

E-News & Views

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A Publication of KTBA

January 2021 to March 2021

A publication covering information on recent important judicial pronouncements, circulars and clarifications

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FROM THE DESK OF THE PRESIDENT

My Dear Members,

The Jan-Mar 2021 Edition (First Edition) in your hand is the sheer efforts of E-News & Views Sub-Committee headed by Ms. Raeel Fatima, a young dynamic and a gold medalist of our Professional Development Program who has been included in our Executive Committee for the first time. The Karachi Tax Bar Association (KTBA) has always taken pride in taking a leap of faith, be it making new leaders, irrespective of gender distinction, or dissemination knowledge.

The E-News & Views of KTBA always serves as a first hand choice to look for the Notifications/Circulars or for finding important judgments on Federal and Provincial Tax Laws.

In this edition, Members will also find circulars and notifications of issued by Punjab Revenue Authority, Balochistan Revenue Authority, Khyber Pakhtunkhwa Revenue Authority in addition to Federal Board of Revenue and Sindh Revenue Board.

I have no hesitation to acknowledge here that every member of KTBA's E-News & Views Sub-Committee has shown an exemplary level of responsibility and commitment in bringing out this edition and that too during these trying times. I am blessed to have such a wonderful team of E-News & Views Sub-Committee led by Ms. Raeel Fatima. Everyone who cares about knowledge sincerely owes to all the contributors of this publication a debt of thanks as well.

As we are gripped by the fourth wave of Covid-19 Pandemic, I would request you all to take care of yourselves and stay safe! I pray to Almighty Allah to keep all of us rather the entire humanity safe from this pandemic!

In the end, I would once again like to thank the entire team and hope that this Sub-Committee will ensure fresh issues of this publication on regular basis.

Yours in service,

Muhammad Zeeshan Merchant

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

It is my great pleasure to present the first publication of E-News & Views of this Committee.

It was only the coordinated and concerted team efforts enabling this Sub-Committee to complete the publications of 1st Quarter of this Calendar Year 2021.

We have compiled in this issue, Circulars, SROs and General Orders concerning revenue laws of the Country issued from January, 2021 till March, 2021.

This publication also covers circulars and notifications issued by Sindh Revenue Board, Baluchistan Revenue Authority, Khyber Pakhtunkhwa Authority & Securities & Exchange Commission of Pakistan. In addition to aforesaid, the important case laws dealing with Sales-tax, Federal Excise and Direct Tax are also part of this publication.

We graciously welcome your suggestions and comments which would indeed help us in our pursuit of improving the readership as well as quality of this publication.

Our valuable team never shield away from innovating & introducing new practices in order to raise the bar of knowledge to another level.

I am extremely grateful to the team of E-News & Views for completing the task. I am confident that this E-News & Views Committee will continue to scale new heights & will be more innovative & informative in publication of future editions.

Yours in service,

Raeel Fatima

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
09 of 2021	March 01, 2021	Mechanism to be adopted for the release of Consignment of FATA/PATA Residents stuck-up at the Karachi Ports.
10 of 2021	March 01, 2021	SOP for Protecting Complaints of Corruption Against Reaction or Revenge.
11 of 2021	March 02, 2021	Partial modification of Circular No.9/2021.
12 of 2021	March 10, 2021	Partial modification of Circular No. 05 of 2011 dated 30th April, 2011.
13 of 2021	March 26, 2021	Procedure for issuance of exemption certificate for import of Industrial Inputs/Machinery by FATA/PATA Resident Tax Persons.
05 of 2021	March 26, 2021	Procedure for issuance of Consumption Certificate for import of Industrial Inputs by FATA/PATA Domiciled Industries.
14 of 2021	March 26, 2021	Extension in date of furnishing of Taxpayer's profile under section 114A of the Income Tax Ordinance, 2001.

