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Tax Bulletin

March 2024

Tax

Foreword

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

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Income Tax Ordinance, 2001

A. Reported Decisions

1. AUTOMATIC SELECTION OF AUDIT UNDER SECTION 214D OF THE ORDINANCE STANDS ABATED AFTER OMISSION MADE THROUGH FINANCE ACT, 2018

2024 PTD 80
SINDH HIGH COURT (SHC)

COMMISSIONER INLAND REVENUE, RTO, GUJRANWALA
VS
MUHAMMAD KHALID CHAUDRY

APPLICABLE SECTIONS: 133, 214A & 214D OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

Return of income of the taxpayer for Tax year 2015 was selected for audit under section 214D of the Ordinance on account of late filing of return of income. Later, due to identification of certain discrepancies in the return of income and wealth statement, show-cause notice was issued which ultimately resulted in passing of amendment of assessment order dated March 16, 2021 creating tax demand of Rs. 16,870,606. Being aggrieved, the taxpayer filed appeal before the Commissioner Appeals, which was decided in favor of the Department. Subsequently, the taxpayer filed an appeal before the Appellate Tribunal Inland Revenue (ATIR). The ATIR annulled both the orders of lower authorities.

The Department filed reference application before the Sindh High Court contending that the ATIR has passed the order in haste disregarding the principle of law enunciated by the Hon'ble Supreme Court of Pakistan in the case reported as 2016 SCMR 816, wherein it was unequivocally held that it cannot be said that the income years which relate to the period covered under the repealed Income Tax Ordinance, 1979, cannot be brought under scrutiny under its provisions after 30.06.2002 on the strength of Section 239(1) of the Ordinance. It was further contended by the Department that the ATIR was not justified to hold that power to use section 214D of the Ordinance, after its omission was not available to the tax officer, by ignoring the provisions of Article 264 of the Constitution of the Islamic Republic of Pakistan, 1973 and Section 6 of the General Clauses Act, 1897.

Decision:

The Hon'ble SHC in its decision referred to the order dated October 27, 2020, passed in W.P. No. 49412 of 2019, wherein it was observed that section 214D of the Ordinance was omitted by way of Finance Act, 2018, therefore, power is not available to be exercised by the officers subsequent to the omission. It was also observed that the ATIR in its order referred to the findings of Federal Tax Ombudsman vide judgment dated 26.12.2018, wherein the Commissioner Inland Revenue was directed to withdraw the audit proceedings regarding late filing of return for the tax year 2015 under Section 214D of the Ordinance.

Moreover, it was held that section 214D of the Ordinance was omitted vide Finance Act, 2018 which took effect on May 22, 2018, whereas the show-cause notice to the taxpayer was issued on November 8, 2018 i.e. when the said provision was not in field. It was further held that through Finance Supplementary (Amendment) Act, 2018 which took effect on October 8, 2018, section 214E was inserted which clearly provides that audit initiated as a result of automatic selection under the omitted section 214D shall stand abated.

The SHC further emphasized that while amending any statute, if the legislature intends to preserve any inchoate right under a repealed provision, it usually incorporates a saving clause or provision in the amending statute, which is not the case in hand. Although, it is also settled law that when any amendment is made in a

statute, which is procedural in nature then the retrospective rule of construction is to be applied, even if it is not specifically given retrospective effect. However, there is an exception to this general rule i.e. when any substantial right stands accrued in favor of a person, then this general rule will not be applied. Reference in this regard was placed on the judgment of Hon'ble Supreme Court of Pakistan in the case reported as (2023 SCMR 111). Hence, the reference application was decided against the applicant Department.

2. THE ATIR HAS NOT EXPLICITLY STATED WHETHER OR NOT THE APPLICANT SUBMITTED THE REQUISITE INFORMATION AND THAT THE ATIR ON SUCH BASIS DETERMINED THAT NO DEMAND COULD BE GENERATED IN TERMS OF SECTION 161 OF THE ORDINANCE

2024 PTD 129
ISLAMABAD HIGH COURT

COMMISSIONER INLAND REVENUE, LEGAL ZONE CORPORATIVE TAX OFFICE, ISLAMABAD
VS
T.F. PIPES LIMITED COMPANY LIMITED

APPLICABLE SECTIONS: 174, 161, 133 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) 44(4) OF INCOME TAX RULES, 2002.

