REVENUE, CTO, ISLAMABAD

APPLICABLE SECTIONS: SECTION 170 AND 122 OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

The appellant is permanent establishment of a non-resident UAE-based company, and provide oil field services to various government and public sector clients. The appellant filed its income tax return for tax years 2013,2014,2016 and 2017 within the due date. Tax deducted at source under various provisions of the Ordinance, were claimed as refundable.

However, the department passed the orders under section 122(1) of the Ordinance in case of tax year 2017 and under section 122(5A) of the Ordinance in case of tax years 2013, 2014 and 2016, and demand was created which was challenged before the CIRA and later at ATIR. Issues related to whether withholding of tax deducted at the import stage and for services were final tax or adjustable had already been decided in appellant's favour either at assessment and /or at appellate stage.

Later on, while proceeding under section 170(4) of the Ordinance for the tax years 2013, 2014, 2016 and 2017, the officer enquired about the status of tax deduction on account of import and services. The officer rejected the appellant's claim by treating it as final tax liability instead of adjustable for all the years under appeal. Further, the refund claim for the tax year 2014 was rejected on the ground that the refund application was barred by time as it was filed on September 30, 2018, after the expiry of the stipulated time of 3 years.

Being aggrieved, the appellant filed appeals with ATIR.

Arguments

The department argued that the appellant had been filing returns under the incorrect assumption that withholding tax deducted at the import stage and for services was adjustable, whereas it was a final tax liability. The department further argued that appellant was not operating as an industrial undertaking but as a services provider, making the withholding tax on services as a final tax, therefore, it was rightly rejected the claims by treating it as final tax.

Department further argued that previously unchallenged order passed under section 122(1) and 122(5A) were incorrect and the new instance of impugned order under section 170 was correct.

Decision

ATIR has decided the matter in favour of appellant by responding to the following questions:

Questions (i) & (ii)

(i) Whether the mandate of section 170 of the Ordinance is limited to verifying as to whether the claimed refund is supported by evidence and does not allow the department to go beyond the assessment order (under section 120)?

(ii) Whether, under the facts and circumstances of the case, the department was justified in assuming jurisdiction under section 170 of the Ordinance, to determine the amount chargeable to tax and change the classification of withholding tax deducted at source to declare some withholding tax as final tax liability?

The ATIR responded on these matters as under:

Section 170 grants power only to verify whether the claimed refund is supported by evidence. The relevant provision does not suggest that the officer can question the correctness of a return that has attained by the fiction of law the status of assessment order. Therefore, the Officer cannot go beyond the assessment order under section 120 while exercising jurisdiction under section 170. If the Officer believe that the tax deducted should be treated as final tax, then proper course of action would be to assume jurisdiction under section 122 of the Ordinance, this has been conclusively settled in case of Honda Atlas Cars Limited ITR No.2455 of 2021 and civil petition No.1129-L/2021.

Under section 170, the power to issue a refund does not include the authority to discuss the nature of the taxpayer's business or determine whether the income is presumptive, or whether withholding is final, adjustable or minimum. The duty of the tax authorities is limited to verifying the documents for calculating the refund amount and ensuring that the tax has been physically paid into the government treasury.

Questions (iii) & (iv)

(iii) Whether the deemed orders that were later amended by higher authorities under sections 122(1) and 122(5A) of the Ordinance, and subsequently merged into the orders of the ATIR, be overturned using the refund issuance mechanism in proceedings under section 170 of the Ordinance?

(iv) Whether, under the facts and circumstances of the case, the assessing officer deliberately and willfully committed maladministration by rejecting the refunds and treating certain withholding tax as final tax liability while assuming jurisdiction under section 170 of the Ordinance, despite the presence of amended orders passed by senior officers under sections 122(1) and 122(5A) of the Ordinance, which were later merged into orders passed by the Tribunal?