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
13(I)/2021	January 08, 2021	Insertion of Rule 34B in respect of Taxpayers Profile in Income Tax Rules, 2002
78(I)/2021	January 22, 2021	The Inland Revenue Reward Rules, 2021
99(I)/2021	January 26, 2021	Import of Wheat
101(I)/2021	January 28, 2021	Constitution of Alternate Dispute Resolution Committee (ADRCs)
202(I)/2021	February 08, 2021	Protocol amending the Convention between the Islamic Republic of Pakistan and Hungary for the Avoidance of Double Taxation with respect to Taxes on Income
175(I)/2021	February 10, 2021	Refund Rules
214(I)/2021	February 18, 2021	Refund Rules
235(I)/2021	February 23, 2021	Exemption of taxes on import of raw & white sugar
269(I)/2021	March 01, 2021	International Sukuk
268(I)/2021	March 01, 2021	Eurobonds

SRO REFERENCE	DATE	SUBJECT
272(I)/2021	March 02, 2021	Functions of Directorate General (I&I-IR)
369(I)/2021	March 31, 2021	Assets Declaration Rules

Indirect Tax CIRCULARS AND SROs

Indirect Tax Circulars

CIRCULAR REFERENCE	DATE	DESCRIPTION
Sales Tax Circular 01 of 2021	March 30, 2021	Standard Operating Procedure for Registration of New Manufacturers for Concessionary Tariff Rates on Supply of Electricity and Gas

Indirect Tax SROs

SRO REFERENCE	Dated	SUBJECT
01(I)/2021	January 05, 2021	Amendment in Sales Tax Rules, 2006
77(I)/2021	January 21, 2021	Amendment in S.R.O 495(I)/2016
98(I)/2021	January 26, 2021	Amendment in S.R.O 1190(I)/2019
97(I)/2021	January 26, 2021	Exempt the import of cryogenic tanks (for oxygen gas)
96(I)/2021	January 26, 2021	Amendments in Sales Tax Rules, 2006
136(I)/2021	February 03, 2021	Exemption to import of Fifty Two Fire Fighting vehicles
215(I)/2021	February 19, 2021	Exemption of Sales Tax on Import of 500,000 MT on White Sugar
234(I)/2021	February 22, 2021	Amendment in Sales Tax Rules, 2006
373(I)/2021	March 30, 2021	Constitution of Alternate Dispute Resolution Committees (ADRCs)

Indirect Tax Circulars – SRB

Working Tariff of Sindh Sales Tax on Service (Amended upto 01st November, 2020)

Indirect Tax Notifications – SRB

Notification Order No.	Dated	SUBJECT
SRB-3-4/01/2021	January 02, 2021	Amendment in notification No.SRB-3-4/24/2020 dated 3 rd July, 2020
SRB-3-4/02/2021	February 02, 2021	Amendment in notification No.SRB-3-4/24/2020 dated 3 rd July, 2020.

SRB-3-4/04/2021	February 26,2021	Transfers and postings in SRB - Amendments in notification No. SRB-3-4/24/2020 DATED 3 rd July ,2020
SRB-3-4/05/2021	March 06,2021	Transfers and postings in SRB - Amendments in notification No. SRB-3-4/24/2020 Dated 3 rd July ,2020

Indirect Tax Circulars – KPRA

Circulars Order No.	Dated	Description
Circulars 01 of 2021	February 24, 2021	Streamlining of Procedure for Expeditious Disposal of Deregistration Applications/Cases.

Indirect Tax Notifications – KPRA

Notification Order No.	Dated	Description
KPRA/REGULATION/WH/2089-94	January 22, 2021	Amendments in Khyber Pakhtunkhwa Sales Tax Special Procedure (Transportation of Carriage of Petroleum Oil Tankers) Regulation, 2018
F NO. KPRA/OPT TO STANDARD RATE/2020/405	January 28, 2021	Permission to operate under Standard Rate of Tax (15%) in terms of section 26-A of the KP Finance ACT-2013

Indirect Tax Notifications – BRA

Notification Order No.	Dated	Description
NO.BRA/BSTS/16/2020-21	January 27, 2021	BSTS exemption for Pak-China Friendship Hospital Gwadar (Grant in-Aid project)
NO.BRA/BIDC/05/2020-21	January 27, 2021	BIDC exemption for CPEC Project i.e. Pak-China technical & Vocational Institute of Gwadar Port (Grant in-Aid Project)

CIRCULARS ISSUED BY SECP

Circular No.	Date	Description
01 of 2021	January 11, 2021	Growth Rate Scenarios for Life Insurance and Family Takaful Illustrations-2021
02 of 2021	January 28, 2021	Online Submission of Financial Information by Securities Brokers.
03 of 2021	February 12, 2021	Requirement for Digital Account Opening by Asset Management Companies (AMCs)
04 of 2021	February 19, 2021	Corona Virus related contingency planning for general meetings of the listed companies