Brief Facts:

Show cause notice was issued by the Department under sections 161 and 174 of the Ordinance requiring the taxpayer to produce reconciliation under Rule 44(4) of the Income Tax Rules, 2002. The taxpayer submitted responses vide its letters dated January 08, 2018, and February 01, 2018.

The Department passed the Order and contended that the taxpayer failed to furnish information required under the notice.

Taxpayer filed appeals before CIRA and then before ATIR. ATIR vide its Order set aside the demand generated by the Department and directed it to identify the individual transactions in relation to which the taxpayer had failed to discharge withholding obligations under section 161 of the Ordinance.

In view of the above, following questions of law was framed by the department before IHC:

- Whether on facts and in circumstances of the case the learned ATIR has not erred in law and facts by holding that Department have not discharged its obligation to specify the payments made by the taxpayer on which it was obliged to deduct tax, when the notice by the Department categorically lists down all the heads under which payments were to be withheld?

- Whether on facts and in circumstances of the case the learned ATIR has not erred in law and fact by holding that the Department did not resort to Rule 44(4), whereas a show-cause notice under section 161 of the Ordinance, read with Rule 44(4) was sent on November 8, 2017 followed by a reminder notice on February 9, 2018, for reconciliation and documentary evidence?

- Whether on facts and in circumstance of the case the learned ATIR has not erred in law and fact that when the taxpayer intentionally and deliberately fails to comply with his obligations under section 161 and rule 44(4), the only way forward is to hold the amount of withholding tax in default, determinable from the available record, recoverable from taxpayer?

Arguments:

The Department argued that the taxpayer failed to furnish the required information under sections 161 and 174 of the Ordinance, and the Department was left with no option but to passed the Order and generated the demand, given that despite various opportunities the taxpayer failed to provide the requisite record.

Department further submitted that now the question was clarified by the august Supreme Court vide its Judgement (2021 SCMR 1325) read together with (2002 PTD 01) wherein it was held that where a taxpayer fails to produce any record after being asked to do so, an assessment can be made under section 161 and recoveries can be affected. However, where a taxpayer produces records, it is for the Department to then identify the transactions in relation to which an obligation under section 161 of the Ordinance has not been discharged.

The Department submitted that in instant case no such information was produced.

On the other hand, taxpayer argued that the Order itself suggests in Para 02 that the taxpayer filed his reply on February 1, 2018, as well as on January 8, 2018, but the Department concluded that the reply filed by the taxpayer was not in accordance with the format required by the Department.

Decision:

The IHC remanded back the matter as under:

- The ATIR has not explicitly stated whether or not the applicant submitted the requisite information and that the ATIR on such basis determined that no demand could be generated in terms of section 161 of the Ordinance.

- It appears that the ATIR did not take into account the fact that within the show-cause notice the application was also put to notice to file a reconciliation statement under Rule 44(4) of the Rules as it has observed that the Department did not bother to obtain a reconciliation statement for such purpose, which finding is incorrect in view of the record placed before us.

- The question of law before us has therefore already been decided in case of 2021 SCMR 1325. It is only a question of fact and the manner in which the Department can generate a demand against a taxpayer that remains to be addressed. For such purpose we find it appropriate to remand the matter back to the Department. In view of the response filed by the taxpayer and the available record with the Department, within it database, it should not be a problem for the Department to identify the individual transactions in relation to which the taxpayer has failed to discharge his withholding obligations for purposes of section 161 and generate a demand in the event that such delinquency is made out from the record.

3. MERE REPEAL OF THE 1979 ORDINANCE AND APPLICABILITY OF THE 2001 ORDINANCE, WOULD NOT IPSO-FACTO BE A GROUND TO DENY THE TAX CREDIT, WHICH OTHERWISE WAS AVAILABLE TO THE TAXPAYER, AS A MATTER OF RIGHT.

2024 PTD 162
SINDH HIGH COURT

COMMISSIONER (LEGAL DIVISION) INLAND REVENUE
VS
KOHINOOR SOAP AND DETERGENTS (PRIVATE) LIMITED

APPLICABLE SECTIONS: 133, 221, 239 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The taxpayer filed its return of income for tax year 2003 claiming tax credit in terms of section 107AA of the Income Tax Ordinance, 1979 (repealed Ordinance), and after necessary credit and adjustments was issued a deemed assessment Order in terms of section 120 of the Ordinance. Subsequently a notice under section 221 of the Ordinance was issued on the ground that tax credit was wrongly allowed for tax year 2003 as the whole of tax credit ought to have been absorbed in assessment year 2002. Reply was submitted by the taxpayer and was contested on merits as well as on the ground that this was not a case wherein a notice could be issued for rectification under Section 221 of the Ordinance.

