YOUSUF ADIL
PACE ALIGNED...

Tax Bulletin

FEBRUARY 2024

Tax

Foreword

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

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

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

This publication can also be accessed on our Website.

www.yousufadil.com

Karachi
February 19, 2024

Contents

Executive Summary

S.No.	Reference	Summary / Gist	Page No.
Direct Tax – Reported Decision			
1.	(2023) 128 TAX 531	**DEPARTMENT HAS NO AUTHORITY TO PROCEED AGAINST A PERSON WHEN THE MATTER IS ALREADY TIME BARRED AS AFTER LAPSE OF PRESCRIBED TIME LIMIT, MATTER BECOMES PAST AND CLOSED TRANSACTION** The FBR has the power to extend the time limit prescribed under the Ordinance but that extended period should be reasonable which, as per Hon'ble Apex Court, could be six months' time and anything beyond the period of six months could not be termed as reasonable or valid exercise of the powers under Section 214A or 214C of the Ordinance. Thus, any consequent proceedings against the taxpayer is unlawful being past and closed transaction.	8
2.	(2024) 129 TAX 1	**AUTOMATIC SELECTION FOR AUDIT IS A RESULT THAT COMES ABOUT AFTER GOING THROUGH VARIOUS STATUTORY FILTERS UNDER THE ORDINANCE** Section 214D of the Ordinance as much as it is applied automatically, shall not bypass the filters otherwise built into the Ordinance before an audit could be undertaken, need to be construed and applied strictly.	9
3.	(2024) 129 TAX 27	**THE TERM 'GROSS SALES' IN FACT DISTINGUISHES AND ENLARGES THE SCOPE AND COMPASS OF 'GROSS RECEIPTS' FOR THE PURPOSE OF TUNROVER WHILE CALCUALTING MINIMUM TAX UNDER SECTION 113 OF THE ORDINANCE** Expression 'gross receipts' needs to be construed and read disjunctively, while distinguishing it from activity of sale of goods for the purpose of turnover while calculating turnover tax (minimum tax regime) under section 113 of the Ordinance.	9

S.No.	Reference	**Summary / Gist**	**Page No.**
		The Tribunal also noted that the term "End-Consumers" is not explicitly defined in the Act, and its scope would be determined by reference to ordinary dictionary meanings and the principle of 'Ejusdem Generis'. Interpretation should be done considering related words and avoiding basing it on the Inland Revenue's preferences.	
2	2023 TAX 469 (Lahore HC)	**REPLACEMENT OF AUTO PARTS COVERED UNDER WARRANTY AT RELEVANT TIME ARE NOT CHARGEABLE TO SALES TAX** LHC held that manufacturer directly handled the replacement of defected auto parts under warranty, which offered free replacement within specified time or mileage limits. The contract for the sale of vehicle comprised both the supply of the vehicle and the service for replacing defective parts. The warranty replacements were already factored into the vehicle's purchase price, leading to the sales tax being paid on the overall contractual consideration, hence, no sales tax will be applied again on free replacement of parts. LHC allowed the reference application and set-aside the orders of below forums.	13
3	2023 TAX 323 (Appellate Tribunal)	**INPUT TAX CLAIMED ON PURCHASES SHOULD NOT BE CONSIDERED INADMISSIBLE UNDER SECTION 8(1)(e) SOLELY DUE TO NON-SUBMISSION OF ANNEXURE-J WITH THE SALES TAX RETURNS** ATIR accepted the appeal, stating that input tax on purchases should not be deemed inadmissible under section 8(1)(e) of the ST Act solely due to the absence of Annexure-J with the sales tax returns. ATIR highlighted that section 26(5) of the ST Act and Annexure-J have distinct scopes and applications. Annexure-J focuses on specific data related to the return filer, while section 26(5) deals with the summary and information of purchase, sales, and imports. These aspects serve separate purposes in the sales tax compliance process but are not identical.	14
4	2023 PTD 1667 (Lahore HC)	**INVOKING SECTION 2(37) DOES NOT MAKE THE CASE OF TAX FRAUD UNLESS INVOICES AGAINST WHICH INPUT WAS CLAIMED ARE DECLARED FAKE THROUGH A SPEAKING ORDER.** ATIR decided the appeal in favor of the appellant and directed to restore appellant's status as an operative person from the date of its registration.	15

