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Tax Bulletin

May 2024

Tax

Foreword

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

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Karachi
May 17, 2024

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Income Tax Ordinance, 2001

A. Reported Decisions:

1. REQUIREMENT AS TO ISSUANCE OF SEPARATE NOTICE UNDER SECTION 111 OF THE ORDINANCE

2024 PTD 483.
SUPREME COURT OF PAKISTAN

COMMISSIONER INLAND REVENUE, LAHORE
VS
M/S MILLAT TRACTORS LIMITED

Applicable Sections: 111, 122, 122(9), 122(5A) of the Income Tax Ordinance

Brief Facts:

Appeals were filed by the tax department and inter Court Appeals by taxpayers in all cases before the Supreme Court of Pakistan against the decisions of Lahore High Court vide 09-6-2022 related to the matter whether a notice under section 111 of the Ordinance is to be issued prior or subsequent to a notice issued under section 122(9) of the Ordinance.

The following questions of law were framed for an opinion of the Supreme Court:

i. Whether the ATIR has erred in law by deleting the addition made under section 111 of the Ordinance, while holding that a separate notice is required, when no provision of the Ordinance requires a separate notice under section 111.

ii. Whether the ATIR has overlooked the scheme of section 111 of the Ordinance, which cannot be isolated without making reference to sections 122(1), 122(5), and 122(9) of the Ordinance.

iii. Whether the ATIR fell into error by failing to appreciate that in view of the insertion of the Explanation in section 111 of the Ordinance vide the Finance Act, 2021, a separate notice under section 111 was not required to amend an assessment under section 120 of the Ordinance.

Decision:

The matter before the Honorable SC pertained to the tax year prior to Tax Year 2020. It was held by the SC that before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122.

The SC also clarified that even where a notice under Section 111 is issued simultaneously with a notice to amend an assessment under Section 122(9) of the Ordinance, no proceedings can be undertaken under the latter until the proceedings under Section 111 are finalized and result in an opinion against the taxpayer. This is because, even if some basis for action under Section 111 is mentioned in a notice under Section 122(9), it cannot constitute definite information for the purposes of Section 122(5). The proceedings under the notice issued under Section 122(9) can only be formally initiated when the requirement of definite information is satisfied under Section 122(5) after finalization of the proceedings under Section 111 through an opinion of the Commissioner. Therefore, where no opinion is formed against the taxpayer under Section 111, the proceedings under both provisions i.e., Sections 111 and 122 would lapse, and the notice under Section 122(9) would be of no legal effect.

Through the Finance Act, 2021 an Explanation was inserted in section 111 of the Ordinance to the effect that a separate notice under section 111 is not required to be issued if the explanation regarding nature and sources of amount credited or the investment of money, valuable article, or the funds from which expenditure was made has been confronted to

the taxpayer through a notice under subsection (9) of section 122 of this Ordinance. In respect of this Explanation the SC stated that the intention behind the Explanation and the effect of adding the Explanation is to take away the right to a separate notice and proceedings under Section 111 if the grounds under Section 111(1)(a) to (d) are confronted to the taxpayer through a notice under Section 122(9) of the Ordinance.

It was held by the SC that the Explanation under section 111 divests and affects the substantive rights of the taxpayer to a separate notice and proceeding under section 111. Therefore, the same would not have retrospective effect for tax year 2020 and prior tax years.

The SC held that as far as the cases prior to the Explanation are concerned, a separate notice is required to be issued under Section 111 before proceedings can be initiated under Section 122. The simultaneity of notices issued under Sections 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up.

After the introduction of the Explanation in Section 111 in the year 2021, a notice encompassing both the grounds under Section 111(1) and Section 122(5) can be issued under Section 122(9), however, the proceedings under Section 111 still have to be concluded first and thereafter the remaining part of the notice under Section 122(9) can be given effect to.

