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Message of the President

Dear Members

It gives me immense pleasure and pride to forward my message on the occasion of publication of **News & Views**, a well received publication of our Association. I would like to place on record my appreciation to the members of the News & Views Committee and its leader Mr. Abdul Qadir Memon, who, despite of their extremely occupied schedule, devoted their time and efforts in bringing out the second issue of this year. This publication is a brain child of Mr. Memon, as it was started when he was the President in the year 2002. Since then the sub- committee members are contributing their efforts in one or the other capacity.

I feel confident that this publication would be of great source of information for the worthy members. High quality information is the lifeblood of any profession and this publication will be helpful in imparting taxation knowledge, especially about recent judgments and legislative changes, to the worthy members of the Bar and other readers.

After assuming the office, the present Managing Committee mapped a focused plan of activities for the benefits of our members. Within a very short span of time, the CPE Committee has made tremendous efforts to organise many workshops / seminars aiming to disseminate and share knowledge.

Another big ordeal we have successfully dealt with the help of Almighty Allah, was in respect of Bar's premises. As all of you know, the income tax building is being renovated to accommodate new set-ups introduced by the Central Board of Revenue. Initial renovation plan did not include Bar premises but I am pleased to inform you that due to our proactive approach and important role played by the Bar's Advisory Committee; we have successfully secured the present premises for the purpose of Bar's activities.

Publication of News & Views in this month of August, reminds me of our responsibilities towards our country. We have to contribute our due share of tax for the progress and prosperity of our beloved country and we have to educate and persuade the taxpayers particularly our clients to make correct and accurate declaration of their income and pay due taxes. I take this opportunity to urge our members to broaden their outlook and understand the dynamics in which our profession is and would be operating in future and respond appropriately to the demands of stakeholders.

Needless to mention, myself and my colleagues are determined to serve to our optimal potential and turn the knowledge into value for the benefit of our members. My heartiest congratulations to the News & Views Committee for making positive efforts in this direction. I wish all the successes to the Committee in their efforts.

Saqib Masood

From the Desk of Convener– News & Views Committee

Dear Fellow Members,

As soon as you elected me as the member of the Managing Committee and provided me another opportunity to serve you with the same zeal and enthusiasm; I requested our President Mr.Saqib Masood to please allow me to be a part of the **News & Views Committee** and he and the entire Managing Committee acceded to my request, for this I am grateful to all of them.

I alongwith my team members conceived the idea of publication of News & Views in the year 2002 and we thought that it would act as an important tool to keep the members abreast of the latest judicial pronouncements, circulars and other matters of immense importance and help them in discharging of their professional and national duty effectively and promptly. I congratulate and compliment the former and present members of this sub-committee; specially Mr.Arshad Siraj, Mr.Haider Ali Patel and Ms.Yasmin Ajani, who not only were there when we sowed the seed in March, 2002, but also with tender care and watering helped it to grow into a strong tree and we all benefit from fruits of their hard work. God bless them all.

This year few more worthy members of the Bar have pledged to dedicate their time and energy as members of this sub-committee to serve you in a more befitting manner. This year we have also decided to include new features in the forthcoming issues and be regular in monthly publication. In this issue for your ready reference we have included circulars and notifications upto 21st July 2005. We urge you to please send copies of important un-reported judgments, clarifications, small articles on current issues of taxation and of course your view point on any issue which may effect our common goal i.e. to serve our clients and to help the government in collection of due tax for the economic growth of our country and to make Pakistan, a better place for our children.