05 of 2021	February 19, 2021	Approved list of Auditors Pursuant to Section 48 (1) of the Insurance Ordinance 2000- Updated
06 of 2021	March 04,2021	Corona Virus related contingency planning for general meetings of the listed companies
07 of 2021	March 12,2021	Policy to be prepared at Board Level for Gender Diversity
11 of 2021	March 31,2021	Issuance of shared Under Clause (a) of Subsection 1 of section 83

NOTIFICATIONS ISSUED BY SECP

Notification No.	Date	Subjects
20(I)/2021	January 11, 2021	Delegation of Powers of the Commission to Officers of Insurance Division
19(I)/2021	January 11, 2021	Extending timeline for meeting the paid up capital and equity requirements
18(I)/2021	January 11, 2021	Amendment to the Central Depository (Licensing & Operations) Regulations, 2016
50(I)/2020	January 20, 2021	Amendment in the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017
49 (I)/2021	January 20, 2021	Amendments to the Securities and Futures Advisers (Licensing and operations) Regulations, 2017
105(I) /2021	January 30, 2021	SRO-Directive on CDD for occasional transaction
107(I)/2021	February 01, 2021	2 nd Draft amendments in the Non-Banking Finance Companies and Notified Entities Regulations, 2008
131 (I)/2021	February 03, 2021	Amendments to the Associations with Charitable and not for profit Objects Regulations, 2018
920(I)/2020	February 18, 2021	Notification amendments in SRO 920(I) 2020 AML dated 28 September 2020
229(I)/2021	February 23, 2021	Draft amendments to the Companies (Distribution of Dividends) Regulations, 2017
230(I)/2021	February 23, 2021	Draft amendments to the Futures Brokers (Licensing and Operations) Regulations, 2018
231 (I)/2021	February 23, 2021	Draft amendments to the Credit Rating Companies Regulations, 2016
232 (I)/2021	February 23, 2021	Draft amendments to the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017
233 (I)/2021	February 23, 2021	Draft amendments to the Securities Brokers (Licensing and Operations) Regulations, 2016

261 (I)/2021	February 26, 2021	Draft amendments to the Share Registrars and Ballotters Regulations, 2017
373 (I)/2021	March 05, 2021	Delegation of Powers to the ED (SCD)
281(I)/2021	March 08, 2021	SEC (Reinsurance Brokers) Regulations 2021
371 (I)2021	March 31, 2021	Draft amendments to the Associations with Charitable and not for profit Objects Regulations 2018
370 (I)2021	March 31, 2021	Draft amendments to the NBFC Regulations 2008



