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WELCOME!

The editorial team, the DOT faculty and the entire staff of DOT welcome Mr. Mustafa Ashraf on assuming office as the Director-General of Directorate General Training & Research (Inland Revenue). We wish him the best in his present assignment and are sure that with his experience and knowledge, DOT(IR) will be greatly benefited.



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Chairman FBR meets Chief Commissioners and Commissioners to discuss revenue collection










TREKKER Workflow & MIS Hands-on session





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Copy of Letter to honourable Member Inland Revenue FBR, Islamabad by Mr. Zulqarnain Tirmizi, Director DOT(IR), Lahore vide No. DT/1328/2012 dated 31.01.2012

Imposition of Sales Tax & S.E.D on Manufactured Food



Zulqarnain Zirmizi
Director DOT(IR)

Kindly refer to the Board's letter C.No.105(2)S-IR-III/2011 dated 25.08.2011 reported on statute pages of the monthly Tax Review for the month of September 2011 on page ST-800 (copy enclosed Annexure-A). I have minutely studied the contents of the said letter and very humbly wish to submit that it has compromised the department's stance adopted in the case reported as Mughal-e-Azam Banquet Complex v Federation of Pakistan 2011 PTD 2260 (Lahore High Court-Annexure-B) which in any case was not based on correct interpretation of law. In my humble opinion the matter needs reappraisal by the Board on the basis of the arguments hereunder.

2. Before commenting any further it shall be in the fitness of things to reproduce the relevant portion of the Board's letter which needs reconsideration, i.e. operative part of the first paragraph and whole of paragraph 2 of Annexure-A which read as follows:

> *"....The services provided / rendered by marriage halls are not liable to FED as not being mentioned in the Second Schedule to the Federal Excise Act, 2005. However, under the Punjab Sales Tax Ordinance, 2000, services provided and rendered by marriage halls and lawns were chargeable to sales tax till June, 2005. This levy was abolished since July 2005, so services provided or rendered by marriage halls and lawns are no longer chargeable to sales tax.*
>
> *2. The services provided by the marriage halls / lawns are classified under PCT Heading 9801.3000 while those provided by the caterers are separately classified under heading 9801.5000. A marriage hall may provide a number of services like, providing sitting venue for the guests, entertaining guests with music programs, lighting and decorations of the hall, providing food/drinks for the guests etc. All these services are provided by the marriage halls in the normal course of business. When services provided by marriage halls are exempt from sales tax, it would mean that all services, which a marriage hall provides in the normal course of business, are exempt from sales tax. Provision of food / drinks in a marriage hall is rather an essential service provided by it in the normal course of business and, therefore, cannot be subjected to tax separately."*

Supply of cooked food by marriage halls / lawns is liable to sales tax under the Act of 1990. It was also liable to Special Excise Duty up to 30.06.2011 till the omission of section 3A from the Federal Excise Act, 2005

3. At the very outset with utmost reverence it is pointed out that reference to the Second Schedule to the Federal Excise Act, 2005 while discussing taxability or otherwise of the services provided by the marriage halls / lawns in the first paragraph of the subject letter (as quoted above) is incorrect. In fact excisable services are mentioned in Table II of the First Schedule to the Federal Excise Act, 2005 and not in the Second Schedule which describes "goods on which duty is collectible under sales tax mode".

4. It is admitted with respect that the services rendered by marriage halls are not taxable either under the Federal Excise Act, 2005 or under the Sales Tax Act, 1990. These services fall under Chapter 98 of the Customs Tariff. The relevant HS Codes are given in Annexure-C. However, serving cooked food i.e. supplying tangible movable goods is certainly not included in "providing services". Items which can be considered as prepared foodstuff are scattered throughout in the Customs Tariff but are mostly found in Chapters 16 to 24. For the purposes of Sales Tax cooked food is actually included in "goods" as defined in clause (12) of section 2 of the Sales Tax Act, 1990 in the following words:

> *"(12) "goods" include every kind of movable property other than actionable claims, money, stocks, shares and securities;"*

5. The honorable Supreme Court of Pakistan has ruled authoritatively in paragraph 24 of its judgment in re: **Collector of Sales Tax & Central Excise v Sanghar Sugar Mills Ltd Karachi & others PTCL 2007 CL 565 = [(2007) 96 TAX 105 (S.C. Pak)]** that all goods are liable to sales tax unless exemption is provided under section 13 or Sixth Schedule of the Act ibid

...continued on page 4

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Annexure-D. In paragraph 16 the honorable Court was pleased to record the following:

> *"16. .... It follows that sales tax would be applicable in respect of taxable supply made during the course of a business activity. It also follows that it is immaterial whether the supplier is in the business of the relevant goods or not so involved but the sale of these items & the utilization of these sale consideration in the business activity is definitely to be considered in the course of or furtherance of the business / taxable activity."*

6. After a careful study I have inferred that apart from the conditional exemption to "cottage industry" given at S.No.3 of Table-2 of the Sixth Schedule, the only exemption available to cooked food is found at S. No. 7, 8 and 9 of Table-2 of the Sixth Schedule to the Act.