The ATIR responded on these matters as under:

The ATIR held that the issues regarding adjustable withholding tax on account of services rendered and imports were accepted at the assessment and / or at appeal stage, consequently the deemed merged order with orders passed under section 122(1) and 122(5A) cannot be disturbed under the guise of the refund issuance mechanism in proceeding under section 170 of the Ordinance.

The assessing officer cannot determine, change, modify or alter the tax liability of the appellant under provisions of section 170 of the Ordinance. Further, issue involved in the orders already have been settled by the appellate authorities and therefore, the matter is now past and closed transaction. No legal and moral justification exists to reopen the issue which has attained finality and is past and closed transaction for all purposes (reliance placed on reported judgement 2007 SCMR 1698). Passing of impugned order by the assessing officer being lower authority cannot override the finding of the higher authority.

The power to amend an assessment order under the Ordinance is a different concept with its own parameters, whereas claim for a refund is adjudicated with its own attributes. Therefore, action taken by the officer under section 170 is illegal and contrary to law.

Question (v)

(v) Whether the limitation for filing a refund application provided in

section 170 of the Ordinance is mandatory in nature?

The ATIR responded on these matters as under:

The ATIR held that there is no doubt that it is now settled that provisions of the limitation act are of mandatory nature and anyone filing a claim beyond the limitation period must explain as to why the delay was caused, while seeking its condonation. However, in the fiscal statues, the superior courts have criticized the revenue department for using technicalities or limitation to deny legitimate refunds. SC in case of Pfizer reported as PTCL 1998 Cl.354 held that the latest judicial trend is to deprecate and discourage withholding of a citizen's money by a public functionary on the plea of limitation or any other technical plea if it was not legally payable by him.

Based on above, it is declared that any amounts collected or deducted and paid in excess of the due tax must be refunded. The state is not expected to get itself unduly enriched by erroneous or inadvertent payment of money made by its citizens.

Question (vi)

(vi) Question: Whether, under the facts and circumstances of the case, the department's deliberate disregard of the binding order passed by the Supreme Court on November 15, 2022, in the Honda Atlas case, regarding the refund mechanism, constitutes a contemptuous attempt to undermine the authority of the apex court of Pakistan and a grave contempt of court?

The ATIR responded on these matters as under:

The ATIR held that the arguments presented by the department reveal that the tax officials are effectively committing sever contempt by disregarding clear order issued by the higher authorities.

Section 170 of the Ordinance only grants the power to verify if the claimed refund is supported by evidence. The department cannot re-examine such assessment order while exercising jurisdiction under section 170 of the Ordinance.

The wrongful denial of a legitimate tax refund, despite a clear verdict of the SC, violates the taxpayer rights and amount of harassment.

In view of the above, FBR advised to sensitize the field formation on the issue of refunds and build confidence in them to process the refund cases in accordance with the law.

2. EFFECTS OF SPECIAL TAX YEAR AND FINANCIAL YEAR ON SHOW CAUSE PROCEEDINGS
CP No. 3062 of 2020

HIGH COURT OF SINDH

SABRE TRAVEL NETWORK PAKISTAN (PVT.) LTD
VS
PAKISTAN & OTHERS

APPLICABLE SECTIONS:
122(2),122(5),74 of the Ordinance, 2001

Brief Facts:

In this case, bunch of common question of law are involved such as

i. whether the impugned notices are without jurisdiction, ultra vires and barred by time under the scheme offered by the Income Tax Ordinance, 2001 (the Ordinance) and

ii. what is the effect of special tax year vis-à-vis financial year of which the approval was accorded under section 74(5) of the Ordinance to all the petitioners.

All petitioners received approval for a "special tax year" under section 74(5) of the Ordinance based on their respective applications under section 74(3) and utilized a 12-month period other than a

normal tax year as their special tax year. The Court elaborated that "tax years" are defined under Part-II, Section 74 of the Ordinance 2001. It specifies a normal tax year comprising 12 consecutive months ending on June 30, making the starting point ascertainable along with the special tax year, which is also a computation of 12 consecutive months chosen by the applicant and denoted by the calendar year in which that date falls.