The reply was not accepted by the Department; an Order was passed under section 221 of the Ordinance against which an appeal before the CIRA also failed.

The taxpayer being aggrieved, preferred Appeal before the ATIR and vide impugned Order the said Appeal stands allowed and decided that:

> *the taxpayer was justified in adjusting balance tax credit against the income of tax year 2003 which could not be absorbed against tax year 2002. This is also intent of section 239(15) of the Income Tax Ordinance, 2001. The language of subsection (15) of Section 239 stipulates that 'Section 107AA of the Income Tax Ordinance, 1979 shall continue to apply until 30th day of June 2002'. Meaning thereby that the taxpayer has been allowed even to invest in purchase of plant and machinery on which credit undersection 107AA of the Income Tax Ordinance, 1979 was allowable. Obviously the*

advantage or facility allowed upto June 30, 2002 cannot be withdrawn retrospectively with the change of law which obviously is not the intent of legislature

The Department filed appeal before SHC and proposing following question of law:

- Whether under the facts and circumstances of the case the learned ATIR was justified in vacating the Order framed under section 221 of Income Tax Ordinance, 2001.
- Whether under the facts and circumstances of the case the learned ATIR was justified in holding that the rectification was made on misinterpretation of legal provisions of the case
- Whether under the facts and circumstances of the case the learned ATIR was justified to allow credit under section 107 AA of the repealed Ordinance for the tax year 2003 despite clear stipulations to the contrary contained in section 239(15) read with section 74 of the Ordinance.

Arguments:

The Department argues that the taxpayer was not entitled to claim tax credit in tax year 2003, as the same pertained to the earlier years; hence, the ATIR has erred in allowing the appeal of taxpayer.

On the other hand, the taxpayer supports the impugned Order of the ATIR and submits that no illegality has been committed by the taxpayer in availing the tax credit, as it was the lawful right of the taxpayer.

Decision:

The SHC decided the matter in favour of taxpayer and held that:

- Mere repeal of the 1979 Ordinance and applicability of the 2001 Ordinance, would not ipso-facto be a ground to deny the tax credit, which otherwise was available to the taxpayer, as a matter of right.
- If the 2001 Ordinance, had not been made effective from July 1, 2002, then such tax-credit available from assessment year 2002 was very much validly and lawfully available for the assessment year 2003, to be deducted from the payable tax being in the following assessment year. The argument, that since section 239(15) of the 2001 Ordinance, provided that section 107 AA of the repealed Ordinance shall continue to apply until the 30th day of June 2002; hence, the tax credit available from pervious assessment year cannot be adjusted on or after June 30, 2002, is misconceived and not in conformity with spirit of the said provision.
- Thus, it is obvious without any ambiguity that the right to claim tax credit comes into existence with the making of investment in the purchase of plant and machinery and the actual deduction from the tax payable is a matter of implementation only. On that score as well, the taxpayer was fully entitled to adjust the available tax credit from the assessment year 2002 (being available under the Repealed Ordinance) in its return for tax year 2003 (filed and finalized under the 2001 Ordinance).

4. NO COERCIVE MEASURES WOULD BE TAKEN AGAINST THE PETITIONER FOR RECOVERY OF THE DISPUTED AMOUNT OF TAX OR WORKERS' WELFARE FUND TILL THE ISSUANCE OF A SPEAKING ORDER IN LINE WITH THE DIRECTIONS OF LHC.

2024 PTD 183
LAHORE HIGH COURT

TETRA PAK (PAKISTAN) LIMITED
VS
FEDERATION OF PAKISTAN AND OTHERS

APPLICABLE SECTIONS: 138 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The Petitioner filed constitutional petition under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") and has sought Judicial Review of a public Action taken by the FBR, through issuance of the impugned notices dated June 17, 2021, under Section 138(1) of the Ordinance, read with Section 4(9) of the Workers' Welfare Fund Ordinance, 1971 (the WWF Ordinance), for recovery of certain

amount of tax and the Workers Welfare Fund (the WWF).

Arguments:

Petitioner argued that the impugned notices have been issued by FBR without going through the proper procedure provided under the law, in sheer violation of the provisions of Article 4 of the Constitution which states in unequivocal terms that it is an inalienable right of every citizen of this country to be treated in accordance with law and no action detrimental to his/her life, liberty, reputation or property shall be taken except as per law. Reliance was placed on the judgment passed by the Supreme Court of Pakistan in the case of Watan Party and another v. Federation of Pakistan and others (PLD 2011 SC 997).