TABLE-2 OF THE SIXTH SCHEDULE

S. No.	DESCRIPTION	HEADING NO.
7.	Breads prepared in tandoors & bakeries, vermicellies, nans, chapattis, sheer mal, bun, rusk	Respective headings
8.	Foodstuff cooked or prepared in-house & served in messes run on the basis of mutuality & industrial canteens for workers.	Respective headings
9.	Foodstuff & other eatables prepared in the flight kitchens & supplied for consumption on-board in local flights.	Respective headings.

7. The issue of taxability of supply of cooked food under the Sales Tax Act, 1990 cropped up before the learned Tribunal and the judgment which is in favor of Revenue is reported as **Balana Restaurant, Peshawar v Assistant Collector Sales Tax & Federal Excise (Refunds) Peshawar PTCL 2010 CL 581 (Trib)**. The matter was then taken by the registered person to the honorable Peshawar High Court but it was again decided against him vide judgment reported by the title **Balana Restaurant, Peshawar v Collector Sales Tax Peshawar 2010 PTD 1286 (H.C. Pesh)**. The two judgments are Annexures E & F.

8. Having established the taxability of cooked food supplied by marriage halls and lawns under the Sales Tax Act, 1990 I now turn my attention to its taxability under the Federal Excise Act. Since cooked food is not mentioned in Table-I of the First Schedule to the Federal Excise Act, 2005, it cannot be subjected to Federal Excise Duty. However, cooked food being a manufactured item never enjoyed exemption from Special Excise Duty (SED) which was imposed under section 3A of the Act ibid read with SRO 655(I)/2007 dated 29.06.2007 initially at the rate of 1% and enhanced to 2.5% by the Federal Excise (Amendment) Ordinance, 2011 promulgated on 15.03.2011. (The SED was abolished by Finance Act, 2011.) It is worth mentioning that cooked food supplied by them.

9. It seems that in spite of the detailed guidelines provided by the Board vide **Federal Excise General Order No. 3 of 2007 dated 30.07.2007 regarding** SED (Annexure-H), the Board was influenced by letter No.530/2009LAW-I by the Law & Justice Division which was circulated vide Board's letter C.No.1(3) FED/2007 dated 25.07.2009 (copy enclosed for ease of reference-Annexure-I). The Law & Justice Division had merely explained that services provided or rendered by hotels & restaurants do not attract SED. But supply of cooked food is a distinct activity comprising supply of manufactured "goods" and is not merely service, thus not covered by the said letter. Even otherwise it is the duty of the assessing officer and the courts to interpret law and it is possible to deviate from the opinion of the Law & Justice Division. In one such case while dissenting from the legal opinion of the Law & Justice Division in the case **Collector of Sales Tax & Central Excise v Sanghar Sugar Mills Ltd Karachi & others PTCL 2007 CL 565** (already annexed at D) the honorable Apex Court of Pakistan has held in para 23 on page 590 of the report that the opinion of Law & Justice Division is not binding in the following words:

> *"23. The OM issued by the Ministry of Law, Justice & Human Rights, Islamabad contains an information and does not have any effect on the legality of the matter when it is not supported by any other statutory instructions / orders from the authority competent to do so under the Act & rules made there under and cannot be equated with the legislative instruments, and which is also subject to the decision of the Court."*

10. Based on the above interpretation of law I am convinced that supply of cooked food by marriage halls / lawns is liable to sales tax under the Act of 1990. It was also liable to Special Excise Duty up to 30.06.2011 till the omission of section 3A from the Federal Excise Act, 2005.

11. Coming now to aerated waters or beverages supplied by such marriage halls. These are taxable on the basis of section 3(2) of the Sales Tax Act, 1990 read with the Third Schedule to the Act as items on which sales tax is recovered on the basis of retail price from the manufacturer. FED is also charged from manufacturers only as stipulated in section 3 of the Federal Excise Act, 2005. Since tax is recovered from the manufacturers and loss of revenue does not occur on their supply by marriage halls I do not wish to offer any comments on their liability under the Sales Tax Act, 1990 or under the Federal Excise Act, 2005, because such drinks are liable to taxation in the hands of manufacturers.