The learned counsel for the respondents argued that if a special tax year is granted, the petitioner must file their return on or before December 31 of the following year. According to Section 120(1)(b), such returns are deemed to be an assessment order issued by the Commissioner on the day the return was submitted. Consequently, in terms of section 122(5), such deemed assessment orders cannot be amended after five years from the end of the "financial year" in which the Commissioner has issued or treated as having issued an assessment order to the taxpayer.

Decision

- The SHC held that the purpose of Section 122(2) of the Ordinance is to adjust the limitation period of five years from the date of filing the return to the date at the "end of the financial year" in which such return was filed and where the Commissioner has issued or treated as having issued an assessment order to the taxpayer.

- No order could be passed even if a show-cause notice is issued on the last day when limitation ends; essentially, an "order" cannot be passed after five years have expired.
- Normally, December is not considered the end of a financial year; rather, it is June 30. This was not altered under Section 74(5) of the Ordinance. One might presume that the financial year corresponds to when a deemed assessment has occurred; however, Section 74(10) includes special tax years unless stated otherwise. Section 74(10) clarifies that a special tax year is inclusive of a financial year unless context dictates otherwise. Therefore, if a special tax year ends on December 31, it is designated as a "financial year" by Section 74(10) of the Ordinance. The limitation period would then commence from January 1 of the following year.

- Sections 122(2) and 74(10) of the Ordinance must be interpreted together clearly. This interpretation ensures both sections align without conflict. Consequently, impugned show-cause notices are deemed without jurisdiction and time-barred; thus, no subject therein could be lawfully pursued.

3. NEITHER INSURANCE PROCEEDS NOR GAIN ON THE SALE OF FIXED ASSETS QUALIFY FOR THE EXEMPTION UNDER CLAUSE (132).

ITA No.1403/IB/2024
APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I, ISLAMABAD

ATTOCK GEN LIMITED VS COMMISSIONER INLAND REVENUE, CTO, ISLAMABAD

APPLICABLE SECTIONS: SECTION 122(5A), CLAUSE (132), PART 1 OF THE SECOND SCHEDULE TO THE INCOME TAX ORDINANCE, 2001 SECTION 4 OF THE WWF ORDINANCE, 1971

Brief Facts:

The appellant is a company engaged in a power generation project. Profits and gains from the project are exempt from income tax under Clause (132), Part I of the Second Schedule to the Ordinance.

Proceedings under Section 122(5A) of the Ordinance were initially finalized on June 1, 2022. Aggrieved by this outcome, the appellant filed an appeal before the CIRA, Through Order dated November 7, 2022, the CIRA annulled the initial order and directed the officer to re-examine the record, address discrepancies or objections raised by the appellant, and issue a detailed speaking order.

The Officer issued an amendment order section 122(5A) of the Ordinance, whereby the officer rejected the appellant's claim for exemption on income derived from an insurance claim, the sale of scrap, and the gain on the sale of fixed assets relying on Clause (132), Part I of the Second Schedule to the Ordinance. Furthermore, the officer imposed the Workers' Welfare Fund (WWF) charge, rejecting the appellant's assertion that it did not qualify as an "industrial establishment" under the WWF Ordinance, 1971

Being aggrieved, the appellant filed appeal at CIRA, however, on August 29, 2024, the case was transferred to the ATIR under section 126A(4) of the Ordinance as assessment amount exceeds Rs.20 Million.

Arguments

Before the Tribunal, the appellant contended that the income derived on account of insurance claim, sale of scrap and on disposal of fixed assets was part and parcel of the project's income. The appellant argued that the exemption clause should not be narrowly construed to refer exclusively to income from the sale of electricity. According to the appellant, the phrase "profits and gains" from an electric power project has a broader interpretation and includes profits earned from sources closely or remotely related to the project's operation. It was contended that proceeds from the sale of scrap, insurance claims, and gain on the sale of fixed assets during the tax year were directly connected to the power generation project, the income from which is exempt under Clause (132), Part I of the Second Schedule to the Ordinance. project.