S.No.	Reference	**Summary / Gist**	**Page No.**
		ATIR emphasized that the action of suspension of registration or blacklisting should only be taken as a last resort after establishing tax fraud or issuing fake invoices. ATIR held that before exercising power under section 21(2) of the ST Act, the Commissioner of Inland Revenue must be satisfied that a registered person has issued fake invoices or committed tax fraud. It clarified that invoking section 2(37) does not make the case of tax fraud unless invoices against which input was claimed are declared fake through a speaking order.	
5	2024 TAX 32 (Appellate Tribunal)	**CHARGEABILITY OF EXTRA TAX SHOULD NOT BE DETERMINED BY ORDINARY MEANING OF CONFECTIONARY.** The ATIR held that word confectionary implies to products which include sugar as substantial ingredient like candies, fruit marmalade sweets, toffees, caramels, chewing gum, white chocolates etc. Therefore, the alleged products cannot be said to be "confectionary" by any stretch of meaning of the said term as provided in dictionaries. Hence, appellant is not chargeable to extra tax as the aforesaid products are not considered to be confectionary by an ordinary meaning.	15

Income Tax Ordinance, 2001

Reported Decisions

1. DEPARTMENT HAS NO AUTHORITY TO PROCEED AGAINST A PERSON WHEN THE MATTER IS ALREADY TIME BARRED AS AFTER LAPSE OF PRESCRIBED TIME LIMIT, MATTER BECOMES PAST AND CLOSED TRANSACTION.

(2023) 128 TAX 531
SINDH HIGH COURT

M/S SKF PAKISTAN (PVT.) LIMITED, MR. MOHSIN ALI NATHANI
VS
ADVOCATE FOR INLAND REVENUE

APPLICABLE SECTIONS: 122, 174, 177, 214A AND 214C OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The Federal Board of Revenue (the FBR) selected the case of the petitioners for audit for the tax year 2014 (corresponding accounting period was from January 01, 2013 to December 31, 2013).

Statute of limitation for proceedings under section 122 of the Ordinance could be made within five years after the expiry of the financial year, accordingly, such proceedings for the Petitioners expired on June 30, 2019. However, as per section 174 of the Ordinance, a taxpayer is required to maintain the accounts and documents for the period of six years after the end of tax year to which they relate. In case of Petitioners time limit under section 174 expired on December 31, 2019.

In terms of the above specified time limits, the FBR did not complete the audit proceedings initiated in 2016, however, by exercising powers under Section 214C of the Ordinance, FBR after expiry of time limit for amendment of assessment under section 122 of the Ordinance but some 26 days prior to the expiry of time limit as prescribed under Section 174 of the Ordinance i.e. on December 04, 2019 extended the time for finalization of audit proceedings up to June 30, 2020 for the tax year 2014. Surprisingly again, FBR, just 21 days before the extended time limit issued show cause notice to the petitioner and on the very last date when the date was about to expire i.e. June 30, 2020 again granted general condonation of limitation under section 214A of the Ordinance on the ground of pandemic being spread over the country.

The petitioners, being aggrieved by the time barred actions adopted by the FBR, approached the High Court and raised the plea that FBR has no authority to proceed against the petitioners after the limitation period as prescribed under the Ordinance. The petitioners referred various judgments of the Appellate Forums in support of their contention whereby it is held that any action beyond the limitation period is non-est in the eyes of law and is ab-initio void.

Decision:

The Sindh High Court allowed the petitions in favor of taxpayers and pronounced the following:

- Though FBR has the power to extend the time but that period should be reasonable and a reasonable period, as per Hon'ble Apex Court, could be six months' time.