11. It is submitted with respect and all the humility at my command that remedial action may be taken if so approved.

Annexures are not reproduced. They can be accessed at www.dgtrdt.gov.pk

Budget Proposals (Sales Tax)

by Zulqarnain Tirmizi Director DOT(IR) Lahore

OIL & GHEE SECTOR

SALES TAX EXEMPTION TO OIL & GHEE

S.NO.24 of SIXTH SCHEDULE-*states:*

> *"Edible oils & vegetable ghee, including cooking oil, on which FED is charged, levied & collected by a registered manufacturer or importer as if it were a tax payable u/s 3 of the Act "Explanation. Exemption of this entry shall not be available to distributors, wholesalers or retailers".*

This explanation was inserted vide Finance Act 2007. Oil & Ghee sector was taken out of the sales tax regime & placed into Excise Duty regime apparently to recover duty from manufacturers of FATA as Sales Tax Act, 1990 did not extend to FATA.

F.E.D ON OIL & GHEE

1.1 While edible oil & vegetable ghee is exempted from Sales Tax to the extent as provided in S.No.24 of Table-I of Sixth Schedule, FED is chargeable @ 16% in Sales Tax mode. (S. No.1 & 2 of Table-1 of First Schedule & also of Second Schedule of FE Act, 2005). Moreover, SRO 24(I)/2006 dated 07.01.2006 specifies fixed duty of Rs.1/kg payable at import stage in lieu of FED payable at production or manufacturing stage. The manufacturers are allowed to issue dummy or replacement invoices to RPs who have to avail input.

CONSEQUENCES

1.2 The distributors, wholesalers or retailers of edible oil & vegetable ghee including cooking oil have specifically been ousted from exemption from sales tax. Yet hardly any distributor, wholesaler or retailer of above is registered to pay sales tax due to poor enforcement of law. Further since the incidence of FED is only on manufacturers & importers (S.3 of FE Act, 2005) the distributors, wholesalers or retailers with turnout above Rs.5 million are not required to pay FED. So practically the distributors, wholesalers or retailers of above are neither paying sales tax nor FED.

1.3 Manufacturers of edible oil & vegetable ghee including cooking oil mostly do not provide lists of their distributors, wholesalers or retailers to field formations claiming that sales were made to unregistered persons without any dealer, although such dealers / wholesalers exist and are paid commission also. It is proposed that in order to overcome this hurdle the statements u/s 165 of Income Tax Ordinance, 2001 submitted by these ghee / oil manufacturers be consulted to identify the distributors & wholesalers because commission paid to them is liable to deduction at the rate of 10% u/s 233 of the Income Tax Ordinance, 2001.

1.4 Such manufacturers of edible oil & vegetable ghee normally don't issue sales tax invoices u/s 23 to their distributors since most of them do not need them, being unregistered persons. Rather they issue replacement / dummy invoices mostly to parties like chemical manufacturers & hotels & restaurants etc without making actual sales to them. Such fake purchasers in turn claim unlawful refund on the basis of these flying invoices.

BUDGET PROPOSAL

1.5 The Oil & Ghee sector be made part of the Sales Tax regime again without any distortion instead of keeping it in Federal Excise Duty regime. The main goal of putting this sector in Federal Excise regime was taxing the manufacturers in FATA but this aim has still not been achieved in a satisfactory manner. **In order to go back to sales tax regime the following is proposed:**

A. S.No. 24 of Table-1 of Sixth Schedule to the Sales Tax Act, 1990 be omitted;
B. S.No.1 & 2 of Table-1 of First Schedule as also S.No.1 & 2 of Second Schedule to the Federal Excise Act, 2005 be omitted;
C. SRO 24(I)/2006 dated 07.01.2006 specifying fixed duty of Rs.1/kg payable at import stage in lieu of FED payable at production or manufacturing stage be also deleted.

SUGAR SECTOR

SALES TAX EXEMPTION & LEVY OF FED ON WHITE CRYSTALLINE SUGAR

2 SRO 551(I)/2008 dated 11.06.2008 specifies exemption from sales tax on certain goods subject to certain conditions & restrictions. "White crystalline sugar" was added to above notification vide SRO 481(I)/2011 dated 03.06.2011 at S.No.27 granting exemption from sales tax to white crystalline sugar. Concurrently vide S.No.53 "white crystalline sugar" was added to Table-1 of the First Schedule to the Federal Excise Act, 2005 levying FED @ 8% ad val in sales tax mode by simultaneous insertion of S.No.3 "white crystalline sugar" in the Second Schedule to the said Act.