Petitioner further argued that issue of the WWF has already been discussed in detail by the august Supreme Court of Pakistan reported as PLD 2017 SC 28:

Besides there are certain other features of the contributions made to the Workers' Welfare Fund that suggest they are not in the nature of a tax.

Petitioner has also drawn attention of the LHC toward the latest judgments in the cases of reported as PLD 2021 Lahore 343 and 2021 PTD 1321 in which jurisdiction of the FBR; scope of the powers vested in the officers functioning under control of the FBR and provisions of various Sections of the Ordinance have been discussed.

Petitioner also contended that the exercise being conducted by the FBR pursuant to the impugned notice, is also in violation of FBR's own Circular No. 4(33)-Rev. Bud./99 dated February 17, 2000, which is binding on them under Section 206 of the Ordinance. Petitioner claims that the provisions of Section 138 of the Ordinance cannot be straightway invoked without adopting the steps/method/ mechanism given in subsections (4) and (9) of Section 4 of the WWF Ordinance read with the provisions of sections 122 and 221 of the Ordinance, as it offends the provisions of Article 10-A of the Constitution, granting right of fair trial and due process to every citizen of Pakistan.

On the other hand, FBR submitted that in Ramzan Sugar Mills' Case it has been held by this Court that FBR is Regulator of all fiscal laws in the country and being a Regulator, it vests with the main goal of tax collection in the country", therefore, the matter of seeking record and information under various subsections of Section 122 of the Ordinance comes within the domain of the FBR as well as the government officers appointed under the Ordinance and such matters need no interference by this Court as required under its constitutional jurisdiction supports the impugned Order of the ATIR and submits that no illegality has been committed by the taxpayer in availing the tax credit, as it was the lawful right of the taxpayer.

Decision:

The LHC decided the matter as under:

- LHC, after hearing arguments of the parties Ordered for sending a copy of the writ petition along with all the annexures to FBR, who would consider it as a representation of the Petitioner, carefully look into the FBR Circular No. 4(33)-Rev.Bud./99, dated February 17, 2000 and then decide the issue in hand after providing proper hearing to all the concerned including the Petitioner, strictly in accordance with relevant provisions of the Ordinance, as well as the WWF Ordinance, keeping in mind the constitutional provisions and the law, through a speaking Order, within two weeks from the receipt of certified copy of the Order.

- In the meanwhile, no coercive measures would be taken against the Petitioner for recovery of the disputed amount of tax or the WWF, till decision.

5. INCOME TAX DEDUCTION OR COLLECTION IMPLICATIONS IN CASE OF BUISNESSES LOCATED IN AND OPERTAED WITHIN THE TERRITORIAL LIMITS OF THE TRIBAL AREAS

2024 PTD 201
PESHAWAR HIGH COURT

M/S SARDAR WALI KHAN
VS
GOVERNMNET OF PAKISTAN THROUGH FEDERAL SECRETARY FINANCE AND REVENUE DIVISION, ISLAMABAD

APPLICABLE SECTIONS: 148, 153 AND 159 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The taxpayer (the Petitioner) is a government carriage contractor, running its business as an individual, within the territorial jurisdiction of Chitral (erstwhile Tribal area). In terms of nature of business, the Petitioner was awarded a contract for supply of essential food products in the region of District Swat for which a formal contract was executed between the Petitioner and the Food Department, Kyhber Pakhtunkhwa (the Respondent Food Department).

The petitioner, being aggrieved from the refusal of the benefit provided vide the SRO No. 1213(I)/2018 dated October 05, 2018 from the income tax against his services in the tribal area, filed a writ petition before the Peshawar High Court (the PHC), against the Revenue Division and the Food Department and sought the following prayers:

- Declare that the profits and gains / income of the Petitioner from the carriage business, within the territorial limits of erstwhile Tribal area, are exempted from payment of income tax.

- Declare that the payments to the Petitioner by the Respondent Food Department are not liable to tax deduction under section 153 of the Ordinance.

- Declare that the petitioner is not required to obtain exemption certificate under section 159 of the Ordinance from deduction of taxes at source under section 153 of the Ordinance.

- Declare that the taxes deducted or collected under section 153 of the Ordinance in advance from the petitioner is liable to be refunded.