Warmest Regards,
Abdul Qadir Memon

IMPORTANT CIRCULARS AND NOTIFICATIONS

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
INCOME TAX			
Circular No. 1 of 2005	05.07.2005	Important provisions relating to Amendments in Income Tax Ordinance, 2001 made by the Finance Act, 2005 explained.	114
Circular No. 2 of 2005	06.07.2005	Computation of Income Tax Payable by the Salaried Persons for Tax Year 2006 and deduction of tax from Salary for the year commencing on 1st July, 2005.	115
Circular No. 3 of 2005	11.07.2005	Corrigendum to Circular No. 1 of 2005, to clarify that the following amendments are applicable for the tax year 2006. (1) Enhancement of Limit for claiming Tax Rebate on Investment in New Shares. (2) Enhancement of Limit to Rs. 400,000/- for Tax Rebate to Senior Citizens. (3) Enhancement of Tax Rebate for Teachers and Researchers.	116
Circular No. 4 of 2005	16.07.2005	Explanation /Clarification regarding provisions for Withholding Tax under S. 232 on Cash Withdrawals exceeding Rs. 25,000/-for Banks.	117
C.No. 1(10)ITR/05	12.07.2005	Consolidated Quarterly Statement of all types of tax collection and deduction as per new format due for quarter ended 30.06.2005 on 15.07.2005 was facilitated to be accepted upto 30.07.2005, without drawing any adverse inference.	118
SRO 174(I)/2005	17.02.2005	Non-applicability of Withholding Tax u/s. 148 on sugar imported in pursuance of decision of ECC of the Cabinet's No. ECC.16/2/2005 dated 08.02.2005, by insertion of clause (54) in Part-IV of the Second Schedule.	119
SRO 212(I)/2005	03.03.2005	Commissioner of Income Tax authorized to grant approvals of benevolent Fund or Group Insurance Scheme for the purposes of clause 57(3) (iii) of Part-I of the Second Schedule.	120
SRO 213(I)/2005	03.03.2005	Sub-rule (11) of Rule 231C omitted in regard to payments of remuneration to the Members of Alternate Dispute Resolution Committee, other than Public Servant.	121
SRO 315(I)/2005	14.04.2005	Draft Notifications issued for substitution Final amendments by of Part-II of chapter IX of the Income Tax Rules 41 to Rules 45 dealing with Employers Certificate, of deduction of Tax from Salary; Certificate of Collection or deduction of Tax (other than Salary); Payment of Tax collected or deducted; Annual/Quarterly Statement of tax collected or deducted; Statement of tax collected or deducted under the Sixth Schedule. By this substitution Old Rules form 147 to 161 have been omitted.	122
Final amendments by SRO 641(I)/2005	27.06.2005		
SRO 423(I)/2005	13.05.2005	Non-applicability of Withholding Tax u/s. 148 on import of onions, potatoes, tomatoes, garlic, halal meat of goat, sheep, beef and live animals (bovine animals i.e. buffaloes, cows, sheep, goats and camels only).	123
SRO 438(I) /2005. Final Amend by SRO 595(I)/2005	16.05.2005 02.06.2005	Draft Notification issued for omission of words "of a non-profit organization" in the marginal note in Rule 220A.	124

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
SRO 596(I) /2005. Final by SRO 678(I)/2005	07.06.2005 04.07.2005	Draft notification issued for substitution of Income Tax Rule 78 for prescribed form for Reference to High Court.	125
SRO 608(I)/2005	13.06.2005	Certain amendments made in Income Tax Rule 211(2) (g) in regard to the procedure for approval of a non-profit organization.	126
SRO 609(I)/2005	13.06.2005	Draft Notification issued for omission of sub-rule (2) of Rule 7, in regard to valuation of accommodation and housing.	127
SRO 638(I)/2005	27.06.2005	Withholding Tax u/s. 148 to be collected @ 1% of the import value of Goods specified with PCT heading numbers mentioned in Table of this Notification.	128
SRO 667(I)/2005	02.07.2005	Certain amendments made in SRO 638(I)/2005 dated 27.06.2005.	129
SRO 679(I)/2005	04.07.2005	Certain amendments made in Income Tax Rule 231C in regard to Alternate Dispute Resolution Committee.	130
SALES TAX			
C. No. 1(1) Survey I/2005	08.02.2005	Instructions issued regarding release of goods under determination of input-output ratios, by importers- cum-manufactures avoiding the benefit under amended SRO 456 (I)/2004 dated 12.06.2005 for quick disposal / clearance of inputs.	131
C. No. 3/13- STB/99	09.02.2005	Clarification regarding fixation of deemed price (notional value) of ships for breaking fixed at US\$ 300 per LTD, instead of the actual invoice value or dutiable value for the purposes of calculation of sales-tax at import stage, under SRO 77(I)/2005 dated 27.01.2005.	132
C. No. 1(115) STJ/2004	22.02.2005	Directives for submission of factual data of pending appeals / litigation at various forums, numbers of cases reviewed and withdrawn by the Department, etc. on monthly basis.	133
C. No. 3(13)ST. L&P/03	21.04.2005	Procedure specified for Electronic filing of Sales tax Return at large Tax Payers Unit, (LTU), Karachi and Transmission of data from Bank.	134
C. No. 3(13)ST- L&P/2004	04.05.2005	Clarified that in terms of SRO 500 (I)/2004 dated 12-06-2004, supply in all such plant, machinery and equipment, either imported or locally manufactured is zero-rated without any conditions or restrictions of tariff headings, as no such conditions has been prescribed under said notification.	135
C. No. 1/33- STB/2005	06.06.2005	Sales Taxes and Federal Excise Budget Instruction issued.	136
C. No. 2/106/- STB/2005	20.06.2005	Implementation of SRO 531 (I)/2005 dated 06.06.2005 held in abeyance till further orders and accordingly, Supply of Tractor parts, components and sub-components made by the authorized vendor to the manufactures of tractors, shall be charged to standard rate of sales-tax.	137
C.No.5/8-STB /2005	21.06.2005	Clarified that in terms of SRO 530(1)/2005, dated 06/06/2005, the items/equipment viz electric switchgear, panels and mobile grid stations shall be charged to sales tax at the rate zero percent on supply thereof. It was also clarified that in terms of SRO 527(1) 2005 dated 06/06/2005, the importer is not required to produce any document/indemnity bond, etc, at the time of import for availing facility of zero rating sales tax, except for	138