- In the present case, FBR has extended the time period to complete the audit proceedings within a period of six months' time and on the very last date when the date was about to expire again extended the time limit for another six months' time on the ground of pandemic being spread over the country which could not be termed as reasonable or valid exercise of the powers under Section 214A or 214C of the Ordinance.

- It is a settled proposition of law that FBR has no authority to proceed against a person when the matter is already time barred as after lapse of prescribed time limit matter becomes past and closed transaction.

2. AUTOMATIC SELECTION FOR AUDIT IS A RESULT THAT COMES ABOUT AFTER GOING THROUGH VARIOUS STATUTORY FILTERS UNDER THE ORDINANCE

(2024) 129 TAX 1
SUPREME COURT OF PAKISTAN

THE COMMISSIONER INLAND REVNUE, LAHORE
VS
M/S ATTA CABLES (PRIVATE) LIMITED

APPLICABLE SECTIONS: 119, 177 AND 214D OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The department selected the taxpayer for automatic selection of audit on the basis of late filing of return for tax year 2015 within the specified due date. It is important to mention here that the taxpayer filed an extension application for filing of return which was not responded by the Commissioner Inland Revenue (the CIR).

Being aggrieved by the notices served in this regard, the taxpayer challenged the same by filing a writ petition in the Lahore High Court. The learned single Judge, relying on an earlier (single Bench) decision of that Court dismissed the petition. The taxpayer filed an intra-Court appeal, which was allowed by the learned Division Bench which relied on a decision of the Sindh High Court. The department petitioned the Supreme Court for leave to appeal, which was granted.

Decision:

The Supreme Court of Pakistan dismissed the petition considering the following aspects of the case in hand:

- Automatic selection for audit would have applied if the CIR had extended the period for filing the return and the return was not filed within such extended period.

- It is relevant to quote that a failure to file a return within the due date and the fate of an application and how it is dispose of (or not, as the case may be), can have different consequences and implications depending on which provision of the Ordinance is under consideration. For the present case, only section 214D of the Ordinance is concerned and therefore whatever has been said is to be so understood and applied.

- Section 214D of the Ordinance as much as it is applied automatically, shall not bypass the filters otherwise built into the Ordinance before an audit could be undertaken, need to be construed and applied strictly.

3. THE TERM 'GROSS SALES' IN FACT DISTINGUISHES AND ENLARGES THE SCOPE AND COMPASS OF 'GROSS RECEIPTS' FOR THE PURPOSE OF TUNROVER WHILE CALCUALTING MINIMUM TAX UNDER SECTION 113 OF THE ORDINANCE

(2024) 129 TAX 27
LAHORE HIGH COURT

THE COMMISSIONER INLAND REVNUE, LAHORE
VS
M/S PAKISTAN CRICKET BOARD

APPLICABLE SECTIONS: 15, 15A, 113 AND 169 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The brief facts of the case are that the Appellate Tribunal Inland Revenue (the ATIR) allowed the petitions filed by the taxpayer:

- For Tax Year 2014, deleted the liability of minimum tax charged, and applied tax on income, inclusive of income from property, where the amount of tax computed was more than the benchmark set for triggering minimum tax regime under section 113 of the Ordinance.

- For Tax Year 2015, deleted tax separately charged on income from property, upon finding that cumulative component of tax payable was lesser than the benchmark provided for attracting minimum tax regime under section 113 of the Ordinance.

The department filed the reference application before the Lahore High Court (the LHC) and raised the following question arising out of the above consolidated order of the ATIR whereby appeals filed by the taxpayer for the subject tax years were allowed.

- Whether rental income from the property qualifies as taxpayer's gross receipts for the purposes of turnover for computing turnover tax (Minimum tax) under section 113 of the Ordinance for the subject tax years, provided that the conditions prescribed for charging of minimum tax under section 113 of the Ordinance are fulfilled.

Decision:

The LHC answered the question in affirmative in the following manner that illegality was not committed by the ATIR while allowing appeals preferred by the taxpayer:

- Section 113 of the Ordinance refers, inter alia, gross sales and gross receipts. The term 'gross receipts' cannot be confined to activity connected with sales of goods, when such activity of sale of goods is catered through expression 'gross sales'. In other words, gross receipts include income from non-sales sources, and not necessarily related to regular business activity.