It is much relevant to note that during 2018, the Constitution of Pakistan (the Constitution) was amended through Twenty-Fifth amendment to omit Article 247 of the Constitution and, accordingly, the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) stood merged in the provinces of Kyhber Pakhtunkhwa and Balochistan as defined under Article 246 of the Constitution. Prior to such omission, the provisions of the Ordinance were not in force in the Tribal Areas, however, through aforesaid amendment in the Constitution, the region of Tribal Areas has now come under the same legal and constitutional framework, as the rest of the country.

Decision:

The PHC allowed the petition as prayed for and discussed the aspects in the following manner:

- As per Clause 110 of Part IV of the Second Schedule of the Ordinance, the provisions of the tax collection and deduction under the Ordinance are not applicable to individual domiciled or company and association of person resident in Tribal Areas with effect from the 1st day of June 2018 to the 30th day of June 2024 (both days inclusive).

- Section 159 of the Ordinance comes into force where tax deduction or collection under the Ordinance applies, whereas for the case in hand, such provisions do not apply as mentioned above. Therefore, demanding of tax exemption certificate is unwarranted, illegal and unconstitutional but also inconsistent with the provisions of the section 53 of the Ordinance that explains the exemptions and tax concessions in the Second Schedule to the Ordinance.

- Kyhber Pakhtunkhwa Revenue Authority (KPRA) has also granted exemption with the sealing date of 30th June 2023 from the whole of sales tax leviable to the service providers of the erstwhile FATA and PATA through notification subject to the conditions that the service providers are resident of, located in and providing services for consumption exclusively within the territory of the said areas. Therefore, the objection of the Respondent that the petitioner will be bound to pay, inter alia, KPRA service sales tax is misconceived because the contract between the parties cannot bypass the law, regulation or notification lying in the field.

6. RECOVERY OF TAX DUES SHALL BE IN THE MANNER PRESCRIBED UNDER THE ORDINANCE

2024 PTD 242
LAHORE HIGH COURT

M/S CHINA MACHINERY ENGINEERING CORPORATION, PAKISTAN BRANCH
VS
FEDERATION OF PAKISTAN

APPLICABLE SECTIONS: 138 AND 140 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The taxpayer namely China Machinery Engineering Corporation, Pakistan Branch (the Petitioner), registered with SECP, filed its return of income and the same constituted deemed assessment under section 120(1) of the Ordinance. Subsequently, the tax department issued notice under section 122(9) read with section122(5A) of the Ordinance to amend the assessment.

After affording an opportunity of hearing, amended assessment order (the AAO) was passed and, accordingly, a notice under section 137(2) of the Ordinance was issued for payment of the tax payable. The aforementioned AAO was challenged before the Commissioner Inland Revenue Appeal (the CIRA) wherein stay was granted, restraining recovery of the impugned tax demand. During subsistence of the stay order, the tax department issued notice under section 138 of the Ordinance for payment of impugned tax demand within two days. Thereafter, the CIRA decided the appeal whereby the amended assessment order was confirmed. Surprisingly, on the same day, the tax department after issuing notice under section 140 of the Ordinance read with Rule 69 of the Income Tax Rules, 2002 recovered the tax due from the two bank accounts of the Petitioner.

Being aggrieved, the CIRA order was challenged before the Appellate Tribunal Inland Revenue (the ATIR) wherein stay of thirty days was granted. However, the ATIR dismissed the appeal and, consequently, the Petitioner filed the reference application before the Lahore High Court, wherein interim relief was also granted against recovery of the tax assessed. The instant petition essentially called into questions the following parameters:

- During pendency of the stay order by the CIRA, issuance of the recovery notice did not meet the mandatory prerequisite of section 138(1) of the Ordinance i.e. recovery of the amount was not due at that juncture.

- Fresh recovery notice was not issued in pursuance of dismissal of appeal by the CIRA, even reasonable time was not allowed to avail the remedy of appeal before the ATIR.

Decision:

The Lahore High Court allowed the petition and directed the tax department to reimburse the recovered amount to the Petitioners or credit the same to the bank accounts within specified time period. The instant reported judgment explained the following matters:

- Coercive recovery measures shall not be effected till tax liability is adjudicated by at least one appellate forum outside the revenue hierarchy such as ATIR. If the impugned tax liability even upheld by the CIRA or ATIR, the taxpayer still needs to be notified of the timeframe within which the taxpayer is required to discharge such tax liability failing which the State could resort to coercive power to enforce recovery.

