

E-News & Views

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A Publication of KTBA

July 2021 to September 2021

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

President Muhammad Zeeshan Merchant	S.No.	Description	Page No.
Vice President Muhammad Mehmood Bikiya	1	From the desk of the President	02
Honorary General Secretary Syed Faiq Raza Rizvi	2	Direct Tax Circulars	03
Joint Secretary Haris Tufail	3	Direct Tax SROs	03
Librarian Shiraz Khan	4	Indirect Tax Circulars	04
Members Executive Committee Abdul Aziz Tayabani Abdul Wahab Asim Rizwani Sheikh Atif Nawaz Irfan Ghafoor Muhammad Mustafa Rahim Muhammad Zubair Raeel Fatima Saud-ul-Hasan Syed Ejaz Ahmed Jafry	5	Indirect Tax SROs	04
	6	Indirect Tax Circulars - SRB	05
	7	Indirect Tax Notifications - SRB	05
	8	Indirect Tax Notifications - KPRA	06
	9	Indirect Tax Notifications - PRA	06
	10	Circulars issued by SECP	07
E-News & Views Committee Raeel Fatima (Convener) Abdul Wahab Ammar Athar Saeed Asif Zafar Ejaz Ahmed Bhutta Hameer Arshad Siraj Haris Tufail Muhammad Rashid Muhammad Shabbir Najeeb Tahir Mochala Sarah Siddique Mughal	11	Notification issued by SECP	07
	12	Synopsis of Important Case Laws Direct Taxes	08
	13	Synopsis of Important Case Laws Indirect Taxes	10

FROM THE DESK OF THE PRESIDENT



My Dear Members,

As Salam o Alikum and Seasons Greetings!

I am delighted to pen down this message for the 3rd Edition of the E-News & Views as it covers case-laws, circulars, and notifications from July 2021 to September 2021.

As always Ms. Raeel Fatima and her team have outperformed themselves and for this the entire Executive Committee appreciates their work.

Ms. Fatima and her team is also working on an important and herculean assignment of indexing the case laws of both direct and indirect taxes which shall also be released very shortly. This will provide our Members to find all the cases related to particular section and/or subject at one place. I am positive that our Members would definitely take full advantage of this new feature.

Before I conclude, I would like to state on record that this year's team led by Ms. Raeel Fatima and her sub-committee members have done full justice with the tasks assigned to them and for this they deserve special round of applause from all of us!

As our tenure is coming to an end, we at Karachi Tax Bar Association would welcome your feedback as to how this sub-committee and our overall team have performed during the year.

Stay safe and blessed!

Yours in service,

Muhammad Zeeshan Merchant

FROM THE DESK OF THE CONVENER



Dear Fellow Members,

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

The significant rise in productivity from our team is massive. I am glad that I have such a good team. I appreciate this Sub-Committee to complete the publication of 3rd 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 July, 2021 till September, 2021.

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

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.

Yours in service,

Raeel Fatima

DIRECT TAX CIRCULARS AND SROs

Direct Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
01 of 2022	July 01,2021	Circular No. 1 of 2022 - Operations (Inland Revenue)
02 of 2022	July 01,2021	Finance Act, 2021 - Explanation of important amendments made in the Income Tax Ordinance, 2001
03 of 2022	July 05,2021	Circular No. 3 of 2022 - Taxation of Cooperative Housing Societies Registered under Cooperative Housing Societies Act, 1925
04 of 2022	August 16, 2021	Amendment in Section 122 of the Income Tax Ordinance, 2001
05 of 2022	August 30, 2021	Circular no. 5 of 2022 - Foreign Remittances – Exemption
06 of 2022	September 10, 2021	Circular No. 6 of 2022 - Operations - Relaxation in Filing of Declarations under Assets Declaration Ordinance, 2019
07 of 2022	September 23, 2021	Circular no. 7 of 2021-22 - Policy regarding explanation of important amendments introduced in Income Tax Ordinance, 2001, via The Tax Laws (Third Amendment) Ordinance, 2021
08 of 2022	September 30, 2021	Extension in Return Filing Date for Tax Year 2021