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
		declaration on GD regarding his status as manufacturer of capital goods and his requirement as per customs survey notification if any. So far as documentary requirement for local purchase of zero-rated inputs, no such requirement is prescribed except that the buyer is registered for sales tax purposes as manufacturer of capital goods. In respect of query relating to zero rating of utilities, it was clarified that presently there is no such facility available to the manufacturer of capital goods.	
C.No.3 (12) ST-L&P/04	22.06.2005	Clarified that those commercial importers, who are engaged in the import and further supply of such goods mentioned in Notification SRO 621(1) 2005 dated 17/06/2005, the rate of sales tax would be zero percent. In such cases the provisions of Chapter II of the Sales Tax Special Procedure Rules, 2005, about Minimum Value Addition of ten percent shall not apply and such commercial importers shall not be entitled to refund of sales tax on any ground.	139
C.No.1 (10) STT/2005.	22.06.2005	Clarified that in terms of SRO 621(1) 2005 dated 17/06/2005, the description in the above SRO is Textile and articles thereof, thus making the entry specific for the items relating to the textile industry. Any other items which happen to be classified under Chapter 50 to Chapter 63 of the Pakistan Customs Tariff, but are not exclusively a textile product are not to be included in the scope of the definition of textile and article thereof. The scope and application of the SRO cannot be extended beyond the intended purpose was further clarified.	140
C. No. 4(85)STB/97	27.06.2005	Special procedure of payments of Sales Tax by Steal Sector on Minimum Value Addition explained.	141
C.No.3 (5) ST-L&P/2005.	08.07.2005	The CBR directed that instruction may be issued to the concerned staff that all such plant, machinery and equipment that were zero-rated under the Notification SRO 500(1)/2004 dated 12/06/2004 qualify for zero-rating of sales tax under SRO 530(1)/2005 dated 06/06/2005. The indicative list of PCT headings mentioned in Board's letter of even number dated 09th August, 2004 is also valid for the purpose of SRO 530(1)/2005.	142
C.No.5/7-STB/2005.	08-07-2005	Clarified that in terms of SRO 522(1)/2005 dated 06/06/2005 (Sales Tax Special Procedure Rules 2005), service provided/rendered by the Custom House Agents in relation to import or export of goods/baggage are chargeable to sales tax at the standard rate of 15% of the charges billed by them for providing/reducing such services, notwithstanding that such services are provided to the persons/industries dealing in the items/goods that have been zero rated under SRO 621(1)/2005.	143
C.No.3 (13) ST-L&P/03	11.07.2005	Clarified in consequence of zero-rating of sales tax in certain sectors in the budget 2005-06 vide notification SRO 621(1)/2005, dated 17/06/2005, the concerned registered person will be required to file by 15th July 2005, two sales tax returns, first return shall relate to the period from 01/06/2005 to 05/06/2005, when no such zero-rating was available and the second return shall relate to the period from 06/06/2005 to 30/06/2005 when the zero-rating was available under SRO 621(1)/2005. Also clarified that registered person may off set the net payable amount of tax relating to the first return against the refundable amount of the second return and claim refund of only the balance amount, if any or pay only payable amount after adjustment.	144