In support, the appellant cited judgments reported in 2013 PTD 349 (Trib), 2011 PTD 2440, 2006 PTD 499, and 2005 PTD 1208. It was contended that these precedents establish that proceeds from the sale of scrap, insurance claims, and fixed assets related to the project qualify for exemption as part of business income under Clause (132) of the Ordinance.

With respect to WWF the appellant argued that:

- Electricity generation and supply do not involve the production, adaptation, or manufacture of articles to be treated as an industrial undertaking, as required under the WWF Ordinance.
- The Department's inconsistent treatment of comparable cases constitutes unlawful discrimination.

The department argued that income assessable under Section 39 of the Ordinance could not be attributed to the running of the project. Consequently, the proceeds were considered taxable under the head "Income from Other Sources".

Decision

ATIR decided the matter by responding to the following questions:

(i) Whether the proceeds from the sale of scrap, insurance claims, and gains on the sale of fixed assets during the tax year constitute business income of the project and qualify for exemption under Clause (132), Part I of the Second Schedule to the Ordinance?

The ATIR responded on these matters as under:

Exemption under clause (132) is directed at income directly attributable to the core activity of power generation. Income arising from activities incidental to power generation, such as the sale of scrap, gain on sale of fixed assets, etc. does not directly result from the generation of electricity.

Income from the sale of scrap is generally considered incidental or ancillary rather than a direct profit from the primary activity of the project. Since the exemption applies solely to profits derived from power generation, incidental incomes such as scrap sales do not qualify, as they are not inherently connected to the power generation process.

The insurance proceeds are compensation for losses or damages and not income directly derived from the core activity of power generation. The strict interpretation of the phrase "derived from" excludes contingent incomes like insurance recoveries, as they do not arise from the process of generating electricity.

Similar to the sale of scrap, any gain realized on the sale of fixed assets would also likely fall outside the scope of the exemption. The gain from disposing of fixed assets is unrelated to the project's primary business of generating power and is instead considered incidental income.

(ii) Whether the Worker's Welfare Fund (WWF) is applicable to a power generation project under the Workers' Welfare Fund Ordinance, 1971?

The ATIR responded on these matters as under:

- The WWF Ordinance employs the term "total income" without qualifying it as "taxable income."
- By incorporating the definition of total income from the Ordinance, the WWF Ordinance adopts a broader interpretation that includes exempt income.
- Therefore, WWF contributions are to be calculated on the total income, including income exempt from taxation.

In light of the above ATIR instructed, the assessing officer to recalculate the WWF liability in accordance with the outlined principles.

Sales Tax Act, 1990

A. Notifications:

1. S.R.O. 1735(1)/2024 dated November 1, 2024

FBR has prescribed minimum retail price at Rs. 1,200 per kg for the purpose of sales tax on import and local supply of tea falling under respective headings 09.02 of the First Schedule to the Customs Act, 1969. It may be noted that tea is covered under Third Schedule to the Sales Tax Act, 1990 which is subject to sales tax at the rate of 18% of retail price.

Moreover, through aforesaid notification it is also clarified that in case value at which import or local supply of tea exceeds the prescribed minimum retail price, sales tax shall be charged on such higher value.