- Coupling of expression 'gross receipts' exclusively with activity of sale of goods would render the expression '*gross sales*' redundant, superfluous and have an effect of narrowing down the base of income for the purposes of Minimum tax regime under section 113 of the Ordinance.

4. IT IS INALIENABLE RIGHT TO BE TREATED IN ACCORDANCE WITH LAW

(2024) 129 TAX 36
LAHORE HIGH COURT

NORDEX SINGAPORE EQUIMPMENT LIMITED
VS
FBR, COMMISSIONER INLAND REVENUE (CIR) AND FFC ENERGY LIMITED

WRIT PETITION NO.420 OF 2014

APPLICABLE SECTIONS: 2(41), 122A, 122B, 152,152(5), 152(7), 153, 206 AND 206A OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)
231A OF THE INCOME TAX RULES, 2002.

Brief Facts:

The Petitioner is an offshore Company duly registered in Singapore, entered into an agreement with FFC Energy Limited for supply of goods/equipment, including wind power plant.

It is a subsidiary of Nordex Energy GMBH with ultimate shareholder being NORDEX S.E. a Company listed at stock exchange in Germany and has no permanent establishment in Pakistan in terms of section 2(41) of the Ordinance. The equipment and goods acquired offshore were required to directly reach in Pakistan to FFC Energy Limited in its own name. The Title of equipment and goods along with all related risk and rewards of ownership were transferred to FFC Energy Limited outside the territory of Pakistan.

The Petitioner filed an application to the FBR in terms of section 206A of the Ordinance read with Rule 231A of the Income Tax Rules, 2002, demanding advance ruling pointing out that Petitioner does not have any Permanent Establishment in Pakistan and notifying the CIR that payment to be made to the Petitioner without deduction of tax under section 152 and 153 of the Ordinance.

CIR passed the Order whereby FFC Energy Limited was directed to deduct tax from the Petitioner before remitting the payment.

Above said Order was communicated by FFC Energy Limited to the Petitioner by stating that payment shall be made after deduction of tax as directed.

Arguments:

Being aggrieved, the petition was filed before the LHC.

The Petitioner argues that where the title and ownership transfers outside the boundaries of Pakistan, any income arising to the petitioner on such supply is not taxable in Pakistan in view of the Double Tax Treaty between Pakistan and Singapore.

The Petitioner is seeking direction to the FBR/CIR to declare that being a non-resident Company, it is not liable to tax deduction under section 152 of the Ordinance read with section 152(7) of the Ordinance.

The FFCL Eerngy limited may graciously be directed to make payment to the Petitioner without deduction of tax.

FBR/CIR raised objection that Petitioner has alternate remedy available against impugned order by filing revision in terms of sections 122A and 122B of the Ordinance, and therefore, this petition is premature being an attempt to preempt the levy of income tax under the law.

Decision:

The LHC decided the petition as under:

It is inalienable right of the Petitioner and FFC Energy Limited to be treated in accordance with law by FBR and no action detrimental to the reputation, life and liberty shall be taken except as per law and in the case in hand the relevant law is the Ordinance and the Rules.

It is however, observed that the FBR and CIR being regulator, on touchstone of above referred pronouncement, have not met their statutory obligation and impugned order has been passed by the CIR against the provision and all norms of law. Matter in issue was not timely decided in absolute form as well as common purpose of applications made under the different statutory provisions was defeated, thus such practice of the FBR and CIR has not only frustrated cause of justice but has also added agonies of parties as well has piled additional burden and workload for this court to takeaway precious time, energy and resources of machinery of law.