COVID-19
Protect yourself and others

 **Cough and sneeze into a tissue or elbow**

 **Wash your hands thoroughly and regularly**

 **Keep your distance**
Stand 1 metre or 3 feet apart.

 **Avoid shaking hands**

 **Stay at home if you feel ill**

 **Be kind, avoid stigma**

SYNOPSIS OF IMPORTANT CASE LAWS DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
<p>2021 PTD 166</p> <p>Appellate Tribunal Inland Revenue [ATIR]</p> <p>Decided dated January 10, 2019</p>	<p>Section 221 of the 2001, Ordinance</p>	<p>An order under section 161 was passed against the taxpayer. In appeal before CIR-A and ATIR, partial relief was allowed whilst demand raised with respect to local purchases was upheld.</p> <p>The taxpayer filed an application seeking rectification of order passed by ATIR on the ground that the details of payment on account of local purchases were duly submitted during the proceedings and before the appellate authority which if were looked then this addition won't have been confirmed. He plead that this is an oversight in the appellate order and hence warrants rectification.</p> <p>The taxpayer cited various cases on the matter that and factual matters over sighted constitute a rectifiable mistake.</p> <p>The ATIR admitted the error in the appellate order and rectified the earlier appellate order. The issue of demand on local purchases was remanded back to the Taxation Officer.</p>
<p>2021 PTD 299</p> <p>Supreme Court of Pakistan</p> <p>Messrs Shahid Gul and Partners V. DCIR Audit-V, RTO Peshawar</p> <p>Decided on February 14, 2019</p>	<p>Section 20, 21 and 22 of the 2001 Ordinance</p>	<p>The taxpayer was an AOP engaged in the business of conversion of land into building/shops/offices. He has claimed amortized cost of land in four tax years as business expenditure under section 20 treating the land as stock in trade as acquired for making superstructure as shops and offices for resale and not as unimproved land or capital asset.</p> <p>However, the DCIR disallowed the expenses claimed as per return of tax year 2001 and 2002 in respect of land by treating the same as capital cost u/s 21(n) and not allowable against income u/s 20.</p> <p>The matter was agitated before CIR-A who did not concur with the treatment of DCIR and held that the cost claimed as amortization is actually cost incurred in improving the land which claimable u/s 22 should be principally allowable as depreciation u/s 22 and cost relating to sale of shops / flats should be allowed u/s 20 and 21 and remanded back the same to DCIR for properly evaluating the matter.</p> <p>Both taxpayer and DCIR challenged the same before ATIR who partially accepted by remanding back the matter to CIR-A and held that amortization expenses is allowable up to 34% of land covered area and not allowable on remaining area.</p> <p>The CIR-A decision was then challenged before Peshawar High Court who concurred with view of department holding that the entire amortization cost is not claimable.</p> <p>The above decision was challenged before Supreme Court of Pakistan who concurred with decision of CIR-A and restored the same.</p>
<p>2021 PTD 157</p> <p>Appellate Tribunal Inland Revenue</p>	<p>Section 114 of the 2001 Ordinance</p>	<p>The individual taxpayer declared professional services receipts with tax deducted at source under section 153(1)(b) under Final Tax Regime in its return of income / statement u/s 115(4) of the 2001 Ordinance for tax years 2014, 2015 and 2016. The DCIR passed order u/s 122(9) holding the statement filed u/s 115(4) as invalid and treating the gross</p>

Decided on February 14, 2019		<p>receipts as taxable under Normal Tax Regime [NTR] without allowing allowable expenses. The revised normal return u/s 114 was subsequently filed by the taxpayer before completion of assessment for tax years 2014, 2015 and 2016. The appeal against the order of DCIR was confirmed ex-parte by CIR-A. The taxpayer challenged the matter relating to disallowance of expenses from gross receipts in revised return in the above DCIR orders before ATIR.</p> <p>Appeal was allowed by the ATIR holding that the taxpayer was entitled to claim expenses from his professional services receipts and tax returns were lawfully filed under NTR.</p>
2021 PTD184 Appellate Tribunal Inland Revenue Decided on April 10, 2019	Section 111(1), Section 122(1) and 214C of the 2001 Ordinance	<p>The DCIR made additions under section 111(1) on account of differential credit entries in his order under section 122(1) which was confirmed by CIR-A. The taxpayer challenged the both orders before ATIR on the basis that notice issued under section 111 was withdrawn by DCIR after necessary explanations by the taxpayer however additions u/s 111 were made in order u/s 122(1).</p> <p>Appeal was allowed by ATIR holding that additions made under section 111 in amended order is illegal as notice issued under section 111 was withdrawn by DCIR on explanation of the nature and source of all credit entries in question by taxpayer.</p>
2021 PTD 359 Islamabad High Court Decided on October 30, 2019	Sections 133 & 50 of the 1979 Ordinance	<p>An assess engaged in the business with certain companies based in United Kingdom & United States on which with-holding tax were not deducted u/s 50(3) of Ordinance 1979 while making payment as the matter of Double Taxation Treaties.</p> <p>The Taxation Officer decided the matter against assessee that payments were not covering tax treaty. The appeal was filed by assessee which was allowed in I.T Appellate Tribunal.</p> <p>The reference application was filed for framing question of law mentioning article 12 of the treaty with UK & articles VIII & 12 of the treaty with USA.</p> <p>High Court, Islamabad dismissed the Reference Application & concluded that the decision of learned I.T Appellate Tribunal is well reasoned & does not suffer any error of law that no question of law arises, hence payments covered under the treaty.</p>
2021 PTD 35 Appellate Tribunal Inland Revenue Decided on December 11, 2019	Sections 182 & 165 of the 2001 Ordinance	<p>The CIR (Appeals) imposed penalty under section 182(2) for non-filing of monthly returns u/s 165 against which appeal was filed before Appellate Tribunal-IR mentioning that it discharged its statutory obligation of withholding tax & deposit into Govt. Treasury. Hence, it is the matter of no loss of revenue.</p> <p>Appeal was accepted& impugned order is set aside on the basis that the department is failed to point out any mens rea on the part of taxpayer, therefore dept. could not be permitted to generate new income under the garb of penalty.</p>
2021 PTD 192 (Lahore High Court) CIR Multan Zone V. Falah Ud Din Qureshi	Section 111 of the Income Tax Ordinance, 2001 [2001 Ordinance]	<p>In the case the Deputy Commissioner Inland Revenue [DCIR] made additions on account of unexplained income and assets under section 111(b) and 111(d) in order under section 122(1) read with section 177. The additions made under section 111(d) was confirmed by Commissioner Inland Revenue- Appeals [CIR-A],however, additions made under section 111(b) was remanded back with certain directions for the reasons and factors in his order which was challenged before</p>