2. IMPLICATIONS OF TURNOVER TAX ON SALE OF GOVERNMENT SUBSIDIARY

2024 PTD 440
LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, LTO, LAHORE
VS
M/S GUJRANWALA ELECTRIC POWER CO.

APPLICABLE SECTIONS: 113(3)(a) OF The Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The taxpayer is a public limited company engaged in the business of distribution of electricity (Discos). The taxpayer filed income tax return, which was deemed as an assessment order under section 120 of the Ordinance. The Assessing Officer initiated the proceedings under section 122(5A) treating the taxpayer's return for the said tax year as erroneous in so far as prejudicial to the interest of revenue for different stated reasons and eventually assessment was amended under section 122(5A) resulting in specified amount of tax demand.

Being aggrieved, the taxpayer filed appeal before the Commissioner Inland Revenue against amended assessment order. The CIRA has upheld the assessing officer levy of minimum tax under section 113.

The Federal government had granted a Tariff Differential Subsidy (TDS) to different categories of electricity consumers by notifying reduced rates of electricity. However, the taxpayer contended that the amount of subsidy is not part of the turnover for computing the minimum tax liability under section 113 of the Ordinance. Thereafter, the taxpayer filed appeal before the ATIR assailing the CIRA's order to the extent of the said deletions. However, The ATIR Benches issued conflicting judgments on the same legal issue. The taxpayer then filed a reference application before the Honorable Lahore High Court against the order passed by ATIR.

The following questions of law were framed for an opinion of court:

(i) The subsidy granted by the Federal Government for electricity consumers would affect the taxpayer's supply and would be a part of the taxpayer's total turnover?

(ii) The minimum tax under Section 113 is chargeable on amounts received from electricity consumers, not on amounts received under the aforementioned subsidy. Would this plea is supported by Clause (102A) of Part I of Second Schedule?

Decision:

The LHC dismissed the taxpayer's appeal and decided the matter in favour of tax department in the following manner:

The section 113(3)(a) stated that aggregate amount of the person's turnover is chargeable to tax.

As per section 113(3)(a) of the Ordinance, the term 'turnover' means gross sales or gross receipts exclusive of Sales Tax and Federal Excise Duty or trade discount and any deemed income assessed as final discharge of tax liability. Further, the amounts, through subsidy received during the course of carrying on the business, would fall inside the scope of the expressions "gross sale; 'gross receipts' envisaged in the definition of turnover. The taxpayer charged certain portion of tariff from consumer whereas the other portion was reimbursed by the Federal government. Hence the appellant did not suffer a diminution of their income which was made up of two different streams.

It is reiterated that the subsidy is not given by the Federal Government in favour of the DISCOs, but it is handed out directly to the consumers. Therefore, it is held by the LHC that the aggregate amount of turnover, including the subsidy amount, is chargeable to tax under Section 113 of the Ordinance. The question of law has been answered in favour of the tax authorities and against the taxpayer.

3. FOR RECOVERY OF MINIMUM TAX, THE ONUS LAY ON THE TAX DEPARTMENT TO ESTABLISH THAT TAXPAYER WAS ENAGGED IN SALE OF GOODS GENERTAING REVENUE

(2024) 129 TAX 189
LAHORE HIGH COURT

NATIONAL TRANSMISSION & DESPATCH COMPANY LTD
VS
THE COMMISSIONER INLAND REVENUE & ANOTHER

APPLICABLE SECTIONS: 113 and 122(5A) of The Income Tax Ordinance, 2001 (the Ordinance) TY 2015

Brief Facts:

The Tax Officer (TO) passed the Orders for tax years 2014 and 2015 under section 122(5A) of the Ordinance, on the basis that NTDC had not charged minimum tax on the total turnover at the rate of 1%.

For tax year 2014, the CIRA decided the appeal against the NTDC which was affirmed by the ATIR. For the tax year 2015, which is the relevant year in this appeal, the CIRA taking a contrary view decided the issue in favour of the NTDC and stated in its order that the TO was not justified in charging the minimum tax on turnover that does not pertain to the NTDC and is being offered for tax by the respective Distribution Companies. The minimum tax under section 113 of the Ordinance cannot be charged twice on the same turnover.

The ATIR by its order allowed the appeal filed by Tax Department. Thus, being aggrieved by the above decision, an appeal was filed in LHC by NTDC.

Arguments:

NTDC submits that the functions of procurement of electric power on behalf of DISCOs as well as maintenance of transmission system were being undertaken jointly by NTDC under a license granted to NTDC by the National Electric Power Regulatory Authority (NEPRA).