Direct Tax SROs

SRO REFERENCE	DATE	SUBJECT
960(I)/2021	August 01, 2021	Insertion of 19H: Application of this rule
1009(I)/2021	August 08, 2021	Import of 30 million adult 3xPly Knit face masks
1008(I)/2021	August 08, 2021	Amendment in clause (12B), Part IV of the Second Schedule of the Income Tax Ordinance, 2001
1022(I)/2021	August 15, 2021	Draft Income tax Return Forms Manual for Individual and AOPs for Tax Year 2021
1073(I)/2021	August 26, 2021	Manual Income Tax Return Forms for Individual and AOPS for Tax Year 2021
1266(I)/2021	September 26, 2021	Constitution of ADRC
1407(I)/2021	September 28, 2021	Exemptions on import of drones donated by Ministry of Agriculture and Rural Affairs (MARA), China to Pakistan through Sea Route

Indirect Tax CIRCULARS AND SROs

Indirect Tax Circulars

CIRCULARS REFERENCE	DATE	DESCRIPTION
03 of 2022	August 10, 2021	Finance Act 2021 - Taxation of Erstwhile FATA/PATA Domiciled Industries

Indirect Tax SROs

SRO REFERENCE	DATE	DESCRIPTION
860(I)/2021	July 06, 2021	Change in Sales Tax rates on Petroleum Products
895(I)/2021	July 08, 2021	Rescinding S.R.O. 812(1)/2016, dated the 2nd September, 2016
937(I)/2021	July 26, 2021	Change in rate of Sales Tax on Petroleum Products
952(I)/2021	July 28, 2021	Exemption of whole of Sales Tax on import of thirty million adult 3ply knit face masks as donation by M/s Hanes Brands, USA to Government of Punjab
984(I)/2021	August 04, 2021	Imposition of Withholding Tax on online market place under eleventh schedule to the Sales Tax Act, 1990
985(I)/2021	August 04, 2021	Fixation of value of steel in respect of locally produced goods
983(I)/2021	August 04, 2021	Rescission of SRO 587(I)/2017 dated 01.07.2017
989(I)/2021	August 05, 2021	Suspension of applicability of S.No. 50 of Third Schedule to the Sales Tax Act, 1990 w.e.f. 01-07-2021 to 30-11-2021
1007(I)/2021	August 09, 2021	Exemption from Sales Tax on medical and testing equipment regarding COVID-19
1006(I)/2021	August 09, 2021	POS System Integrated with FBR
1005(I)/2021	August 09, 2021	Procedure for prize scheme
1027(I)/2021	August 16, 2021	Fixation of ex-mill value of white crystalline sugar
1064(I)/2021	August 24, 2021	Input tax credit and supply made by the registered person in AJK & GB
1063(I)/2021	August 24, 2021	Integration of Tier-1 Retailers and Licensing thereof
1072(I)/2021	August 26, 2021	Change in rates of Sales Tax on Petroleum Products

1222(I)/2021 & 1223(I)/2021	September 17, 2021	Enhancement of extra rate of tax and exclusion from purview of further tax to Steel and Edible Oil sectors
1225(I)/2021	September 18, 2021	Change in rate of Sales Tax on petroleum products
1279(I)/2021	September 30, 2021	Levy of service charges at a rate of Rupee one per invoice issued through integrated POS

Indirect Tax Circulars – SRB

CIRCULAR NO.	Date	Subject
CIRCULAR NO.02/2021	July 19, 2021	Extension in the last date for E-Deposit of Sindh Sales Tax for the Tax Period June, 2021 and for E-Filing of Tax Return (Form SST-03 or Form SSTW-03, as the Case may be) for the Tax Period June, 2021
CIRCULAR NO.03/2021	July 23, 2021	Extension in the last date for Online Submission of the option / election forms "F", "C", "R", "B", "G" and "I", prescribed Under Rules 36, 42B, 42BB, 42C, 42CC, and 42G, respectively, of the Sindh Sales Tax on Services Rules, 2011
CIRCULAR No.04/2021	August 16, 2021	Extension in the last date for E-Deposit of Sindh Sales Tax for the Tax Period June, 2021 and for E-Filing of Tax Return (Form SST-03 or Form SSTW-03, as the Case may be) for the Tax Period July, 2021

Indirect Tax Notifications – SRB

Notification Order No.	Dated	SUBJECT
NO:SO(C-IV)/SGA&CD/4-61/10	July 12, 2021	Notification
NO. SRB-3-4/22/2021	July 13, 2021	Notification regarding jurisdictions and functions of the Commissionerates in SRB and units of the services sectors under the SRB Commissionerates
NO. SRB-3-4/23/2021	July 13, 2021	Notification regarding postings of the Deputy Commissioners/Assistant Commissioners, SRB, and the units of service sectors assigned to them
NO. SRB-3-4/21/2021	July 13, 2021	Notification regarding jurisdictions and functions of the Commissionerates in SRB and units of the services sectors under the SRB Commissionerates
NO. SRB-3-4/20/2021	July 13, 2021	Notification regarding certain Deputy Commissioners to exercise the powers of Commissioners SRB or Commissioner (Appeals), SRB
No.SRB/Admin/2021/3000	July 19, 2021	Notification