Decided on February 11, 2020		<p>Appellate Tribunal Inland Revenue [ATIR] by taxpayer and the same was allowed in favour of taxpayer.</p> <p>The decision of ATIR was challenged by the department before Lahore High Court stating that the controversy was not properly appreciated while deleting the additions under section 111.</p> <p>The reference application was dismissed by Lahore High court holding that non-issuance of separate notice under section 111 and failure to confront the taxpayer with the proposed addition in order to require him to explain his position regarding unexplained income and assets before making addition in his income under section 122(1) is unlawful and hence order cannot hold the field.</p>
<p>2021 PTD 1</p> <p>Lahore High Court (Bahawalpur Bench)</p> <p>Commissioner-IR V. M/s Three Star Rice Factory</p> <p>Decided on February 17, 2020</p>	<p>Section 122 of the 2001 Ordinance and SRO No. 57(I)/2012 dated 24.01.2012</p>	<p>A taxpayer is a Rice Mill had a special tax year starting from 1st September to 31st August. Minimum tax was being paid by them on normal rates till issuance of SRO No. 57(I)/2012 dated 24.01.2012 and on its issuance the tax for the year 2012 was paid at reduced rate. Department disagreed on payment at reduced rate retrospectively proceeded u/s 122(5A) & raised a demand of less paid tax. Amended order was successfully assailed before the first appellate authority. Department's appeal was dismissed by the Appellate Tribunal on the ground that remedial law could be given retrospective effect on the applicability of determining tax liability in a particular tax period or tax period.</p> <p>Negative remark has been given by High Court on question of applicability of said SRO retrospectively. Therefore, the tax reference is decided in favour of applicant department. The taxpayer is claiming every legislation, giving benefit, as retrospective, ignoring the true spirit of the principle of interpretation.</p>
<p>2021 PTD 162</p> <p>Lahore High Court</p> <p>Mst.FouziaRazzak V. FBR</p> <p>Decided on October 19, 2020</p>	<p>Section 140 and 138 of the 2001 Ordinance</p>	<p>An order under section 182.</p> <p>The taxpayer filed an appeal before Commissioner Inland Revenue-Appeals. During pendency there-of the Commissioner Inland Revenue proceeded to notice under section 140 thereby attaching and recovering the amount of penalty from the bank account of the taxpayer.</p> <p>The taxpayer impugned this recovery pleading that issuance of notice under section 138 prior to notice under section 140 is a Sine Qua Non and hence current action is without legal basis. He further plead that this action has infringed his basic rights as per Article 4 and 10A to the constitution. He plead that this matter has been settled in the case law reported at 2016 PTD 1799.</p> <p>The Hon'ble court agreed to the taxpayer pleas and allowed the petition.</p>
<p>2021 PTD 344</p> <p>Federal Tax Ombudsman</p> <p>Decided on November 30, 2020</p>	<p>Sections 10, 2(3) & 9 of 2001 Ordinance 170, 171 & 120 of FTO</p>	<p>A private limited company is e-filed return of Income for Tax Year 2019 u/s 114(1) of the Income Tax Ordinance, 2001 claiming refund which was considered on unilateral reduction of refund amount without compensation of delayed refund by the AR Department without opportunity of hearing in terms of sub section (4) of section 170 of the Ordinance, 2001.</p> <p>The complaint is resolved on recommendation that FBR to direct Commissioner-IR to revisit the order, while exercising the power conferred u/s 122A of the Ordinance & pass fresh order u/s 170(4) of the Ordinance; after providing opportunity of hearing to the complainant.</p>