Sections 206A and 152(5) are interconnected and in the impugned order, care has not been taken that the provisions of section 152 of the Ordinance and section 206A are intertwined and were required to be read together simultaneously for the purpose of deciding issue, therefore, in order to advance the cause of justice to prevent miscarriage of justice as laid down in the judgement of the Supreme Court of Pakistan cited as 2017 SCMR 118, the writ petition is allowed, impugned Order passed by the CIR, is set aside and matter is remitted to the CIR who shall decide the same afresh strictly in accordance with law and EPC contract by providing proper hearing to all concerned including the Petitioner and FFC Energy Limited, within a period of two months from receipt of certified copy of this Order.

Sales Tax Act, 1990

A. Notification(s)

1. S.R.O. No. 28(1)/2024 dated January 10, 2024

Through this SRO, FBR has notified that S.R.O. No. 1525-DI (1)/2023 dated December 12, 2023 shall be effective from February 1, 2024 whereby registered persons including importers manufacturers, wholesalers, distributors and wholesaler-cum-retailers of fast-moving consumer goods were notified as persons required to issue e-invoices through e-invoicing system. The said notification is issued in terms of Rule 150Q of the SRO 1525 (1) /2023 whereby option to issue e-invoice is substituted with mandatory requirement for issuance of e-invoice through system for the notified registered persons.

B. Circular(s)

2. No. 2(54)SS(BDT-1) GST//7230R dated February 1, 2024

Circular is issued in connection with FBR's initiative to develop a Single Sales Tax Portal/Return in consultation with all provincial sales tax authorities, to simplify the process of filing sales tax returns and promote ease of doing business and reduce compliance cost. This initiative aims to harmonize tax procedures across Federal and Provincial Government Revenue Authorities, promoting national unity.

In the first phase, the single sales tax return is being introduced for the telecommunications sector, including major companies like CM Pak Limited, Pakistan Mobile Communications Limited, Pak Telecom Mobile Limited, Telenor Pakistan (Pvt.) Limited, and Pakistan Telecommunication Company.

All concerned sales tax registered persons and their representatives are advised to familiarize themselves with the Single Sales Tax Portal/Return, as the old sales tax return will not be available for filing the return for January 2024 relating to the telecommunications sector and the uploading of sales tax invoices of January, 2024 has been enabled.

The Single Sales Tax Portal/Return for telecommunication sector can be accessible through www.iris.fbr.gov.pk.

It is anticipated that this centralized platform will help taxpayers to file a single sales tax return instead of separate returns to FBR and Provincial Sales Tax Authorities, saving time and effort, reduce duplication, and ultimately lead to cost savings for both taxpayers and tax authorities. It will also minimize errors and data entry, while allowing apportioning of input tax adjustment and tax payments across all sales tax authorities.

C. Reported Decisions

1. SALES MADE TO END-CONSUMERS WERE NOT SUBJECT TO LEVY OF FURTHER TAX

2023 PTD 1819
APPELLATE TRIBUNAL INLAND REVENUE

M/S MUJTABA SAUD TEXTILE
Vs
COMMISSIONER INLAND REVENUE FAISALABAD

Applicable Provisions: 3(1A) of the ST Act, 1990.

Brief Facts:

In the instant case, the appellant is a sales tax registered manufacturer and retailer engaged in making retail sales to end-consumers from its retail outlets in Faisalabad. During analysis of the sales tax returns and invoice summaries for the tax periods from August 2019 to June 2020 and October 2018 to November 2020, certain discrepancies were pointed out that the appellant has failed to charge and pay further tax at the rate of 3% in respect of its supplies made to un-registered persons. Resultantly, the appellant was issued show-cause notices for the respective periods which were responded by the appellant taking the premise that such sales made to unregistered persons comprise of sales to end consumers which are excluded from the scope of further tax in terms of SRO 648 of 2013.

However, the department being not in agreement with the submissions made by the appellant culminated the proceedings through passing of assessment orders creating demand of further tax. Being aggrieved by the said orders, the appellant went into appeals before the Commissioner Appeals who remanded back the matter to the department.