Later, as explicated the business of procurement of electric power was carved out of NTDC and CPPA-G was established which now carries on the business of procurement of electric power exclusively.

The license is granted pursuant to section 17 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act). NTDC entirely relies on the terms of the license to contend that it does not carry out sale of electricity to be covered under the definition of turnover provided under section 113 of the Ordinance.

Decision:

The LHC set aside the matter and held as under:

a) The initial onus lay on the Tax Department to establish that NTDC was actually engaged in the business of selling electric power and thereby gross receipts were accumulated which were derived from the sale of goods (electric power in this case). In our opinion the Tax Department has failed to establish any such activity to have been undertaken by NTDC.

b) In our opinion, NTDC is a special purpose vehicle incorporated for a specific purpose and regarding which a license has been granted to it by NEPRA. In the terms of

the license, it clearly states that NTDC can only engage in the transmission business. If the allegations made in the Order are taken as true, then it must be established as a fact in the first instance that NTDC is in breach of its license granted by NEPRA. It is nobody's case that NEPRA has taken any action against NTDC for falling in breach of the terms of the license and, therefore, it can be presumed that NTDC is only engaged in undertaking the transmission business in accordance with the terms of the license.

c) The transmission business has been defined as the business of transmission of electric power and for the purpose to plan, develop, construct and maintain NTDC's transmission system and operation of such system for the transmission and dispatch of electric power. That is the whole purpose of NTDC and NTDC is not expected to travel beyond that purpose and to engage in the sale and purchase of electricity.

d) It is admitted by learned counsel for FBR that at present DISCOs are paying minimum tax on turnover including purchase price of electricity. Thus, the electricity, which is purchased from GENCOs by DISCOs, is made liable to minimum tax on the turnover of DISCOs and FBR cannot demand that tax from NTDC as well. Obviously, it is not the case of FBR that firstly the purchase of electricity is done by NTDC and thereafter NTDC sells electric power to DISCOs at inflated price. No evidence has been produced to that effect and in any case NTDC would be falling in breach of its transmission license if it were to engage in such a business.

4. ORDERS THAT CAN BE RECTIFIED UNDER SECTION 221 DOES NOT INCLUDE DEEMED ASSESMENT UNDER SECTION 120

(2024) 129 TAX 249
LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, SIALKOT
VS
M/S CHAUDHRY STEEL MILLS S.I.E. DASKA

APPLICABLE SECTIONS: 113, 120, 120(1), 120(3), 120(1A), 121, 122, 122(1), 122(4), 122(5), 122(5A), 133, 177, 221 AND 221(2) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The Taxpayer filed return of income for the tax year 2011, which was taken as deemed assessment in terms of section 120 of the Ordinance. The TO charged the minimum tax as per section 113 of the Ordinance, by invoking section 221 of the Ordinance, taking it a mistake apparent on the face of record vide order dated May 8, 2012

Being aggrieved, the Taxpayer filed an appeal before CIRA and same was dismissed vide order dated October 22, 2012. Being dissatisfied, the Taxpayer preferred a second appeal before ATIR, which was allowed vide order dated August 28, 2013.

The Tax Department filed an appeal before LHC against ATIR's order and argued that the original return is a deemed assessment order under section 120 of the Ordinance of 2001, which can be rectified within the contemplation of provisions of section 221 of the Ordinance, when the mistake is apparent on the surface of record, but this aspect of the matter has not been thrashed out minutely by ATIR while passing impugned order, hence, the same is not sustainable in the eye of law. The Tax Department relied on case law reported as 2017 PTD 2227.

Following questions of law was raised by the Tax Department:

1. Whether on the facts and in the circumstances of the case, the ATIR was justified to annul the order passed under section 221 of the Ordinance and vacate the order of the First Appellate Authority holding that provisions of the said Section were not applicable in this case in view of section 120(3) when the order under section 221 was passed as the mistake was apparent from record, as the Taxpayer had short paid tax by apply incorrect tax rate?

2. Whether on the facts and in the circumstances of the case, short payment of tax / wrong application of tax rate does not fall in the ambit of mistake under section 221 in view of the provision of sub-section (3) of section 120 of the Ordinance?