<p>2021 PTD 335 (Sindh High Court)</p> <p>AameerMustaaly Karachi wala V. DCIR and 3 others</p> <p>Decided on December 22, 2020</p>	<p>Section 182 and 116A of the 2001 Ordinance</p>	<p>The DCIR imposed penalty under section 182 for non-filing of Foreign Income and Assets Statement under section 116A against which petitions were filed before SHC.</p> <p>Petition was allowed by the SHC on the basis that no prescribed format under section 116A was notified so far so as to bring petitioners within the ambit of 'offence' as per section 182(1).</p>
<p>2021 123 TAX 96 (Lahore High Court)</p> <p>Nestle Pakistan Limited Vs Federation of Pakistan</p> <p>Decided on December 29, 2020</p>	<p>Section 241(2) of the Income Tax Ordinance, 2001 and SRO 115/2015 dated February 09, 2015</p>	<p>Constitutional Petitions were filed challenging SRO 115/2015 issued by the FBR where certain powers and functions have been conferred on the officers of Directorate General (Intelligence & Investigation Inland Revenue) {D.G. (I&I)}. The petition was mainly premised on the decision of Lahore High Court in the case of F.M. Textile Mills and others wherein SRO 116/2015 issued on the same date was struck down.</p> <p>Vide this judgment, the Lahore High Court also struck down SRO 115/2015 on the similar grounds on which SRO 116/2015 was struck down that no reasonable and rational basis has been used to confer the officers of D.G. (I&I) with the powers enjoyed by the Commissioner and Chief Commissioner.</p> <p>Moreover, it was held that validation clause merely saves pending action and validates any irregularity and deficiency and if SRO 115 is struck down, new set of power would have to be conferred to enable officers of D.G. (I&I) to continue to exercise their powers.</p> <p>It was also held that conferring such power would tantamount to setting up a parallel hierarchy of officers to exercise the same power.</p> <p>Further, no rules have been enacted to regulate the powers of D.G.(I&I) and distinguish them from the powers enjoyed by the Officers of Inland Revenue. This makes their power unregulated and any power exercise by them would be based on unstructured discretion which is an affront to the rule of law.</p> <p>Finally, conferring powers to the D.G.(I&I) without specifying their function and jurisdiction is against the provision of Section 230 of the Income Tax Ordinance, 2001.</p> <p>In response to this judgment, FBR has issued SRO 272/2021 dated March 02, 2021 specifying the function, jurisdiction and powers of D.G. (I&I).</p>

SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
<p>2021 PTD 202</p> <p>(Appellate Tribunal Inland Revenue)</p> <p>Ejaz Brothers Steel Furnance Vs CIR Zone 1, RTO, Gujranwala</p> <p>Decided on October 11, 2019</p>	<p>Section 11(2) of the Sales Tax Act 1990 read with Rule 58H of Special Procedure Rules 2007</p>	<p>The brief facts of the case are that the appellant has paid sales tax on import of re-meltable iron and steel scrap of Rs 5,600/- under Rule 58H of Special Procedure Rules 2007 instead of Rs 8,400/- applicable on him. The department passed the order to recover differential amount of sales tax of Rs 5,295,251/- payable at import stage under section 11(2) of the Act.</p> <p>The tribunal held that officer of inland revenue has no power to recover short recovery of sales tax at import stage under the Act as its collection, payment and recovery is governed under the Customs Act 1969. Moreover, Commissioner Inland Revenue has no power of custom officer under the Custom Act whereas the custom officer has power to adjudicate upon short levy of sales tax at import.</p> <p>Further, no loss of revenue has occurred to the department as the appellant currently has paid output tax after deduction of input tax of Rs. 5,025/- which would have been reduced to Rs 2,225/- had the appellant paid input tax at import stage of Rs 8,400/-.</p>
<p>2021 123 Tax 125</p> <p>(Appellate Tribunal Inland Revenue Peshawar)</p> <p>Frontier Green Wood Industries (Pvt) Ltd Vs CIR RTO Peshawar</p> <p>Decided on October 15, 2020</p>	<p>Section 2(16), 3(3)(a), 11, 11(2), & 11(4A) of Sales Tax Act 1990</p>	<p>The Crux of the matter is whether raw wood (cut logs) purchase by the appellant from middle men is exempt from sales tax being agriculture produce.</p> <p>Moreover, whether appellant can be issued with notice under section 11(2) of the Act for failure to withhold tax on purchase of raw wood.</p> <p>The ATIR held that by cutting trees and reducing them to specified size of logs have to be considered to have been taken through a process of manufacture as defined in Section 2(16) of the Act. Accordingly, wood purchased for use in further manufacturing has already been through a process of manufacturing and does not qualify for exemption under entry 10 of Table II of Sixth Schedule of the Act.</p> <p>Moreover, it was held that withholding agent were liable to pay tax after insertion of sub-section (4A) under section 11 through Finance Act 2016 and prior to that there was no provision to held them liable for any default. Hence, order made under section 11(2) of the Act for making the appellant liable to withhold tax is illegal, void ab-initio and without jurisdiction.</p>
<p>2021 PTD 43</p> <p>(Lahore High Court)</p> <p>New Cherat Coal Vs Federation of Pakistan</p> <p>Decided on November 27, 2020</p>	<p>Section 8(i)(b) of the Sales Tax Act 1990 and SRO 549/2006 dated June 05, 2006</p>	<p>Constitutional Petition was filed challenging SRO 549/2006 issued on June 05, 2006 on the ground that it has been issued in excess of jurisdiction conferred on the Federal Government by virtue of Section 8(i)(b) of the Sales Tax Act 1990.</p> <p>Vide this judgment, it is held that Federal government under section 8(i)(b) is empowered to specify goods on which input tax has been paid and in respect to which input tax adjustment is denied to a particular person and cannot construed to mean that denial may be in relation to ultimate taxable supplies without specifying the goods in respect to which input tax was paid.</p>

		<p>A notification under section 8(i)(b) could not be issue merely to specify a class of person making a certain taxable supply for that would tantamount to giving wide amplitude to a construction to be put on powers conferred on the Federal Government.</p> <p>Hence, SRO 549/2006 is held to be without lawful authority and of no legal effect.</p>
<p>2021 PTD 195 (Sindh High Court)</p> <p>Directorate General of Intelligence and Investigation Customs, Karachi Vs The Special Judge (Customs, Taxation and Anti-smuggling) Karachi</p> <p>Decided on December 30, 2019</p>	<p>Section 2 clause (s) of the Customs Act, 1969</p>	<p>The appeal was filed against the order of the Special Judge which decided that the import of betel nuts without payment of custom duties are not smuggled goods under the Custom Act and declared criminal proceedings before the Court of Special Judge (Customs and Taxation) as coram-non-judice.</p> <p>The High Court explained the literal rule of interpretation which is basically relying on the exact wording of the statue and the golden rule of interpretation where the judge can deviate from the literal meaning of the statue if it will give some absurd meaning. However, where the language of the statue is clear there is no need to avoid literal meaning. Similarly, words of law cannot be read in isolation and the entire statue is to be read to give a proper meaning.</p> <p>The court held that the import of betel nuts with an intention to avoid payment of duty and tax are smuggled goods under the definition of sub-clause (iii) of Clause (s) of Section 2 of the Custom Act as the term "any goods" not only cover specified or notified goods but also all goods imported with an intention to avoid payment of duty and tax.</p> <p>Further, there is a requirement under the law that imported betel nuts must accompany phytosanitary certificate and a certificate from export country that it is fit for human consumption. It is because of these conditions, there is a desire to bring betel nuts in the country through undeclared routes and as such these falls within the definition of smuggled goods.</p>
<p>2021 PTD 443 (Punjab Revenue Appellate Tribunal)</p> <p>Frigz Foods Sialkot Cantt Vs CIR(Appeal) PRA Lahore</p> <p>Decided on January 22, 2020</p>	<p>Section 5, 24 & 36 of the PRA Act 2012</p>	<p>Brief facts of the case are that an ex-parte order was made by the department on failure of the part of the appellant to submit documents on the point of its failure to pay PSTS on franchise fee & restaurant services amounting to Rs. 3,072,320/-.</p> <p>In appeal, the appellant contented the issuance of SCN is illegal based on the judgment of High Court in the case of Institute of Architect Pakistan Vs Government of Punjab which declared that all notices issued by the authority were illegal. Further, it was contended that the order of the commissioner(Appeal) is a non-speaking order as it has not dilated upon all the contention raised by the appellant.</p> <p>The tribunal held that the SCN issued by the authority was legal as the government after the judgment of the High Court had made amendment in Section 5 & 36 of the PRA Act 2012 to nullify the effect of the judgment of High Court by establishing the authority under Section 3 of the PRA Act 2012 with effect from 01.07.2012 validating the action taken by the chairperson on behalf of the authority.</p> <p>However, remanded the case back to the officer on the point of non-speaking order passed by the Commissioner (Appeal).</p>