Being dissatisfied, the appellant, challenged the orders of Commissioner Appeals before the Appellate Tribunal on the ground that sales to end-consumers should not be subjected to additional tax under section 3(1A) of the ST Act, relying on S.R.O. 648(I)/2013 dated July 9, 2013, which excludes direct supplies to end-consumers from the purview of section 3(1A) of the ST Act. Reliance in this regard was placed on the judgments of Appellate Tribunal in cases of 2016 PTD 2675 and 2021 PTD 1266.

Decision:

The Appellate Tribunal accepted both appeals and set-aside the orders by taking the view that sales made to end-consumers were not subject to levy of further tax under section 3(1A) of the Act in the light of cumulative reading of section 3(1A) read with S.R.O. 648(I)/2013 dated July 9, 2013 which exclude supply of goods directly to the end-consumers from the provisions of section 3(1A) of the ST Act.

The Tribunal also held that the term "End-Consumers" is not explicitly defined in the Act. Therefore, its extent and scope would be determined by reference to the ordinary dictionary meanings and under the established principles of statute interpretation, commonly known as the principle of 'Ejusdem Generis'. This principle provides that words and phrases within a law are to be read collectively, rather than in isolation. It is crucial to interpret the expression "End-Consumers" in the context of related words, avoiding interpretation based on the Inland Revenue's whims or wishes.

2. REPLACEMENT OF AUTO PARTS COVERED UNDER WARRANTY AT RELEVANT TIME ARE NOT CHARGEABLE TO SALES TAX

2023 TAX 469
LAHORE HIGH COURT

M/S HONDA ATLAS CARS PRIVATE LIMITED
VS
ADDITIONAL COLLECTOR LEGAL

Applicable Provisions: 2(39),2(41), 2(46), 3,4,6,7,11(2), 13,23, 26,34, 36(1) and 47 of the ST Act, 1990.

Brief Facts:

In the instant case, the applicant being a car manufacturer, received a show cause notice whereby the applicant was alleged for non-payment of sales tax on alleged supply of auto parts against warranty claim. The adjudication officer passed the order-in-original holding the applicant liable to pay sales tax along-with penalty. Being aggrieved, the applicant filed appeals before the Appellate forum however, both forums dismissed the appeals.

Feeling aggrieved, the applicant availed the remedy of filing sales tax reference before the Lahore High Court with following questions of law;

(i) Whether the learned tribunal erred in law by holding that "the replacement parts constituted a distinguishable 'supply' on which tax was required to be charged and deposited, under the law, at the time of supply/replacement";

(ii) Whether the learned tribunal fell in palpable error in finding out the true nature of the transaction in hand and has upheld the order of the forums below which would result into imposition of tax twice for one taxable supply;

(iii) Whether the learned tribunal omitted to take into consideration the definition of "supply" provided in section 2(33) as it was at the relevant time especially with reference to the words "for consideration" used therein;

(iv) Whether the learned tribunal failed to take into consideration various provisions of the Act including section 2(46)(b) in order to find out intention of legislature in respect of the transactions like the one under discussion.

Decision:

The High Court allowed the reference application and set-aside the orders of the below forums by taking the view that replacement of auto parts covered by a manufacturer's warranty were not taxable at the relevant time.

The Court emphasized that the auto parts were replaced directly by the manufacturer in the present case under the warranty provided for free replacement of defective parts within an agreed period or mileage. The contract of sale included both the vehicle supply and the service for replacement of defective parts. The warranty replacements were incorporated in the price of the motor vehicle, and thus, sales tax had already been paid on the contractual consideration. Reliance in this regard was placed in the judgment of Indian Supreme Court in Tata case and judgments in Prem Nath Motors vs. State of Kerala (1979) 43 STC 52 (Delhi) and Geo Motors (2001) 122 STC 285.

3. INPUT TAX CLAIMED ON PURCHASES SHOULD NOT BE CONSIDERED INADMISSIBLE UNDER SECTION 8(1)(e) SOLELY DUE TO NON-SUBMISSION OF ANNEXURE-J WITH THE SALES TAX RETURNS

2023 TAX 323
APPELLATE TRIBUNAL INLAND REVENUE

M/S. H.A.R. TEXTILE MILLS (PVT.) LIMITED
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: 8(1)(e), 24A, 25, 26(1), 26(5), 33(10), 34(1) and 72B of the ST Act.