No.SRB-3-4/24/2021	July 26, 2021	Amendments in Notification No.SRB-3-4/22/2021 dated 13-07-2021 ----- Jurisdictions of the Commissioner, SRB.
No. SRB/Admin(PF-182)12-3/2012/5267	August 02, 2021	Notification
No.SRB-3-4/25/2021	August 04, 2021	Amendments in Notification No.SRB-3-4/22/2021 dated 13-07-2021 ----- Jurisdictions of the Commissioner, SRB.
SRB-3-4/26/2021	August 25, 2021	Amendments in Notification No.SRB-3-4/22/2021 dated 13-07-2021 ----- Jurisdictions of the Commissioner, SRB.
SRB-3-4/29/2021	August 26, 2021	Amendments in Rule 42(4) of the Sindh Sales Tax on Services Rules, 2011 (effective from 01 st October, 2021)
SRB-3-4/28/2021	August 26, 2021	Amendments in Rule 42BBC of the Sindh Sales Tax on Services Rules, 2011 (Effective From 01 st September, 2021)
SRB-3-4/27/2021	August 26, 2021	Amendment in the Reduced Rate Notification No. SRB-3-4/8/2013 dated 1 st July, 2013 issued under section 8(2) of the Sindh Sales Tax on Services Act, 2011 (effective from 01 st September, 2021)
SRB-3-4/30/2021	September 01, 2021	Amendments in Notification No.SRB-3-4/22/2021 dated 13 th July, -2021 ----- Jurisdictions of the Commissioner, SRB.
SRB-3-4/31/2021	September 03, 2021	Amendments in Notification No.SRB-3-4/22/2021 dated 13 th July, -2021 ----- Jurisdictions of the Commissioner, SRB.

Indirect Tax Circulars – KPRA

Notification Order No.	Dated	Description
BO(RES-III) FD/2-2/2019-20/VOL-IV	September 07, 2021	Inclusion of KP Sales Tax on Services in Market Rate System (MRS) 2021

Indirect Tax Notifications – PRA

Notification Order No.	Dated	Description
2021-03	July 01, 2021	Extension in Return Filing Date Till 24th August 2021
2021-04	July 16, 2021	Extension in Return Filing Date Till 26th July 2021
2021-05	August 14, 2021	Notification Punjab Finance Act 2021

CIRCULARS ISSUED BY SECP

Circular No.	Date	Description
22 of 2021	July 23, 2021	Covid 19 Vaccination at Work Place
15 of 2021	August 11, 2021	Maximum Management Expense Limits for Life Insurers under s.22 (9) & s. 23(9) of the Insurance Ordinance 2000
21 of 2021	August 11, 2021	Approved list of auditors for insurers under section 48(1) of the Insurance Ordinance 2000
24 of 2021	September 30, 2021	Policy to be prepared at board level for gender diversity by the Insurance Companies
25 of 2021	September 30, 2021	Sales & Marketing incentives for small ticket insurance policies under the Corporate Insurance Agents Regulations 2020

Notifications Issued By SECP

Notification No	Date	Subjects
S.R.O. 724(I)/ 2021	July 30, 2021	Amendments to REITS Regulation 2015
S.R.O. 724(I)/ 2021	August 11, 2021	Amendments to the Real Estate Investments Trust Regulation 2015 (REIT Regulation)
S.R.O. 1011(I)/ 2021	August 12, 2021	Notification under section 66 of the Companies Act, 2017
S.R.O 506 (2021)	August 16, 2021	Delegation of the power of Insurance Ordinance 2000-Supervision (Offsite Dept)
S.R.O 1068 (I) / 2021	September 9, 2021	Notification of Amendments in NBFC & NE Regulation 2008
S.R.O 1069 (I) / 2021	September 9, 2021	Notification of Amendments in Voluntary Pension System Rules (VPS Rules), 2005
S.R.O 1177 (I) / 2021	September 20, 2021	Partial Exemption from IFRS 9
S.R.O 1214 (I) / 2021	September 21, 2021	Regulatory Frame work for SPAC