- The notice under section 138(1) of the Ordinance requires the tax authorities to prescribe a reasonable time period within which the liability is to be discharged.

- Whether it is the Commissioner (Appeals), the Tribunal or the High Court upholding an assessment order, the tax authorities are under an obligation to issue a notice under Section 138(1) of the Ordinance before they resort to use of coercive means under Section 138(2) or Section 140 of the Ordinance.

7. RECTIFICATION APPLICATION AND ORDER THEREOF AGAINST IMPUGNED ORDER WHICH HAS PASSED THE TEST OF APPEAL ARE NOT SUSTAINABLE IN THE EYES OF LAW

2024 PTD (Trib.) 270
APPELLTE TRINUNAL INLAND REVENUE

M/S URBAN DEVELOPERS
VS
COMMISSIONER INLAND REVENUE, RTO-II, LAHORE

APPLICABLE SECTIONS: 221 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The Assessing Officer (the AO) framed the assessment order whereby FED was held recoverable from the taxpayer (the company/developer). The taxpayer filed appeal against the said assessment order, which were disposed of, against the taxpayer by the Commissioner Inland Revenue Appeal (the CIRA) and Appellate Tribunal Inland Revenue (the ATIR) respectively.

The taxpayer further assailed ATIR order before the Lahore High Court (the LHC) whereby the LHC conditionally suspended the impugned order subject to deposit of specified amount to the satisfaction of the concerned Commissioner. During pending of the reference application before the LHC, the taxpayer filed rectification application before the AO purportedly on new/different grounds and, accordingly, previous order-in-original was rectified. However, the taxpayer yet not satisfied with the rectification done by the AO, proceeded to file appeal before the CIRA against the rectification order whereby the CIRA annulled the impugned order, with the direction to the AO to charge FED for the period confronted in the show cause notice. Still discontented, the taxpayer filed an appeal before the ATIR against the directions given by the CIRA.

Decision:

The ATIR dismissed the taxpayer's appeal and set aside all proceedings carried out by the AO and CIRA in pursuant to rectification application in the following manner.

- Both the authorities below have passed the orders in complete insensibility of law, as once the appellate authority decides the appeal, the order of the lower authority merges into the appellate authority. Therefore, there remains no authority to the AO to rectify his own order as the matter being decided by two appellate forums and being pending before the LHC.

- By rectifying the original order where reference application before the court is pending in continuation of ATIR order, the AO has nullified all the proceedings / orders conducted / passed by the appellate forums that should have been dealt strictly by the CIRA. Thus, authorities below have transgressed their jurisdiction by passing rectification orders in application and appeal.

Sales Tax Act, 1990

A. Notification(s)

1. S.R.O. No. 242(1)/2024 dated February 23, 2024

Through this SRO, FBR has made further amendment to the earlier issued notification no. S.R.O.1190(1)/2019 dated October 2, 2019 wherein, Pakistan LNG Limited (PLL) is added at Serial no. 14 under the list of sectors excluded from Section 8B of the Sales Tax Act, 1990 which imposes restriction on claiming input taxes in excess of 90% of the output tax charged.

2. S.R.O. 308(I)/2024 dated February 29, 2024

Through this SRO, the scope of the Chapter XIV-B related to electronic monitoring and tracking of specified goods has been extended by inclusion of auxiliary products of cements and tiles into the list of specified goods.

3. S.R.O. 350(I)/2024 dated March 7, 2024

Through the SRO, FBR has extended the procedural requirements for obtaining sales tax registration in case of individual, AOPs and a company having only one shareholder or member, by making amendments in Rule 5, 18 and 20 of the ST Rules, 2006 as summarized below:

- **Requirement to upload specified documents - Rule 5:**

(a) an individual, AOPs and a company having only one shareholder or member, (other than manufacturer) are required to upload on IRIS, a balance sheet indicating the amount of business and amounts attributable to partners with percentage.

However, if any of the above said persons who is already registered fails to meet the requirements of the mentioned clause within 30 days from the date the requirement comes into effect, he will only be allowed to file return electronically with prior authorization from the Commissioner through IRIS.

(b) The IRIS system will only register above named persons after the LRO is satisfied that the required documents as specified under sub-rule (2) of Rule 5 have been uploaded in IRIS. The LRO shall approve the application through an order in the IRIS system.