3. Whether on the facts and in the circumstances of the case, the ATIR was justified to annul the order passed under section 221 of the Ordinance, and vacate the order of the First Appellate Authority on technical basis holding that there is no mention of word "return" in section 221(2) as observed by the tax officer when the Supreme Court in its judgment reported as 95 Tax 353 (S.C.) has held that technicalities should be overlooked as the same do not vitiate the order/notice

Decision:

The ATIR dismissed the Tax Department's appeal and decided as under:

a) A careful reading of sections 120, 122 and 221 of the Ordinance makes it very clear that the powers under these provisions are not overlapping rather independently clearly intended to operate within their respective compass.

b) Thus, there is a marked distinction between the deemed order and the order passed by the authority after fully applying its mind and giving proper opportunity of being heard to the person. As per the well-established principle of interpretation of statutes, every word used in a statute has to be given effect to and no word or provisions of a statute is to be treated as surplus and redundant – (PLD 1963 SC 395 & PLD 1999 SC 395).

c) Thus, rectification is permissible only to "amend any order passed by him" and not the order treated to have been issued under section 120 of the Ordinance because the deemed order did not amount to an order passed by the authority. Had it been the intention of the legislature, it become necessary to introduce the specific provisions or amendment with certain words to cater the eventuality of deemed order in section 221 that adeemed order under section 120 can be amended in case of a mistake apparent from record. The expression "subject to this section" used in sub-section (1) of section 122 of the Ordinance further restricts that the deemed order treated to have been issued under section 120 can only be amended under the said section.

d) Under the law, the tax liability of an assessee in the process of rectification cannot be altered on the basis of a consideration, which was not part of the original proceedings and the concept of rectification of mistake to correct the error committed in the assessment order, which is found floating on the surface of the record, may not be beyond the assessment already made.

e) Power under section 221 is quite limited to the extent of mistakes apparent from record and floating on the surface which is so obvious to strike one's mind without entering into long drawn process of reasoning – (2017 PTD 903).

f) The Honorable Apex Court in the case of Shadman Cotton Mills Ltd. (2008 PTD 253), while dilating upon provisions relating to rectification in the repealed Ordinance, observed that the expression "mistake apparent on record" must be the error or mistake so manifest and clear which, if permitted to remain on record, might have material effect on the case, however, an error of fact or law, having direct nexus with the question of determination of rights of parties, affecting their substantial rights or causing prejudice to their interest, is not a mistake apparent on the record to be rectified under section 156 of repealed Ordinance, and that the mistake must be of the nature, which is floating on the surface of record and must not involve, an elaborate discussion or detailed probe or process of determination. In these circumstances, the referred case law (2017 PTD 2227) is not helpful to the case of the Tax Department.

In view of the above, the proposed questions are answered against the Tax Department, in favour of the Taxpayer.

5. ADJUSTMENT OF EXCESS TAX PAID CANNOT BE SIMPLY TERMED AS UNVERIFIED REFUND, UNLESS THE REFUND CLAIMED BY THE TAXPAYER IN THE RELEVANT TAX YEAR IS ASSESSED BY THE DEPARTMENT

2024 PTD 511
APPELLATE TRIBUNAL INLAND REVENUE

M/S. SHABBIR FEED MILLS (PVT.) LTD
VS
COMMISSIONER INLAND REVENUE, MULTAN

APPLICABLE SECTIONS: 120, 221 AND 170 of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The Appellant taxpayer in the instant case is a private limited company engaged in the business of production and sale of poultry feed who filed return of income for Tax Year 2019 claiming refund of previous tax year of Rs. 25,731,483. The Officer Inland Revenue (OIR) issued notice under section 221 of the Ordinance requiring explanation as to why refund adjustment shall not be disallowed and assessment order under section 120 of the Ordinance may not be rectified. The Appellant did not furnish response to the notice received. Hence, rectification order was passed under section 221 of the Ordinance disallowing refund adjustment of previous tax year with tax liability of Tax Year 2019.