SYNOPSIS OF IMPORTANT CASE LAWS

DIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
2021 PTD 1223 (Inland Revenue Appellate Tribunal) Muhammad Younas Vs. The Commissioner Inland Revenue, Sialkot Decided on April 21, 2020	Ss. 111 & 39 of 2001 Ordinance	<p>Section 111 of Income Tax Ordinance 2001, was successor of section 13 of Income Tax Ordinance 1979, only defined and explained the unexplained investments as income. Such unexplained income was chargeable under the head 'income from other sources' under section 30(e) of Income Tax Ordinance 1979, However section 39 titled 'income from other sources' of Income Tax Ordinance 2001 did not have any such clause.</p> <p>Departmental Officer was obliged to issue notice under section 122(5) of Income Tax 2001, after receiving reply under section 122(9) of Income Tax 2001. The non-specification of the relevant clause in notice under section 122(5) was incurable for any amended assessment. Appellate Tribunal abandoned the impugned order of CIR(A) by declaring a legislature lapse and cancel the Amended Assessment Order under sections 122(1)/122(5)(i)/111(1)(d) in respect of tax years 2014 and 2015.</p>
2021 PTD 1182 (Supreme Court of Pakistan) Commissioner Inland Revenue Zone Bahawalpur, Regional Tax Office, Bahawalpur Vs. Messrs Bashir Ahmed (Deceased) through LRs Decided on January 28, 2021	Ss 111(1)(b), 122(1), 122(5) & 122(9) of Ordinance 2001	<p>After scrutinizing the filed return by the respondent (taxpayer), Department claimed that it has definite information that immovable property has been acquired in the sum of Rs.5,600,000/-, whereas respondent has only declared agricultural income of Rs.500,000. Notices have been issued under the following sections as 122(1), 122(5), 122(9) and then 111.</p> <p>The supreme court declared that there was no definite information available within the contemplation of statute and the proceedings under section 111 were "short circuited" and the decisions by the Tribunal and High Court were correct.</p>
2021 PTD 1136 (Lahore High Court) Majeed Fabrics (Pvt.) Ltd and 36 others Vs. Federation of Pakistan through Ministry of Energy (Power Division), Islamabad and 6 others Decided on February 03, 2021	Ss.159, 235 & Second Schedule Part-IV, Cl.66 of 2001 Ordinance.	<p>Appellants (taxpayers) claimed that being registered with Sales Tax as exporters or manufacturers-as the case may be under Clause 66, they were exempted from applicability of section 235 of the Ordinance. It was highlighted that appellants/petitioners are not claiming exemption from tax under clause (a) of section 53(1), but exemption from the operation of provision of the Ordinance, i.e. section 235 of the Ordinance, by virtue of Clause 66 of Part-IV of Second Schedule catered under clause (d) of 53(1). Section 235 is at the heart of controversy. Consequently, the appeals and constitutional petitions are dismissed, by declaring that operation of section 235 of the Ordinance shall effectively remain in abeyance/non-operative once conditions prescribed in clause 66 are fulfilled, and which compliance is evidenced by certificate, issued in terms of section 159(1) of the Ordinance, and not otherwise. And in cases where</p>

		registration is inactive, suspend or canceled the operability of section 235 will become effective, applicable and no exemption is claimable.
<p>2021 PTD 1203</p> <p>(Islamabad High Court)</p> <p>Messrs. Federal Bank for Cooperatives, Islamabad Vs. Commissioner of Income Tax Companies Zone, Islamabad</p> <p>Decided on April 05, 2021</p>	<p>Ss. 80D & 136 of 1979 Ordinance</p>	<p>The petition was filed on the matter: -</p> <p>“Whether under the law and circumstances of the case the learned ITAT was justified in holding that section 80D is a special provision and will prevail over section 38 of Federal Bank for Co-operative Act, 1977?”</p> <p>If the section 80D of 1979 Ordinance overrides the section 38 of Federal Bank for Co-operative Act, 1977 then there would be minimum tax on the income of the taxpayer. The court makes the decision of exemption of tax that in the present context Cooperatives Act is a special law having overriding effect on section 80D of Income Tax Ordinance 1979.</p>
<p>2021 PTD 1275</p> <p>(Islamabad High Court)</p> <p>Abdullah Khan Vs. Commissioner Inland Revenue (Appeals-11) Regional Tax Office and 2 others</p> <p>Decided on April 09, 2021</p>	<p>Ss. 161 & 127 of Ordinance 2001</p>	<p>Petitioner (taxpayer) filed an appeal against the assessment order in terms of section 127 of Income Tax Ordinance, 2001, which could not be filed within time, however the application for condonation of delay is pending and such delay be condoned.</p> <p>Petitioner’s (taxpayer’s) application for condonation of delay in filing the appeal is pending with respondent No. 1. The petitioner has apprehension that the respondent department may initiate recovery proceedings without issuing notices to other respondents, it would be in the interest of justice to restrain respondent department for recovery of the disputed tax liability until the decision of the petitioner’s application for condonation of delay by respondent No.1. Respondent No.1 is directed to decide the petitioner’s application for condonation of delay in filing appeal within one-month period from the date of receipt of Order.</p>