<p>2021 PTD 130</p> <p>Peshawar High Court</p> <p>Collector Sales Tax Vs Army Welfare Trust-Nizampur Cement Plant</p> <p>Decided on September 09, 2020</p>	<p>Section 47 of the Sales Tax Act, 1990</p>	<p>The crux of the matter is whether collector of sales tax is the only authority competent to file reference under the Act for tax year 2007.</p> <p>The Court relying on the judgments 2006 SCMR 129 and 2018 SCMR 1005 held that the words occurring in Section 47 of the Act that “not below the rank of Additional Commissioner” are couched in negative language which manifests the intention of the legislature being mandatory and not directory and if the statute requires a thing to be done in a particular manner it must be done in that manner and deviation from it would render the entire proceeding as invalid. Hence, the Deputy Collector of Sales was not competent authority to file appeal.</p>
<p>2021 PTD 318</p> <p>(Sindh High Court)</p> <p>Sawera Industries Cotton Ginning Pressing Factory and Oil Mills Vs Federation of Pakistan</p> <p>Decided on November 23, 2020</p>	<p>SRO 253/2019 dated 26.02.2019 read with Entry No 81 of Sixth Schedule to the Sales Tax Act 1990</p>	<p>Constitution Petition was filed to challenge SRO 253/2019 dated 26.02.2019 which seek to recover sales tax on supply of cotton seed in presence of statutory exemption available in Entry 81 of Sixth Schedule of the Act.</p> <p>The court relying on another judgment of the court in the case of Insaf cotton held SRO 253/2019 as ultra-vires based on the following grounds:</p> <ul style="list-style-type: none"> • Statutory Exemption cannot be taken away through a notification. • Retrospective effect could not be allowed in respect of notification which places fiscal burden on the taxpayer. • Denial of input tax against output tax is against the basic principle of VAT, further the denial of input tax under the SRO is not in terms of Section 8(1)(b) of the Act and cannot be sustained.
<p>2021 123 Tax 167</p> <p>(Lahore High Court)</p> <p>Kamran Textile Mills (Pvt) Ltd Vs Federation of Pakistan</p> <p>Decided on December 08, 2020</p>	<p>Section 25(2), 33, 34 and 72B of the Sales Tax Act 1990</p>	<p>Brief facts of the case are that FBR selected the person for audit under section 72B of the Act for the tax period July 2012 to June 2013 which was done. Thereafter the Commissioner selected the appellant for audit under section 25 of the Act for the Tax periods July 2015 to June 2016.</p> <p>Vide this Judgment, it is held that Section 25 and 72B are independent section and audit conducted under section 72B would not preclude the officer to conduct audit under section 25 of the Act.</p> <p>Moreover, even on merit of the case, the time period of three years were not breach as last audit was for tax period July 2012 to June 2013 and current selection is of July 2015 to June 2016.</p>

2021 123 TAX 122 (Sindh High Court) Fatima Fertilizer Company Limited VS Commissioner II Sindh Revenue Board Decided on December 22, 2020	Section 2(63), 9, 13(3), 16, 44, 47, 47(1) & 47(1A) of Sindh Sales Tax on Service Act 2011	Vide this Judgment, the High Court has held that the provisions of section 13(3) of the Act could not be applied retrospectively as charging provision are generally applied prospectively unless retrospective application is expressly accorded to. Hence, a withholding agent cannot be made liable to pay tax before the amendment made through Finance Act 2019.
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Note: Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.