B. Reported Decisions

1. CUTTING TREES INTO PIECES DOES NOT TRANSFORM IT INTO A DISTINCT PRODUCT, THEREBY NOT TRIGGER SALES TAX ON ITS SUPPLY

2024 PTD 1422
PESHAWAR HIGH COURT

M/S FRONTIER GREEN WOOD INDUSTRIES (PVT.) LTD.
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: 2(11), 2(33), 2(35), 2(39), 2(41), 3(3), 11(2), 11(4A), 13, 47, Sixth Schedule, Table-II, Entry No. 10 of the Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, Frontier Green Wood Industries (Pvt.) Ltd. purchased raw wood (specifically poplar and eucalyptus) for manufacturing of laminated sheets, from unregistered suppliers between July 2013 and October 2013 while no sales tax was withheld. A show-cause notice was issued to recover the amount of sales tax to withheld under Section 11(2) of the ST Act. The appellant contended that the wood purchased was intended for chipboard production and was exempt from sales tax under Entry No. 10 of Table-II of the Sixth Schedule, classifying it as agricultural produce. The assessing officer disregarded the submissions and issued Order-in-Original.

Being aggrieved, the appellant approached Commissioner Appeals who upheld the Order-in-Original. The appellant further challenged the decision before the Appellate Tribunal where the Tribunal held that the wood purchased was exempt from sales tax as agricultural produce.

However, department challenged the decision of Tribunal before the High Court which was disposed of with certain observations regarding wood manufacturing and sent the matter back to the Tribunal for fresh decision. The appellant being dissatisfied with the High Court's findings, filed civil petition before the Apex Court where the petition was disposed of with the observation that the High Court's findings were tentative and directed the Tribunal to elaborately answer the issue albeit the questions of law.

The Tribunal ultimately absolved the appellant from responsibility of withholding sales tax due to a change in legislation citing Sub-Section (4A) of Section 11 inserted through the Finance Act, 2016, stating that the appellant had no obligation of withholding sales tax during the relevant period. However, the appellant's main grievance remained unanswered regarding interpretation of the term "manufacturer" as it occurs in Entry No. 10 of Table-II of the Sixth Schedule, hence, the matter was raised again before the Peshawar High Court, relying upon judgment of Lahore High Court in case of "Malik Shams-ud-Din".

Decision:

The Court decided the case in favour of the appellant and held that raw wood where standing trees cut into pieces are classified as agricultural produce which is exempt from sales tax under entry no. 10 Table 2 of Sixth Schedule to the Act. The court analyzed the definitions of "supply", "taxable goods", "taxable supply", and "taxable activity" under the ST Act and it was held that the charging section of the Act would only trigger when there is a taxable supply relating to taxable goods in furtherance of any taxable activity carried by a person.

The Court referenced past instances where the definition of "manufacturer" was discussed and clarified that cutting wood into pieces does not transform it into a distinct product, thereby not triggering sales tax liability.

The Court concluded that the appellant's transaction regarding the purchase of cut wood remained within the scope of agricultural produce as defined under entry 10 of Table-II of the Sixth Schedule, resulting in sales tax exemption. Hence, appellant is not liable to withhold sales tax on purchase of exempt goods.

2. ATIR ALLOWED THE APPELLANT TO ADJUST INPUT TAX FOR UNACCOUNTED-FOR GAS (UFG) DESPITE LOSS OF GOODS BEYOND THE LIMITS PRESCRIBED BY THE OIL AND GAS REGULATORY AUTHORITY (OGRA).

2024 PTD 1432
APPELLATE TRIBUNAL INLAND REVENUE

M/S. SUI NORTHERN GAS PIPE LINES LIMITED
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 8, 8(1) and 11(2) of Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, Sui Northern Gas Pipe Lines limited (SNGPL) is engaged in transmitting and distributing natural gas to domestic, commercial, and industrial consumers. The assessing officer passed the order for recovery of alleged excessive adjustment of input tax claimed by SNGPL in respect of unaccounted-for gas (UFG) which was beyond the permissible limit determined by the Oil and Gas Regulatory Authority (OGRA) and on the premise that the said gas was never supplied to consumer nor output sales tax was paid thereon.

Feeling aggrieved, the appellant filed appeal before the CIRA who upheld the disallowance of input tax adjustment claimed in respect of UFG. Being dissatisfied, the appellant challenged the CIRA Order before the Appellate Tribunal Inland Revenue.