(c) Every individual, any member of an AOP, and a director of a company with only one shareholder or member (as the case may be) must visit an e-Sahulat Centre of NADRA during the month of July every year for biometric re-verification. If they fail to do so, they will only be allowed to file electronically with prior authorization from the Commissioner through IRIS.

(d) The Board has been empowered to also conduct 'pre-verification' of manufacturers through field offices which earlier was only to conduct "post verification".

- **Specific restrictions on electronic filing of sales tax return- Rule 18**

(a) an individual, AOPs and a company having only one shareholder or member, (other than manufacturer) are required to obtain prior authorization from the Commissioner through IRIS if their declared sales in the sales tax return exceed their business capital by five times.

(b) return filed by the buyer for a tax period shall be taken as provisional return in IRIS, until the respective seller files his return for the same tax period up to the last day of the month in which the due date of filing of return falls.

i. in case the seller fails to file return by the end of the month in which the due date falls, IRIS will compute the buyer's sales tax liability after deleting the invoices issued by non-filer seller and allow payment after the adjusted liability.

ii. where the seller files their return and pays the sales tax liability by the due date, the provisional return of the buyer shall be taken as valid by IRIS with the claim of invoices from the seller and corresponding input tax and after payment of the sales tax liability.

(c) in respect of claim of credit of sales tax withheld, a registered person has to declare corresponding sale to respective withholding agent in his return. In case of failure, the amount of sales tax withheld and reduction in output tax shall not be allowed to such person.

- **Commissioner's prior approval before the issuance of Credit Note relating to un-registered person - Rule 20**

The credit note relating to un-registered persons under this rule shall only be issued with the prior approval of the Commissioner.

4. S.R.O. 370(I)/2024 dated March 8, 2024

Through this SRO, FBR has made amendment to the Table-II of the SRO no. 297(I)/2023 dated March 8, 2023 and included therein locally manufactured or assembled vehicles having invoice price (excluding sales tax) exceeding Rs. 4 million under PCT heading 87.03.

FBR in its earlier SRO no. 297(I)/2023 dated March 8, 2023 had enhanced applicable sales tax rate on import and supply of luxury items to 25%.

B. Reported Decisions

1. RECOVERY OF SALES TAX PERTAINING TO THE TAX PERIODS PRIOR TO REGISTRATION

2024 PTD 167
APPELLATE TRIBUNAL INLAND REVENUE

MUHAMMAD MUNAWAR
Vs
COMMISSIONER INLAND REVENUE FAISALABAD

Applicable Provisions: 2(25), 3, 14, 33 (14) and 65(b) of the ST Act, 1990.

Brief Facts:

The appellant is engaged in the business of trading of sugar and other karyana items. The appellant contended that he has made purchases of sugar during the tax period July 2020 to June 2021 from various sugar mills as un-registered buyer. The department compulsorily registered the appellant for sales tax; however, as per the appellant, he was not notified or given any opportunity of being heard before the registration took place. The appellant claimed that despite his compulsorily registration, he has been diligently discharging his sales tax liability in accordance with law without fail.

The OIR issued show-cause notice to the appellant on the premise of claiming input tax on purchase of sugar for the tax period prior to the date of registration or for the period of non-filing. The OIR finalized assessment and ordered for recovery of alleged sales tax.

Being aggrieved, the appellant preferred appeal before the Commissioner Appeals which was rejected holding that the appellant was liable for registration and payment of tax. The appellant filed second appeal before the Appellate Tribunal against the aforesaid orders, inter alia, on the ground that the assessment order is not tenable being violative of the principles of natural justice.

Decision:

The Tribunal dismissed the appeal and upheld the impugned order by relying on the judgment of the Hon'ble Lahore High Court (LHC) in case of M/s SK Steel reported as 2019 PTD 1493 wherein it has been held that the department may proceed against a person in default regarding contravention of the provisions of the Act of 1990, related to the period prior to registration, if any. The Tribunal viewed that the said decision of LHC has already expressly resolved the controversy at hand by holding that the defaulted amount of sales tax prior to registration is recoverable under the law.

The Tribunal held that the taxpayer had not denied the factum of doing business as wholesaler/ retailer and making taxable supplies. Taxpayer had also not denied purchases of sugar from un-registered buyer as confronted in the show-cause notice rather only claimed to be un-registered person during the alleged period and pleaded the matter mainly on legal premise.