Being aggrieved by the decision of OIR, the Appellant filed appeal before the Commissioner Inland Revenue Appeals (CIRA) who also confirmed the treatment of OIR. Hence, the Appellant filed appeal before the Appellate Tribunal Inland Revenue (ATIR) on the ground that the impugned order is contrary to the ratio settled by the Lahore High Court in the decision reported as 2015 LHC 226. Further, the OIR failed to establish any mistake apparent from the record under section 120 of the Ordinance. Moreover, the adjustment of refund was as per format of return of total income as prescribed under Income Tax Rules, 2002 (the Rules) and that disallowance of adjustment, without proving its inadmissibility first in relevant tax year is patently illegal.

Decision:

The ATIR decided the case in favour of the Appellant taxpayer on the following basis:

- The format of return of total income is provided under the Rules. In the return form of tax year 2019 there is a column with description "Refund adjustment of Other Year(s) against demand of this year" at code 92101. The Rules do not prescribe any additional documentation or requirement for making the above adjustment.
- The OIR used the term "unverified refund" in his order as the basis of rectification whereas the term refund has not been defined in the Ordinance. From the plain reading of section 170 of the Ordinance, it is transpired that refund means payment of tax in excess of tax chargeable. In the ATIR's opinion unless refund claimed by the taxpayer is found inadmissible after due verification under the law the same cannot be disallowed merely on the basis that it was unverified. The OIR had neither disputed tax overpaid in previous year nor performed verification thereof. Hence, disallowing prior year's refund is not justifiable.
- It appears that the Commissioner Appeals relied on clause (a) of sub-section (3) of section 170 of the Ordinance which states that where the Commissioner is satisfied of the amount of tax overpaid, he can apply the excess tax paid to reduce the tax liability. Here, the aforesaid provision refers to the adjustment of tax overpaid by the department and not the taxpayer, hence the interpretation of law is misconceived.
- Before disallowing a refund, the OIR should have made an attempt to verify the refund claim of a relevant tax year and if after verification, tax paid in excess was not verified, only then he can issue notice for disallowing adjustment of the same against tax payable for subsequent tax year.

Sales Tax Act, 1990

A. Notifications:

1. SRO. 581(I)/2024 dated April 18, 2024

In terms of subsection (8) of section 3 to the ST Act, sales tax is charged collected and paid by the gas transmission and distribution companies on supply of CNG to CNG stations, at the value of CNG notified by the Board from time to time. Through this SRO, FBR has suppressed previous notification i.e. SRO 587(I)/2022 dated May 10, 2022 and revised the value of supply of CNG for the purpose of charging sales tax by the gas transmission and distribution companies from CNG stations as under:

S.No	Description	Previous Rate/kg	Revised Rate/kg
		Rs.	Rs.
1	For Region-I	140	200
2	For Region-II	133	200

Region-I: Khyber Pakhtunkhwa, Baluchistan, and Potohar Region (Islamabad, Rawalpindi, and Gujar Khan)

Region-II: Sindh and Punjab excluding Potohar Region.

2. S.R.O. 582 (I)/2024 dated April 18, 2024

Through this SRO, FBR has relaxed certain procedural requirements (introduced through earlier notification no. S.R.O. 350(I)/2024 dated March 7, 2024) for obtaining sales tax registration in case of individuals, AOPs and Companies having only one shareholder or member. Accordingly, such persons are now required to upload on IRIS a balance sheet indicating the amounts of business capital and assets whereas the requirement to provide the corresponding assets in the bank and amounts attributable to partners with percentages is done away with. Moreover, time limitation of 30 days to meet the said requirement is also withdrawn.

3. SRO. 644(I)/2024 dated May 07, 2024

Previously, under Rule 18 of the ST Rules, there existed a condition for individuals, AOPs and SMCs to obtain Commissioner's approval before filing of ST return where their sales exceed 5 times of the 'declared business capital'. Through amendment made vide this notification, the words 'declared business capital' is substituted with the words 'sum of assets and liabilities'.