SYNOPSIS OF IMPORTANT CASE LAWS INDIRECT TAXES

CITATION	SECTION(S)	ISSUES INVOLVED
2021 PTD 1760 (Appellate Tribunal Inland Revenue) Muhammad Alam Vs CIR RTO, Rawalpindi Decided on May 13, 2019	Section 21 of the Sales Tax Act 1990 read with Rule 12 of the Sales Tax Rules 2006	<p>The crux of the matter is whether sales tax registration of the person can be suspended without prior notice as allowed under Rule 12(i)(a) of the Sales Tax Rules 2006.</p> <p>The tribunal by following the decision of the high court cited 2019 PTD 1213 held Rule 12(i)(a) of the Sales Tax Rules 2006 offends the provisions of Article 10A and 18 of the Constitution of Pakistan. Hence, Rule 12(i)(a) to the extent that it allows suspension of sales tax registration without prior notice is declared as Ultra Vires and is struck down.</p>
2021 PTD 1249 (Appellate Tribunal Inland Revenue) Hilal Dyes (Pvt) Ltd Vs CIR Zone 1, RTO, Faisalabad Decided on August 28, 2019	Section 45A of the Sales Tax Act 1990	<p>The appeal was filed at the tribunal against the order passed by the commissioner under the revisional jurisdiction of Section 45A of the Act where the commissioner re-opened the earlier order decided in favour of the appellant and directed the officer of passed a fresh speaking order.</p> <p>The tribunal on relying on the judgement of Lahore high court in the case of CIR, RTO, Faisalabad Vs Magna Textile Industries (Pvt) Ltd decided that it is the commissioner who has the power to decide the case under section 45A of the Act and the Commissioner cannot delegate this authority to its sub-ordinate officer because there is no provision allowing the Commissioner to delegate this responsibility under Section 45A of the Act.</p>
2021 PTD 1266 (Appellate Tribunal Inland Revenue) Nimsay Redefining Style (Pvt) Ltd Vs CIR, RTO, Faisalabad Decided on May 07, 2020	Section 3(1A) of the Sales Tax Act 1990 read with SRO 648/2013 dated July 09, 2013	<p>The appeal was filed against the order of the CIR-A and the department where the department has levied further tax at the rate of 2% in respect of supplies made to unregistered person.</p> <p>The tribunal relying on another order of the tribunal reported as 2016 PTD 2675 decided that the appellant is engaged in retail sales of its product and sales made to end consumers are excluded for the purpose of levy of further tax in terms of SRO 648/2013 dated July 09, 2013 read with first proviso to sub-section (1A) of Section 3 of the Act.</p>
2021 PTD 1624 (Appellate Tribunal Inland Revenue) M/S K.B. Enterprise, Montgomery Bazar Vs CIR RTO, Faisalabad Decided on May 27, 2020	Section 11 of the Sales Tax Act 1990	<p>The crux of the matter is whether ACIR has power to issue showcause notice under Section 11 of the Act.</p> <p>The Tribunal by following the judgement of Lahore High Court W.P No. 37295 of 2016 and Islamabad High Court cited as 2016 PTD 1675 held that only commissioner is delegated with the power of adjudication by the Board.</p>