2.1 This step moved the Sugar sector out of the sales tax

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regime & put it into the dying FED regime w.e.f. 04.06.2011. The rate of Sales Tax was 8% instead of 16% by virtue of an un-numbered *SRO ___(I)/2009 dated 23.08.2009.*

CONSEQUENCES

2.2 Charge of FED is primarily on manufacture & import of goods specified in Table-I of the First Schedule to the FED Act, 2005 while sales tax net is much more extensive & covers manufacturers (not being a cottage industry), retailers (with turnover above five million), importers, wholesalers (including dealers) & distributors. The immediate effect of removing white crystalline sugar from the ambit of sales tax & taking it under FED was that retailers, wholesalers (including dealers) & distributors of sugar were allowed total exemption from the requirements of the Sales Tax Act, 1990. Audit of such wholesalers etc under Sales Tax Act could have yielded substantial revenue under sales tax as well as under income tax law.

2.3 Sales Tax SRO 488(I)/2004 dated 12.06.2004 issued by the Fed Gov specified "certain goods that a registered person cannot supply to unregistered person" & if such supplies are made the Registered Person shall not be entitled to reclaim or deduct input tax in respect thereof. Clause (ba) specifying "*sugar (supply to wholesalers & dealers*" was added to the above notification vide SRO 314(I)/2005 dated 15.04.2005 meaning thereby that no sugar mill could sell sugar to any unregistered wholesaler & dealer. However, most of the sugar mills / sugar barons blatantly flouted law. Audit of such sugar suppliers can still result in substantial disallowance of input.

BUDGET PROPOSAL

2.4 The following is proposed in this regard:

a. S.No.27 specifying exemption from sales tax to "white crystalline sugar" in SRO 551(I)/2008 dated 11.06.2008 be deleted;

b. S.No.53 "white crystalline sugar" existing in Table-1 of the First Schedule to the Federal Excise Act, 2005 levying FED @ 8% ad val & S.No.3 "white crystalline sugar" in the Second Schedule to the said Act be deleted;

c. Thus sugar will again move back into the sales tax regime.

d. Instead of *reviving the old rate of 8% under SRO ___(I)/2009 dated 23.08.2009 & causing distortion in the system, the standard rate of sales tax u/s 3 be adopted for sugar.*

ZERO-RATING ON EXERCISE BOOKS

3 SRO 549(I)/2008 dated 11.06.2008 specifies zero per cent rate of sales tax on certain goods subject to certain conditions & restrictions. Clause (xxi) of S.No.4 of the above notification provides zero-rating against both import & supplies of "Exercise Books" of PCT heading 4820.2000. It is worth pointing out that S.No.32 of Table-I of the Sixth Schedule to the Sales Tax Act, 1990 provides exemption to books etc but *of different PCT headings.*

CONSEQUENCES

3.1 Most of the paper importers & manufacturers portray that the paper imported by them has gone into manufacturing of "exercise books". Massive adjustments / refunds are being claimed & allowed to fake exercise book manufacturers. Large-scale audit of such units is recommended to retrieve loss of government revenue.

BUDGET PROPOSAL

3.2 The following is proposed in this regard:

a. S.No.32 in Table-1 of the Sixth Schedule to the Sales Tax Act, 1990 be amended and "exercise books" of PCT heading 4820.2000 be added to the existing entry in order to give them exemption from sales tax instead of allowing them the facility of zero-rating;

b. S.No.4 (xxi) specifying "exercise books" of PCT heading 4820.2000 be deleted from the Table of SRO *549(I)/2008 dated 11.06.2008.*

POLYETHYLENE & POLYPROPYLENE

4 Federal Government issued SRO 644(I)/2007 dated 27.06.2007 specifying higher sales tax rate of 22% on import & supply of certain goods mentioned in Table-I while 19.5% rate was prescribed for goods in Table-II causing distortions in sales tax regime. S.No.16 of Table-I specifies "polymers of ethylene in primary forms" of PCT heading 3901.0000 while S.No.17 prescribes "polymers of propylene or of other olefins, in primary form" having PCT heading 3902.0000.Thus polymers of ethylene & of propylene or of other olefins of the specified PCT headings are chargeable to 22% sales tax on import or supply.

4.1 Though the polymers of ethylene & of propylene or of other olefins of the specified PCT headings are chargeable to 22% sales tax on import, items manufactured out of them are liable to sales tax at the standard rate of 16% if not covered by concessionary SROs like 117(I)/2011 dated 10.02.2011 or SRO 180(I)/2011 dated 05.03.2011 in which case the rate

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of output tax is only 50% of normal rate i.e. effectively it is 8% (being 50% of 16%).Thus manufacturers using above raw material claim input @ 22% though their output is merely 16% or 8%. The result is that in spite of value addition such manufacturers persistently claim refunds.