Brief facts:

The assessing officer observed during analysis of sales tax return of the appellant for the tax period June 2020, that the appellant failed to file Annexure-J along with the return as required under section 26 read with rule 14(1) of the ST Rules amended vide SRO. 494(I)/2015 dated June 30, 2015.

It was further alleged by the officer that the appellant has claimed input tax adjustment which is in violation of section 8(1)(e) of the ST Act [i.e. failure to provide information required by the Board through notification issued under section 26(5)]. Consequently, a show cause notice was issued seeking explanation in this regard. The explanation submitted by the appellant was found unsatisfactory and resultantly, the order in original was passed wherein sales tax was held to be recoverable under section 11(2) along with default surcharge under section 34(1) and penalty u/s 33(10) of the ST Act.

The appellant being dissatisfied with the treatment of assessing officer assailed the order in original before the Commissioner Appeals but could not get a favourable response as appeal was dismissed. The appellant, to show discontent, challenged the order of the Commissioner Appeals by availing the remedy of second appeal before the Appellate Tribunal.

Decision:

The Appellate Tribunal accepted the appeal on the ground that input tax claimed on taxable purchases should not be considered inadmissible under section 8(1)(e) due to the non-submission of Annexure-J with the sales tax returns which is out of the scope of information required under section 26(5).

The Appellate Tribunal held that though a return without Annexure-J can be considered an incomplete return under section 26(1) of the ST Act as the information provided in Annexure-J is an essential part of the return process. However, Annexure-J and sub-section (5) of section 26 of the Act may not have a direct connection; this reason leads to the conclusion that the information required under Annex-J is not the information required under subsection (5) of Section 26 of the ST Act.

The Appellate Tribunal highlighted that section 26(5) of the Act and Annexure-J to the return have different scopes and applications. Annexure-J focuses on specific data related to the return filer, while section 26(5) deals with the summary and information of purchase, sales, and imports. These two aspects are not identical but serve separate purposes in the sales tax compliance process.

4. INVOKING SECTION 2(37) DOES NOT MAKE THE CASE OF TAX FRAUD UNLESS INVOICES AGAINST WHICH INPUT WAS CLAIMED ARE DECLARED FAKE THROUGH A SPEAKING ORDER

2023 TAX 334
APPELLATE TRIBUNAL INLAND REVENUE

M/S FAST ENGINEERING
VS
COMMISSIONER INLAND REVENUE

Applicable Provisions: 2(37), 3(A), 3(3)(a), 11(2), 21(2), 21(4), 23, 33, 34 and 73 of the ST Act.

Brief Facts:

During investigation proceedings on "suspicion of tax fraud" initiated by I&P Cell, RTO, Faisalabad against M/s. Amin Traders, Faisalabad and others, the record collected by the I&P Cell from the Office of Mr. Hafeez Ahmad Sabri (ITP) revealed that most of the units claiming illegal input tax were being operated by the said person. The accused further admitted that he had arranged flying invoices for the appellant for adjustment of input tax in order to curtail output tax and evasion of the due tax payment.

The allegation states that the appellant claimed inadmissible input tax adjustment against blacklisted units, suggesting intentional fraud. As a result, the CIR (Lyallpur Zone) suspended the appellant's registration through order, under the authority of section 21(2) of the ST Act read with Rule 12 of the ST Rules. Subsequently, a show-cause notice was also issued, asking the appellant as to why they should not be blacklisted. The appellant, being dissatisfied with suspension order issued by the Commissioner, filed appeal there against before the Appellate Tribunal Inland Revenue under section 46(1)(b) of the ST Act.

Decision:

The Appellate Tribunal decided the appeal in favor of the appellant and the impugned order for suspension of registration and consequent show cause notice issued for blacklisting were declared to be illegal, void ab initio and set aside with the direction to restore the status of the appellant as an operative person from the date of its registration.