The Tribunal further held that had there been no need of charging / paying / recovery of sales tax prior to registration, the legislature would not have prescribed a mechanism for granting exemption in case the person liable to register had failed to collect tax because of inadvertence or some general practice in the relevant sector of economy or a particular area. Tribunal observed that the legislature never intended to enact the law in a manner that legitimate amount of sales tax pertaining to the tax period prior to actual registration was not recoverable from a person who was liable to register and had been treated by the law as registered person by fiction of law.

2. SALES TAX AT THE RATE OF 2% IS CHARGED IN ACCORDANCE WITH SRO. 1125(I)/2011 AS AMENDED BY SRO 154(I)/2013 WHICH DULY COVERS THE SPINNING STAGE IN THE TEXTILE SECTOR.

2024 PTD 265
LAHORE HIGH COURT

M/S BASFA TEXTILE (PVT.) LIMITED
VS
FEDERATION OF PAKISTAN

Applicable Provisions: 11 of the ST Act, 1990.

SRO. No. 1125(I)2011 dated December 21, 2011 and SRO No. 154(1)/2013 dated February 28, 2013

Brief Facts:

Applicant imported a consignment of Indian Raw Cotton and got released the consignment on payment of 2% sales tax by referring SRO. 1125(I)/2011 dated December 31, 2011. During audit proceedings, it was observed that applicant was liable to pay sales tax at the rate of 16% therefore applicant is alleged for short payment of tax which culminated in passing order-in-original creating demand along-with penalty. Feeling aggrieved, applicant filed appeal against the said order before the Customs Appellate Tribunal, which was rejected. Hence, the applicant filed instant Reference Application with following question of law:

- Whether the Customs Appellate Tribunal was justified to hold that the imported Indian Raw Cotton was subject to sales tax @ 16% instead of 2% as provided in SRO 1125(I)/2016 as amended by SRO 154(I)/2013?

Decision:

The Lahore High Court has decided the reference application against the respondent-department and answer the proposed question in negative.

The respondent department emphasized that there are two additional steps i.e. carding and combing which comes between ginned cotton and spinning stage therefore, the produce can be termed as raw material for the spinning only after completion of these stages. However, the Court explained that carding and combing do not change the texture or form of material and only line up the fibers nicely to make them easier to spin. In these processes, neither textural form nor chemical composition is changed inasmuch as these are not essential to be performed for forming the cotton as raw material for spinning. The moment when cotton is ginned and converted into bales, whether or not it is carded and combed, it becomes raw material for spinning. therefore, applicant is entitled to the benefit of SRO 1125(I)/2011 as amended by SRO

154(I)/2013 which duly covers the spinning stage in the textile sector.

3. ASSESSMENT ORDER PASSED BEYOND SHOW-CAUSE NOTICE IS NULLITY IN LAW

2024 PTD 253

APPELLATE TRIBUNAL INLAND REVENUE

M/S. REHMANI DAWAKHANA MAIN BAZAR GANDAM MANDI
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: 11 of the ST Act.

Brief facts:

In the instant case, a show-cause notice was issued to the taxpayer being an individual deriving income from business with the name and style of M/s Rehmani Dawakhana wherein it was alleged that the taxpayer has declared turnover in its income tax return for the period of July 2019 to July 2021 rendering him liable for sales tax registration and payment of sales tax on supplies which culminated into passing of assessment order under section 11 of the Sales Tax Act.

Being aggrieved, taxpayer filed appeal before the Commissioner Appeals who partially accepted the appeal. However, being dissatisfied with the orders of the below forums, the taxpayer filed appeal before the appellate Tribunal with the contention that the order has been passed beyond the show-cause notice as the sales tax demand has been created without confronting the same to the taxpayer.

Decision:

The Appellate Tribunal vacated the order of Commissioner Appeals and annulled the order passed by the assessing officer declaring to have been passed against the spirit of the ST Act.

The Tribunal held that the show-cause notice is totally silent and has not mentioned any allegation as have been mentioned in the assessment order. Therefore, proceedings initiated and consequently finalized under section 11(2) of the Act are not according to law. The Tribunal further held that the proceedings initiated on the basis of illegal notices and superstructure constructed thereon in the shape of amended order undersection 11(2) is nullity in law.

Khyber Pakhtunkhwa Revenue Authority

A. Notification(s)

1. C.BO(Rev-I)FD/12-1/2024 dated February 23, 2024

Government of Khyber Pakhtunkhwa has imposed 2% of infrastructure Development Cess of the value of the goods imported into the province.

This notification will be enforced with immediate effect and suppress previous notifications in this regard.

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