2021 PTD 1386 (Sindh High Court) Byco Petroleum Pakistan Limited Vs Federation of Pakistan Decided on October 16, 2020	Section 11 & 25 of the Sales Tax Act 1990	<p>The crux of the matter is whether showcause notice under section 11 of the Act can be issued in absence of audit under section 25 of the Act.</p> <p>The court held that there is no linkage/prerequisite in section 11 of the Act that audit is mandatorily before issuing showcause notice under section 11 of the Act. It is a settled law that nothing can be read into the statute when it is explicitly not mentioned. Hence, audit is not mandatorily before issuing of showcause notice under section 11 of the Act.</p>
2021 PTD 1187 (Sindh High Court) Shield Corporation limited Vs Government of Sindh Decided on October 27, 2020	Section 15A of Sindh Sales Tax on Services Act, 2011 read with Rule 22A of Sindh Sales Tax on Services Rules, 2011	<p>The crux of the matter is whether input tax adjustment can be claimed with respect to taxable supplies and services received from unregistered person.</p> <p>The court held that there is no bar on obtaining taxable services from unregistered person and the withholding agent is only required to obtain from the unregistered person, CNIC of the Individual and NTN of the Company, hence their cannot be any bar on claiming input tax adjustment in respect of taxable services obtained from unregistered person.</p> <p>Hence, the input tax adjustment in respect of taxable services obtain from unregistered person can be claimed. Further, SRB is directed to make necessary adjustment in e-return to enable the person filing return to claim such input tax adjustment.</p>
2021 PTD 558 (Islamabad High Court) Oil & Gas Development Company Limited Vs Sprint Oil & Gas Services Pakistan FZC Decided on January 21, 2021	Section 3 of the Sindh Sales Tax of Services Act 2011, Balochistan Sales Tax on Services Act 2015, Punjab sales tax on Services Act 2012 and Section 19 of Khyber Pakhtunkhwa Sales Tax on services Act 2013	<p>The background of the case is that the respondent provided cementation services to the appellant and paid sales tax on taxable services to the respective provincial provinces. Subsequently, the appellant stopped clearing of invoices and the tax claim of respondent accumulated to Rs 123,020,066/- . Eventually respondent filed writ petition to declare that liability to pay sales tax is of the appellant and also for the recovery of the same. The judge allowed the petition on the point that the liability to pay tax is of the appellant but declined the claim of recovery. Against the above judgement both the appellant and respondent filed appeal with this court.</p> <p>The court held that since the respondent is registered with all the provincial authorities the liability of pay the tax is on the respondent as per section 3(1) of all the three provincial authorities and section 19(1) of Khyber Pakhtunkhwa sales tax on services statute. As such the claim of recovery was also dismissed.</p>
2021 PTD 1576 (Sindh High Court) Aachee Garments (Private) Limited Vs Federation of Pakistan Decided on March 25, 2021	Section 37 of the Sales Tax Act 1990	<p>The crux of the matter is whether notice under section 37 of the Act can be issued in absence of any inquiry against the appellant.</p> <p>The court held that section 37 empowers the officer to summon person to produce documents in any inquiry, pending under the Act. The notice issued by the department makes no reference of any inquiry initiated by the department against the appellant. Hence, notice issued under section 37 of the Act without reference of any inquiry is set aside.</p>

<p>2021 PTD 1355 (Supreme Court of Pakistan) Commissioner Inland Revenue Multan Vs Acro spinning and weaving Mills Decided on May 27, 2021</p>	<p>Section 3(1A) & 4 of the Sales Tax Act 1990</p>	<p>The crux of the matter is whether person involve in Zero rated supply under SRO 1125 is required to pay further tax.</p> <p>The court held that Section 4 of the Act has an overriding effect on the chargeability of tax under section 3 as it starts with a non-obstante clause. Hence, person involve in Zero rated supply under SRO 1125 are not required to pay further tax.</p>
<p>2021 PTD 1608 (Lahore High Court) Muhammad Arif Ice Factory and Others Vs Federation of Pakistan Heard on June 08, 2021</p>	<p>Section 3(1A), 3(2), 3(5) & 3(6) of the Sales Tax Act 1990</p>	<p>The crux of the matter is whether person involve in exempt supply is required to pay further tax and extra tax.</p> <p>The court held that person making exempt supply are not required to be registered under the Act. Further, Section 13(1) of the Act has an overriding effect on the chargeability of tax under section 3 including further tax and extra tax. Hence, person involve in exempt supply are not required to pay further tax and extra tax.</p>
<p>2021 PTD 1379 (Lahore High Court) Ghulam Hassan Vs Federation of Pakistan Heard on June 15, 2021</p>	<p>Section 38 & 40 of the Sales Tax Act 1990</p>	<p>The crux of the matter is whether tax department has power under section 38 of the Act to have access to business premises of the appellant without a search warrant as required under section 40 of the Act.</p> <p>The court held that section 40 of the Act is a specific provision and must yield before a general provision of section 38 of the Act. Further, if the department stance is accepted that section 38 & section 40 are independent provision than section 40 of the Act would become redundant. Thus, an accumulative and conjunctive reading of section 38 & 40 of the Act is required. Hence, any search of the business premises of the appellant cannot be made without a search warrant under section 40 of the Act.</p>

Note: Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.