B. Reported Decisions:

1. SUBSIDY/GRANT PROVIDED BY THE GOVERNMENT MEANT TO FACILITATE GENERAL PUBLIC CANNOT BE CONSIDERED AS TAXABLE SUPPLY – APPELLATE ORDER PASSED BEYOND PRESCRIBED TIME PERIOD IS BARRED BY TIME LIMITAITION

2024 TAX 89
APPELLATE TRIBUNAL INLAND REVENUE

M/S. SUKUR ELECRIC POWER COMPANY LIMITED (SEPCO)
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 2(46), 3, 11, 34 & 45B of the ST Act.

Brief facts:

In the instant case, M/s Sukkur Electric Power Company Limited (SEPCO) being distributor/supplier of electricity has received tariff subsidy amount from the government against supplies of electricity. In this regard, show-cause notice was issued to the appellant based on differences in sales declared during the tax period from July 2012 to June 2013 on comparison of sales tax return with income tax return and audited accounts. After the proceedings, the concerned officer ordered the recovery of sales tax on account of differential amount of sales and imposed penalty along-with default surcharge.

Being aggrieved, the appellant preferred an appeal before the Commissioner (Appeals); however, the Commissioner (Appeals) upheld the order-in-original. The appellant thereafter filed second appeal before the Appellate Tribunal.

Decision:

The Appellate Tribunal decided the appeal in favour of the appellant and vacated the order of the Commissioner (Appeals) being time-barred as it was passed after 547 days of filing of appeal which is beyond the time limit of 120 days.

The Tribunal further held that under section 3(1) of the ST Act, sales tax is leviable on taxable supplies. However, the subsidy provided by the government is sort of compensation which cannot be treated as taxable supply, therefore, the same cannot be brought under the ambit of consideration against taxable supplies. Hence, the subsidy amount, which was not a consideration for supply of electricity, is not to be included for the collection of sales tax under Sales Tax Act, 1990 and thus not chargeable to sales tax.

2. READJUDICATION OF SAME ISSUE FOR SAME TAX PERIOD BY SAME AUTHORITY IS UNJUSTIFIED AND ILLEGAL

2024 TAX 99
APPELLATE TRIBUNAL INLAND REVENUE

M/S. FINE & CO.
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 3(1), 3(1A), 8B(1) and 11 of the ST Act, 1990. SRO 648(I)/2013 dated July 9, 2013

Brief facts:

M/s. Fine & Co. is a sales tax registered distributor and retailer of beverages. During the scrutiny of record for the tax period July 2016 to June 2017, 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 and that the registered person made excess input tax adjustments which were inadmissible under section 8B(1) of the ST Act. Resultantly, the appellant was issued with show-cause notice for the respective periods which was 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 officer was not satisfied with the submissions and passed the order.

Being aggrieved of the order-in-original, the appellant preferred appeal before Commissioner (Appeals) wherein Commissioner (Appeals) vide his order confirmed the demand in respect of further tax; however, the demand created to the extent of excess adjustment was deleted. Being dissatisfied, the appellant challenged the matter before the Appellate Tribunal.

Decision:

The Appellate Tribunal decided the appeal in favour of the appellant on the following grounds:

- 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 excludes supply of goods directly to the end-consumers from the provisions of section 3(1A) of the ST Act.
- The Commissioner Appeals overlooked the fact that the appellant had already been adjudicated for further tax under section 3(1A) of the ST Act and had paid the tax to the extent applicable. Re-adjudicating the same issue for the same tax period by the same authority under the same section multiple times is deemed as unjustified and illegal.
- Order-in-Original passed by the DCIR was time barred and the orders of the officers below are not maintainable on these grounds.

Sindh Sales Tax on Services Act, 2011

A. Reported Decisions:

1. NO ORDER UNDER SUB-SECTION (1) OR (1A) OF SECTION 23 SHALL BE MADE BY AN OFFICER OF SRB UNLESS A NOTICE TO SHOW CAUSE IS PROPERLY SERVED TO THE PERSON IN DEFAULT

2024 TAX 67
APPELLATE TRIBUNAL INLAND REVENUE

M/S. EVENTMENT, LAHORE
VS
THE ASSISTANT COMMISSIONER, SRB, KARACHI

Applicable provisions: Section 2(94), 23, 43, 44, 47(1A), Sindh Sales Tax Special Procedure (Withholding) Rules, 2014.