4.2 Federal Government issued SRO 769(I)/2009 dated 04.09.2009 in order to zero-rate the import & supply of polyethylene & polypropylene of PCT heading 3901.1000, 3901.2000 & 3902.1000 for manufacture of mono filament yarn & net cloth subject to the condition that manufacturer is duly registered & has in-house manufacturing facility & supplies net cloth for green house farming. SRO 769(I)/2009 dated 04.09.2009 was superseded within almost a fortnight by SRO 811(I)/2009 dated 19.09.2009 but zero-rating was retained as above. Thus polymers of ethylene & of propylene of specified PCT headings are chargeable to 22% sales tax & to zero per cent.

CONSEQUENCES

4.3 Polyethylene & polypropylene being imported as zero-rated for supply of net cloth to green house farms is being sold in market & massive refunds are being claimed & allowed. Audit of all registered persons importing polyethylene & polypropylene & claiming benefit of SRO 811(I)/2009 dated 19.09.2009 is proposed to check the veracity of claim of manufacturing net & supplying it to green house farms.

BUDGET PROPOSAL

4.4 The following is proposed in this regard:

a. SRO 644(I)/2007 dated 27.06.2007 specifying higher sales tax rate of 22% & 19.5% on import & supply of certain goods is causing huge distortions in sales tax regime & may be revoked to minimize refunds;

b. SRO 811(I)/2009 dated 19.09.2009 is proposed to be deleted in order to minimize fake refunds.

SRO 1125(I)/2011 dated 31.12.2011

5 Textile sector is zero-rated under the subject notification. However, supplies to sectors other than textile are chargeable to tax at the rate of 5%. Zero-rating is being misused by other unauthorized sectors like fabric purchased by auto manufacturers for seat covers.

S.No.4 Maize Starch, commercial importers supplying to unorganized sector are misusing relaxation by claiming sales to textile mills.

S.No.8 Emery Powder is used in grinding machines for surgical goods but is also being misused by cutlery manufacturers.

5.1 Other examples which can be mentioned include, S.No.61 Cleaning Preparations; hair shampoos being imported under this provision.

S.No.88 Polyurethanes; used by shoe-manufacturers for sole manufacturing, being misused by foam manufacturers and for refrigerator insulation.

S.No.99 Rubber Latex is used in sports goods/footballs, but is being misused by tyre-manufacturers.

BUDGET PROPOSAL

5.2 The following is proposed in this regard:

a. Benefit of notification should not be allowed to commercial importers;

b. Beneficiaries of this SRO 1125(I)/2011 dated 31.12.2011 be subjected to mandatory audit.

SRO 180(I)/2011 dated 05.03.2011

6 Federal government has reduced sales tax by 50% on supplies (other than cement, sugar, beverages and cigarettes) by registered persons located in Districts of Hangu, Bannu, Tank, Kohat, Chitral, Charsadda, Peshawar, Dera Ismael Khan, Batagram, Lakki Marwat, Sawabi, Nowshera and Mardan with effect from 10.03.2011.Since SRO 180(I)/2011 does not impose restriction of manufacturing in the specified areas, the provision is being misused by manufacturers of other areas of the country who have obtained registration as wholesaler/dealer at Peshawar, etc. and are obtaining refunds because input is @16% and output is @ 8%.

BUDGET PROPOSAL

6.1 The following is proposed in this regard:

a. Relief of 50% in rate of sales tax be restricted to manufacturers of the specified areas as is done in similar SRO 117(I)/2011 dated 10.02.2011.

6.2 It is proposed that that the following clarifications & / or letters issued by the Board may be withdrawn for the reasons given against each hereunder.

SALES TAX ON MARRIAGE HALLS

7 SALES TAX ON MARRIAGE HALLS

C.No.105(2)S-IR-III/2011 dt 25.08.2011. Subject letter terms serving of cooked food as "services" not liable to tax either under Sales Tax Act, 1990 or FED Act, 2005. In fact supplying cooked food is not "providing services". Cooked food is included in "goods" as defined in clause (12) of section 2 of Sales Tax Act, 1990. The said clause *(12) states "goods" include every kind of movable property other than actionable claims, money, stocks, shares and securities.*

7.1 All goods are liable to sales tax unless exemption is provided under section 13 or

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Sixth Schedule of the Act. In this regard attention is drawn to the order of the honorable Supreme Court of Pakistan re: Collector **of Sales Tax & Central Excise v Sanghar Sugar Mills Ltd Karachi & others PTCL 2007 CL 565 = [(2007) 96 TAX 105 (S.C. Pak)] which laid down the ratio that all goods are taxable unless specifically exempted.**

7.2 The only Exemptions to cooked food mentioned in Table-2 of the Sixth Schedule are given below:

S.No. 3 conditional exemption to "cottage industry";

S.No.7 exempts "breads prepared in tandoors & bakeries, vermicellies, nans, chapattis, sheer mal, bun, rusk";

S.No.8 declares that "foodstuff cooked or prepared in-house & served in messes run on the basis of mutuality & industrial canteens for workers" is exempt; and

S.No. 9 grants similar exemption to "foodstuff & other eatables prepared in the flight kitchens & supplied for consumption on-board in local flights".