Decision:

The Tribunal decided the case in favor of the appellant, holding that the appellant is entitled to claim input tax adjustment for unaccounted-for gas (UFG) despite the loss of gas, which does not hinder their input tax claim associated with taxable supplies, as the gas in question was purchased solely for making taxable supplies. The Tribunal citing previous decisions of the Tribunal allowing similar input tax adjustments for utility companies directed that the appellant be allowed to adjust input tax for UFG beyond the limits prescribed by the Oil and Gas Regulatory Authority (OGRA).

The Tribunal also addressed the ground of the respondent department, asserting that decisions of larger benches hold greater precedence over those of smaller benches and reiterating that the larger bench's decision should be followed to ensure legal consistency. Reliance was also placed on the decision of Lahore High Court in case of 'M/s Mayfair Spinning Mills Limited v. Appellate Tribunal' reported as 2002 PTCL CL 115 affirming that input tax adjustments for loss of goods should be permitted, given the intention of appellant at the time of purchases was to make taxable supplies.

3. WASTAGE IN PRODUCTION IS AN INHERENT PART OF THE PRODUCTION PROCESS FOR TAXABLE SUPPLIES.

2024 TAX 571
ISLAMABAD HIGH COURT

M/S. FAUJI CEMENT COMPANY LIMITED
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 7, 8 and 8(1)(a) of Sales Tax Act, 1990 (the Act)

Brief facts:

Messrs. Fauji Cement Company Limited, engaged in the production of cement bags sought input tax adjustment for cement bags that were burst during the production process. The tax department denied the adjustment based on section 8(1)(a) of the ST Act, asserted that input tax adjustments were limited under certain circumstances.

Feeling aggrieved, the taxpayer filed appeal before the CIRA who upheld the department's order. The taxpayer then filed appeal before the Appellate Tribunal where Tribunal also upheld the aforesaid disallowance of input tax.

The taxpayer filed reference application before the Islamabad High Court. The taxpayer argued that the wastage was an inherent part of producing taxable supplies, while the tax department contended the taxpayer had not provided sufficient evidence for the claimed wastage and that it exceeded industry averages.

Decision:

The High Court decided the reference in favor of the appellant and held that wastage during the production of taxable supplies is an integral aspect of the production process. The court determined that section 8(1)(a) does not apply to wastage incurred while producing taxable supplies, as such wastage does not serve any purpose other than that of providing taxable supplies. The court clarified that taxpayers are entitled to input tax adjustments for wastage related to taxable supplies, and therefore allowed the reference setting it as a precedent for future cases in respect of admissibility of input tax on production-related wastages.

4. LHC MANDATES TIMELY RESOLUTION OF TAX REFUND CLAIMS, HIGHLIGHTING THE NEED FOR LEGISLATIVE REFORMS TO UPHOLD TAXPAYER RIGHTS AGAINST UNDUE DELAYS.

2024 TAX 583
LAHORE HIGH COURT

M/S. AGRITECH LIMITED
VS
FEDERATION OF PAKISTAN, ETC.

Applicable provisions: Section 10, 10(1) of the Sales Tax Act, 1990 (the Act)

Brief facts:

The petitioner is a Public Limited Company, registered under the law, and is engaged in manufacturing of fertilizers, prominent of which being Urea and Granulated Single Super Phosphate (GSSP).

The petitioner paid input tax applicable at 17% whereas the output tax is charged on the goods (fertilizers), at the reduced rate of 2% by virtue of Eighth Schedule to the Act. Hence, the petitioner was entitled to the amount of tax refund for the period of January, 2021 to June, 2022 in respect of excess input tax paid. However, the refund claims remained pending for payment with the respondent-FBR despite timely filing of the same along with the requisite documents.

The petitioner contended that its claims were not processed within the required time as outlined in Section 10 of the ST Act, which mandates that refund claims be processed within 45 days, with provision for audit/verification if there is reason to believe that a claim is not admissible. The respondent FBR initiated audit proceedings leading to the issuance of a show-cause notice regarding excess input tax claim, which the petitioner argues is unlawful and aims to delay the refund process.