The Appellate Tribunal further held that:

- The action of suspension of registration or blacklisting should be taken as last resort after establishing tax fraud or issuing fake invoices;
- The act of suspension of registration stands premature without determining amount of tax credit or adjustments illegally made under section 11(2) of ST Act;
- Before exercising power under section 21(2) of ST Act, the Commissioner IR has to be satisfied that a registered person is found to have issued fake invoices or has committed tax fraud;
- Invoking section 2(37) does not make the case of tax fraud unless invoices against which input was claimed are declared fake through speaking order.

5. THE CHARGEABILITY OF EXTRA TAX SHOULD NOT BE DETERMINED BY ORDINARY MEANING OF CONFECTIONARY.

2024 TAX 32
APPELLATE TRIBUNAL INLAND REVENUE

THE COMMISSIONER INLAND REVENUE
VS
M/S SHALIMAR FOODS PRODUCTS KARACHI

Applicable Provisions: Section 3(5) and 11(2) of the ST Act, Chapter XIII of the repealed Sales Tax Special Procedure Rules, 2007

Brief Facts:

M/s Shalimar Food Products being a registered person, is engaged in the business of manufacturing and supply of a combination of betel nut, anise food and dates (Tulsi) and betel nut (Rasili). Upon examination of monthly sales tax returns, the tax officer observed that the registered person is manufacturing and selling confectionery items i.e. "Tulsi" and "Rasili" and being confectionery items these are subject to extra tax under Chapter XIII of the repealed Sales Tax Special Procedure Rules, 2007 (STSPR) which was not paid. Therefore, registered person was issued with a

show cause notice under section 11(2) of the ST Act which was accordingly replied to by the registered person. The reply could not convince the officer and therefore resulted into passing of impugned assessment order.

Being aggrieved, the registered person filed appeal before the Commissioner Appeals who vide his appellate order decided the appeal in favour of registered person. The department being dissatisfied had come up with the appeal before the Appellate Tribunal.

Decision:

The Appellate Tribunal dismissed the appeal filed by the department being devoid of merits and held that word confectionary implies to products which include sugar as substantial ingredient like candies, fruit marmalade sweets, toffees, caramels, chewing gum, white chocolates etc.

The Tribunal observed that when the said criteria and conditions are applied to Rasili and Tulsi, both products do not contain sugar as substantial ingredient, and, therefore, same cannot be said to be "confectionary" by any stretch of meaning of the said term as provided in dictionaries. Therefore, appellant is not chargeable to extra tax as the aforesaid products does not considered to be confectionary by an ordinary meaning.

CONTACT US

For more information you may contact

Atif Mufassir
Partner - National Leader Tax & Legal
Karachi Office
Email: amufassir@yousufadil.com

Zubair Abdul Sattar
Partner Tax & Legal
Karachi Office
Email: zsattar@yousufadil.com

Rana Muhammad Usman Khan
Partner
Lahore Office
Email: rmukhan@yousufadil.com

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

Arshad Mehmood
Senior Advisor Tax & Legal
Karachi Office
Email: amehmood@yousufadil.com

Sufian Habib
Executive Director Tax & Legal
Islamabad Office
Email: sufianhabib@yousufadil.com

Muhammad Shahzad Hussain
Partner Business Process Solutions
Karachi Office
Email: muhahussain@yousufadil.com

Our Offices

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

Phones: + 92 (021) 34546494-97
Fax : + 92 (021) 34541314
Email: sghazi@yousufadil.com

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

Phones: + 92 (051) 8350601
+ 92 (051) 8734400-3
Fax: + 92 (051) 8350602
Email: shahzad@yousufadil.com

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

Phones: + 92 (042) 35913595-7
+ 92 (042) 35440520
Fax: + 92 (042) 35440521
Email: rmukhan@yousufadil.com

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

Phones: + 92 (061) 4571131-2
Fax: + 92 (061) 4571134
Email: rmukhan@yousufadil.com

About Yousuf Adil

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