7.3 Apart from the above exemptions there is no other exemption for cooked food. Therefore, it is submitted that the supply of cooked food is not service & is liable to sales tax. It has been so held in the case law reported as Balana Restaurant Peshawar v Assistant Collector Sales Tax & Federal Excise (Refunds) Peshawar **PTCL 2010 CL 581 (Trib)** and **Balana Restaurant Peshawar v Collector Sales Tax Peshawar 2010 PTD 1286 (H.C. Pesh)**. The honorable Lahore High Court refused to issue writ in favour of **Yasir Broast Lahore in WP No.646-2012** on the above issue.

7.4 Cooked food being a manufactured item was also liable to Special Excise Duty imposed under section 3A of the Act read with SRO 655(I)/2007 dated 29.06.2007. The rate of tax initially was 1% which was enhanced to 2.5% by the Federal Excise (Amendment) Ordinance, 2011 on 15.03.2011. Later SED was abolished by Finance Act, 2011. SRO 655(I)/2007 was challenged before Lahore High Court but dismissed vide **Brothers Sugar Mills Ltd v Government of Pakistan 2011 PTD 2465 (H.C. Lah).** It was also upheld subsequently in Intra-Court appeals. The levy was eventually upheld by the honorable Supreme Court of Pakistan in Civil Petitions No.1576 to 1582 & 1587 of 2011 decided on 18.10.2011.

From the above discussion it is easy to infer that supply of cooked food is still liable to sales tax as the law exists today and that it was liable to Special Excise Duty up to 30.06.2011.

BUDGET PROPOSAL

7.5 The following is proposed in this regard:

a. Board's letter C.No.105(2)S-IR-III/2011 dated 25.08.2011 may kindly be withdrawn for proper taxation of supply of food manufactured by marriage halls, caterers and hotels & restaurants;

b. Board's letter C.No.1(3)FED/2007 dated 25.07.2009 may also be withdrawn for imposing & recovering SED on supply of food manufactured by hotels & restaurants.

SRO 727(I)/2011 dated 01.08.2011

8 The subject notification was issued basically to grant exemption from sales tax on the import of plant & machinery not manufactured locally subject to certain conditions. Attention is drawn to clause (iv) of notification which states: "subsequent supply of plant & machinery imported or acquired & used by registered manufacturers or registered industrial units to unregistered industrial regimes *or commercial regimes whether registered or not, shall be liable to tax*".

8.1 A Letter bearing C.No.3(5)ST-L&P/2005 dated 09.03.2012 to Karachi Chamber of Commerce & Industry states as follows:

> "...It is quite clear that exemption under this SRO shall be available on domestic supply of used plant & *machinery from industrial concern / manufacturer registered in sales tax to another registered industrial concern / manufacturer*".

It is respectfully submitted *that* Clause (iv) does not clarify whether sale of second hand machinery by RP to another RP is taxable or exempt. It also does not deal with sale of machinery imported by an RP before issuance of SRO 727. Apparently the clarification extends a favour which is not envisaged by the subject notification.

BUDGET PROPOSAL

8.2 The following is proposed in this regard:

a. Board's letter bearing C.No.3(5)ST-L&P/2005 dated 09.03.2012 addressed to Mr.S.M. Rizvi of Karachi Chamber of Commerce & Industry may kindly be withdrawn for proper taxation of sale / supply of used plant & machinery from registered industrial concern / manufacturer to another registered industrial concern / manufacturer.

DOTGazette

Training Courses for Officers

Training course on Sales Tax Law was organized for officers in RTO Lahore from 30th January to 2nd February 2012. 60 officers from RTO, RTOII and LTU attended this training session. Mr Shafqat Hayat Hotiana, Additional Commissioner was the resource person. It was an interactive session in which the officers shared their experiences and also discussed different complicated cases. After formation of Inland Revenue these joint training sessions have helped in resolving different legal issues being faced by field formations. This 5 day workshop assumed special significance because all the three hounorable Chief Commissioners also sat through the entire sessions and issued on the spot instructions in various cases and various isues. The Director General DOT attended the concluding session and appreciated the efforts of the resource person and the keen interest shown by the officers.