Decision:

The Court determined that Section 10 of the ST Act delineates a framework for processing refunds for taxpayers involved in zero-rated supplies and exports. However, it was concluded that the petitioner's case fell under the first proviso of Section 10(1) regarding supplies with a reduced tax rate. Therefore, the faster time frame stipulated under Section 10(1) was not applicable.

The Court observed that while the FBR is empowered to conduct audits and inquire into claims deemed non-admissible, it must adhere to the statutory timeframes set out in Section 10(3) for completing such audits, within initial period of 60 days and possible extensions up to 9 months. Non-adherence to these timelines was seen as infringing on the taxpayer's constitutional rights under Articles 23 and 24. The Court also ruled that show-cause notices serve as a means for taxpayers to address issues raised regarding their claims, and as such, challenging them prematurely was not justified. The petitioner was entitled to have its claim processed expeditiously, reflecting the importance of taxpayer rights in balancing tax administration and the promotion of legislative reforms to prevent unjust delays in refund claims processing.

The Court directed FBR to pursue the issue in accordance with statutory requirements and encouraged legislative action to address the deficiencies regarding the consequences of delays in refund processing. Ultimately, the petition was disposed of, emphasizing the need for compliance with set statutory procedures.

Khyber Pakhtunkhwa Sales Tax on Services Act, 2022

A. Reported Decisions

1. KPRA HAS NO POWER TO COLLECT SALES TAX ON SERVICES RENDERED IN KARACHI

2024 TAX 574
PESHAWAR HIGH COURT

M/S. AL-HAMD BULK STORAGE (PVT) LTD, KARACHI SINDH
VS
KHYBER PAKHTUNKHWA REVENUE AUTHORITY

Applicable provisions: Section 19, 19(2), 20 and 22 of the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 (the Act)

Brief facts:

In the instant case, Ms Al-Hamd Bulk Storage (Pvt) Ltd, a company based in Karachi entered into a contractual agreement with a Peshawar-based company for the provision of storage facilities for methanol in excise bonded tanks situated in Kemari, Karachi. The agreement was initially set for one year but extended until December 2019. During this period, the payment received by the petitioner was subject to withholding tax, which the Peshawar-based company withheld and deposited with the Khyber Pakhtunkhwa Revenue Authority (KPRA).

The tax withholding was contested by the Karachi company when it was subsequently audited under the Sindh Sales Tax on Services Act, 2011, during which it was held responsible for paying the Sindh sales tax on services provided in Karachi. In response to the withholding tax action by the Peshawar-based company, M/s Al-Hamd Bulk Storage filed a constitutional petition before the Peshawar High Court challenging the withholding of tax, asserting that no taxable event occurred under KP's tax laws, as all services were provided in Karachi.

Decision:

The Peshawar High Court ruled in favor of the petitioner, emphasizing that no taxing event had occurred within Khyber Pakhtunkhwa since the services in question were provided in Karachi. The Court determined that the petitioner was registered under the Sindh Sales Tax on Services Act, 2011 and had duly paid sales tax for the services rendered in Sindh. As such, the tax withheld and deposited with KPRA was deemed to be outside the jurisdiction of the KPRA.

The Court cited the legal framework provided by the Khyber Pakhtunkhwa Sales Tax on Services Act, specifically section 19 and 22, which define taxable services and economic activities. It concluded that the services provided by the petitioner did not trigger a sales tax obligation under the Khyber Pakhtunkhwa laws due to the nature of the agreement and the location where the services were executed.

The Court established that the tax withheld was beyond Khyber Pakhtunkhwa's jurisdiction and ordered a refund of the amount withheld by the Peshawar-based company. The judgment primarily cited Section 72(1) of the Contract Act, 1872, highlighting restitution in cases of unjust enrichment as the basis for the refund order, and directed the refund be processed within three months.

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