Brief facts:

In the instant case, M/s. Eventment was registered with SRB under the category of Event Management service including services by event photographers and event videographers. During the scrutiny of record for the period from May 2016 to August 2022, it was observed that the service recipients declared and paid Sindh sales tax less than the amount payable therefore, the appellant was issued with show-cause notice, resultantly, the assessing officer passed the order to deposit the differential amount along-with penalty and default surcharge.

Being aggrieved, the appellant preferred an appeal before Commissioner Appeals-SRB with the contention that the show-cause notice and hearing notices were never served to the appellant as provided under section 75 of the Act, 2011. However, the Commissioner (Appeals) upheld the assessment order. Being dissatisfied, the appellant approached the Appellate Tribunal-SRB.

Decision:

The Tribunal allowed the appeal and set aside the orders of lower authorities on the ground of non-serving of notice with the directions to issue fresh show-cause notice to the appellant in conformity of section 75 of the Act and to pass a fresh order after providing proper right of hearing and defense to the appellant.

The Tribunal held that the department neglected to issue show-cause notice and hearing notices in the manner prescribed for service under the Code of Civil Procedure, 1908, as the department has made no efforts to serve the notice to the appellant personally, through agent or through registered post despite the fact that two other addresses are available in the Registration Profile of the appellant and passed order-in-original and order-in-appeal only on the basis of serving show-cause notice via email.

The Tribunal further held that Sub-section (2) of section 23 of the Act provides that no order under sub-section (1) and (1A) shall be made unless a show cause is given to the person in default. In the case under reference, the show cause notice was issued but the same was returned and the tax liability was created without hearing the appellant.

2. A SHOW-CAUSE NOTICE CANNOT BE ISSUED WITHOUT ASSIGNING ANY SPECIFIC TARIFF HEADING TO DETERMINE TAXABILITY OF REBATE/ COMMISSION EARNED BY THE APPELLANT

(2024) 129 TAX 51 (Trib.)
APPELLATE TRIBUNAL INLAND REVENUE

M/S. SAMBA BANK LIMITED, KARACHI
VS
THE ASSISTANT COMMISSIONER, SRB, KARACHI

Applicable provisions: Section 2(28)(b), 34, 47, 59 of SRB Act, Sindh Sales Tax on Services Rule 2011,

Brief facts:

M/s. Samba Bank (the Appellant) is registered with SRB under service category of tariff heading 9813.4000. A show-cause notice was issued requiring explanation regarding short payment of Sindh Sales Tax in respect of various services during the period from January 2012 to December 2012. The assessing officer did not find the explanation given by the appellant satisfactory, resulting into issuance of order. Being aggrieved by the decision, the appellant preferred an appeal before the Commissioner (Appeals), but no final decision was made within statutory limitation period and after a considerable delay, the case was transferred to the Appellate Tribunal assigning various reasons such as restrictions under COVID 19 etc.

In the instant case, issue involved is about the taxability of rebate received by the appellant from foreign corresponding bank in Nostro account and commission earned from State Bank of Pakistan for facilitating home remittances proceeds without charging any fee from the sender or recipient under Home Remittance Initiative Scheme (HRIS).

The department claimed that all services provided by banks are subject to taxation under the main tariff heading 9813.4000 of the Second Schedule to the Act as the services listed under this main heading are considered indicative and not exhaustive of the legislative intent regarding the taxation of various services. Additionally, the sub-heading 9813.4990 (others) encompasses all services not specifically mentioned under the main heading 9813.4000. However, this interpretation of the department was not mentioned in the show-cause notice, which did not specify the tariff heading under which the tax was imposed and requested.

Decision:

The Appellate Tribunal decided the case in favour of the appellant and held that the commission/ rebate earned by the appellant from foreign corresponding bank was not taxable prior to the amendment introduced in the Second Schedule of the Act, taking effect from July 1, 2019 as the tariff heading 9813.4990 is subservient to heading 9813.4900 which covers services in relation to safe vaults only.

The Tribunal further held that show-cause notice is also silent in this regard, as the same was issued without assigning any specific Tariff Heading to determine the taxability of rebate/commission earned by the appellant from foreign corresponding bank and State Bank of Pakistan.

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