Refresher Training Courses for Auditors/Inspectors

SAHIWAL OFFICE

Directorate General of Training and Research conducted a two day refresher training course for Auditors and Inspectors of Sahiwal Office on 28th and 29th of February 2012. Training course was conducted as per the following module:

Sales Tax Law

Audit under Sales Tax Law

2 **Income Tax Law**

(I) Monitoring of withholding taxes

(Ii) Audit Proceedings under Income Tax Law

Mr. Amir Amin Bhatti and Muhammad Majid Hayat conducted the training course as resource persons. 25 participants attended the training session.

LTU, RTO & RTOII, LAHORE

Training course for auditors of Large Taxpayer Unit, Regional Tax Office and Regional Tax Office II Lahore was organized on Audit proceedings under the Income Tax Ordinance 2001 on 6th and 7th of March 2012. Syed Nadeem Hassan, Commissioner Inland Revenue was the resource person. 18 participants attended this training course and they appreciated the teaching methodology and the course content.















36th Issue

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Workshop on Sales Tax Law and Procedures at the Regional Tax Office Rawalpindi

DOT(IR) is extremely indebted to Mrs. Raana Seerat, Director General (HRM), FBR, Islamabad who took interest in arranging a workshop on Sales Tax Law and Procedures at the Regional Tax Office Rawalpindi on 20th February 2012.

The workshop was widely appreciated. It was attended by the officers nominated from the Regional Tax Offices of Rawalpindi and Islamabad as well as from Large Taxpayers' Unit, Islamabad. Mr. Shafqat Hayat Hotiana, Additional Commissioner, Lahore was the resource person who covered the topic in three sessions of two hours each.

The DOT(IR) faculty highly appreciates her profound concern for the in-service trainings of FBR Officers and takes this opportunity to extend felicitations to the hounorable Member (HRD) for such a successful workshop under her guidance.









Three day workshop on "Cross Border Business Taxation & Tax Treaties" at DOT(IR), Lahore



HRM wing of FBR arranged a training program on Cross Border Business Taxation and Tax Treaties in DOT (IR) Lahore, from 9.04.2012 to 11.04.2012. It was a three day session from 9.00 am to 5.00 pm for senior officers posted at Lahore. Mr. Jameel Ahmed Bhutto and Mr. Ahmad Khan (former Member of FBR) were invited to conduct the sessions as resource persons.

The three day training covered the basic concepts of international taxation and double taxation treaties including permanent establishment, scope of taxation etc. Cross border business transactions like royalties, fee for technical services, capital gains, dividends, interest etc were also part of the training objectives. During the session issues related with double taxation like non-discrimination, exchange of information were also discussed.

Mr. Zulqarnain Tirmizi Director DOT, (IR) represented the DOT as one of the participants. Mr. Mustafa Ashraf, Director General DOT (IR) graced the occasion during the opening and closing sessions. Director General DOT, appreciated the contents of the training module and teaching methodology. He also highlighted that DOT is the most convenient venue for holding such training courses and seminars. The participants of the training session were awarded certificates at the end of the training session followed by a group photograph.

The whole training activity was a huge success. It was widely appreciated by the participants for which HRM wing of FBR headed by Mrs. Raana Seerat deserves special appreciation.

2012 PTR 1 (H.C. Lah.)

HIGH COURT LAHORE

Syed Mansoor Ali Shah, J

Riaz Bottlers (Pvt.) Ltd.
V.
Federation of Pakisan

W.P. No. 4715/2012.
Heard on: 15th March, 2012.
Decided on: 15th March, 2012.
Present at hearing: Ch. Anwar-ul-Haq, Advocate for Petitioner. Raja Sikandar Khan, Advocate, Ali Adnan Khan, DCIT, for Respondent.

JUDGMENT

Syed Mansoor Ali Shah, J.

The main grievance of the petitioner is that the name of the petitioner Company has been selected for audit in violation of the procedure laid down in Section 214C of the Income Tax Ordinance, 2001 ("Ordinance"), Section 72B of the Sales Tax Act, 1990 and Section 42B of the Federal Excise Act, 2005 in as much as the computer Ballot has not taken place and, therefore, the selection of the petitioner for audit as intimated through letters dated 2.12.2011, 7.2.2012 and 14.2.1012 of the respondents is without lawful authority. He further submitted that the audit can only be of the current year and in this regard placed reliance on letter issued by Federal Board of Revenue dated 5.10.2009. He lastly submitted that Rukhsana Yasmin, Commissioner Inland Revenue, Zone-II, LTU, Lahore, who has issued impugned letters dated 2.12.2011 has not been duly appointed to the said post.

2. Learned counsel for the respondents has placed on record letter dated 19.1.2012 which shows that the respondent FBR, through Computer Ballot, has selected the petitioner for audit for tax year 2010 for the purposes of Income Tax, Sales Tax and Federal Excise Duty. The departmental representative, however, clarified that letters dated 2.12.2011 carry an incorrect date and in support thereof placed the relevant Dispatch Register before the Court, which showed that the said letters were actually dispatched on 2.2.2012 after the results of the Computer Ballot were consolidated through the above referred letter dated 19.1.2012.

3. Arguments heard.

4. The selection of the petitioner company for audit has been done on the basis of random ballot of corporate cases conducted by the FBR under section 214C of the Ordinance, Section 72B of the Sales Tax Act, 1990 and Section 42B of the Federal Excise Act, 2005 as is evident from letter dated 19.1.2012 issued by Chief (Taxpayer's Audit-III), FBR (Tax Payer's Audit Wing). Petitioner company has been placed at serial No. 26 out of a total of 39 cases selected for audit.

5. Notification' dated 6.5.2010 clearly shows that Ms. Rukhsana Yasmin has been notified as Commissioner Inland Revenue (Enforcement) LTU, Lahore. Further, letter dated 5.10.009, referred by the counsel for the petitioner to contend that the audit can only be for the current year, is actually an internal guideline issued by the FBR to its Collectorates which has outlined its utility after the insertion of the afore-noted sections in various tax laws, which do not provide for any such limitation.

6. It is sad to note that the petitioner without ascertaining the facts regarding random balloting by the FBR or issuance of notification in favour of the Commissioner Inland Revenue has irresponsibly rushed to this Court alleging, rather recklessly, on a sworn affidavit, that no balloting has taken place and no notification exists in favour of the Commissioner Inland Revenue. Approaching the court of law and more particularly invoking the constitutional jurisdiction of this Court is a solemn and serious affair. Before filing a writ petition the petitioner must verify the facts to the best of his ability and then venture to swear an affidavit in this regard. In the present case, the petitioner without any such effort decided to take a shot in the dark, as if playing a game of chance by using the process of this Court. It has transpired that the allegations raised in the petition are incorrect and an outcome of baseless and hollow assumptions on the part of the petitioner. The petitioner has been nonchalant and careless in invoking the jurisdiction of this Court, which is deprecated.

7. This petition, for the above reasons, is not only without merit and frivolous but has also abused the process of this court. The petitioner has wasted valuable public time of the Court and unduly burdened its resources. This petition is, therefore, dismissed with compensatory costs of **Rs.35,000/-** which shall be paid by the petitioner. The costs shall be deposited with any charitable civil society organization in Punjab certified by the Pakistan Centre of Philanthropy (PCP) (www.pcp.org.pk) and a receipt thereof placed on the record **within one month** from today. Reliance is placed on *Kawas B. Aga and another vs. City District Government, Karachi (CDGK) through Nazim-e-Ala and others,* (PLD 2010 Karachi 182), *The Postmaster-General, Northern Punjab and (AJ&K), Rawalpindi vs. Muhammad Bashir and 2 others,* (1998 SCMR 2386), *Province of Sindh through Secretary, Home Department and others vs. Roshan Din and others,*(PLD 2008 S.C. 132), *Inayatullah vs. Sh. Muhammad Yousaf and 19 others,* (1997 SCMR 1020), *Mst. Afsana vs. District Police Officer, (Operation), Khairpur and 5 others,* (2007 YLR 1618) and *M.D. Tahir Advocate vs. Federal Government and others,* (PLD 1999 Lahore 409). Office is directed to place this file before this Court on the administrative side for appropriate orders in case the costs are not deposited within the time prescribed above.

DOTGazette

Farewell to Mr. Khawar Khurshid Butt, Director General

















Training Course on Recovery Proceedings under Sales Tax Law in LTU Lahore

Directorate General of Training and Research (IR) organized a workshop on Recovery Proceedings under Sales Tax Law as per requirement of the field formations. It was held in the conference hall of LTU Lahore on 21.3.2012. Officers posted in enforcement wings of LTU, RTO and RTO II Lahore attended this one day workshop.

Mr Amir Amin Bhatti was the resource person and covered the following topics:

1. An Overview of Sales Tax
2. RECOVERY - From Where does it Emanate
3. Statutory Provisions
4. Types of Recovery
5. Recovery Rules
6. Analysis of Recovery Rules and Practice in Vogue