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
C.No.5/10-STB/2005.	12.07.2005	Clarified that in terms of SRO 621(1)/2005 dated 17/06/2005, Surgical goods mean and cover surgical instruments only which falling under respective sub-heading of PCT heading 90.18, as mentioned in the enclosed list.	145
C. No. 4(1)STM/2005	12.07.2005	Instructions issued that guidelines given vide Circular letter dated 08.02.2005 for release of Goods under Determination of Input-Output-ratios must be strictly followed and progress regarding number of cases processed and disposed by collectors to be furnished to Board.	146
C.NO.3 (7)BTL&P/05	21.07.2005	Clarification regarding SRO 538(I)/2005 dated 06-06-2005 for streamlining sanction of refund of Sales Tax paid on stocks of certain specified zero-rated supplies.	147
SRO 237(I)/2005 sub-rule (2)	12.03.2005	Amendment made in Rule 51, of the Sales Tax Procedures Rules, 2004 relating to supply of Ginned Cotton where by the word 'ninety' substituted by 'one hundred and eighty'.	148
SRO 233(1)/2005.	14.03.2005	Transfer of Registration of M/s Tri-pack Films Ltd from the Peshawar Collectorate to the Large Taxpayer Units (LTU) Karachi, notified.	149
SRO 236(1)/2005.	15.03.2005	The Central Board of Revenue notified various amendments in SRO 07(1)/2005, dated 1 st January 2005.	150
C.NO.1(4) STT/2004 Special Exemption Order No.7/2005	16.03.2005	Special exemption provided from payment of Sales Tax chargeable thereon subject to production of import documents to 22 CKDs for buses imported from Japan for transit to Afghanistan by the Ministry of Finance.	151
SRO 263(I)/2005 Rules 64 and	19.03.2005	Certain amendments made in section 66 of the Sales Tax rules, 2004.	152
SRO 283(1)/2005.	31.03.2005	It was notified that Chapter V of the Sales Tax Rules 2004, except rule 34, shall come into force on the 31st of March 2005, for the refund claims filed by the various registered person specified in the schedule I to III to this Notification from Sales Tax House, Karachi and various Collectorates.	153
Sales tax General Order No.1 of 2005	21.04-2005	Procedure specified for Electronic filing of Sales Tax Return of Large Tax Payers Unit (LTU) at Karachi.	154
SRO 315(I)/2005	15.04.2005	Amendment made in SRO 488(1)/2004 dated 12.04.2004 for insertion of clause (ba) for including sugar (supply to wholesales and dealers).	155
SRO 363(1)/2005.	05.05.2005	The Federal Government amended its Notification SRO 500(1)/2004 dated 12/06/2004, whereby new entries were added in the table after S.No.9 in column (1) and the entries relating thereto in column (2), (3) and (4).	156
SRO 365(I)/ 2005. Exem. SRO	05.05.2005	Amendments made in 500(I)/2004 dated 12.06.2004 to add certain new categories.	157
SRO 414(1) 2005.	12.05.2005	Amendment has been made in SRO 498(1)/2004 dated 12/06/2004; whereby a new serial number and the entry relating to Market Area Branch, Hyderabad has been added under the heading "Collectorate of Customs, Sales Tax and Central Excise Hyderabad".	158
SRO 477(1)/ 2005 & SRO 478 (1) /2005	19.05.2005	Amendment has been made in SRO 288(1) 2003-dated 25/05/2003, whereas four names have been in the Panel constituted for the committees for Alternate Disputes Resolution.	159

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SRO 513(1)/2005.	06.06.2005	SRO 500(1)/2004, dated 12/06/2004, rescinded by the Federal Government, regarding specified goods falling under the heading and sub-heading of the First Schedule to the Custom Act 1969, (mentioned in said SRO) on which sales tax charged at the rate of zero percent subject to conditions.	160
SRO 514(1)/2005.	06.06.2005	The Central Board of Revenue rescinds its notification SRO 480(1)/2004, dated 12/06/2004, regarding list of collectorates who were adjudicating the cases relating to their areas.	161
SRO 515(I)/2005	06.06.2005	Goods falling under specified HS Code of First Schedule of Customs Act on which Sales Tax shall be charged at zero-percent (Supply of cottonseeds and supply of oil-cake and other solid residues).	162
SRO 516(1)/2005.	06.06.2005	SRO 76(1)/2004 dated 27/01/2004, rescinded by the Federal Government, regarding filing of sales tax return-cum payment challan by the Independent Power Producers (IPPs).	163
SRO 517(1)/2005.	06.06.2005	The Central Board of Revenue rescinds its SRO 508(1)/2004, dated 12/06/2004 and SRO 509(1)/2004 dated 12/06/2004, regarding submission of summary statement under section 26(5) of the Sales Tax Act 1990.	164
SRO 518(1)/2005.	06.06.2005	SRO 676(1)/2000, dated 28/09/2000, rescinded by the Federal Government, regarding exemption of sales tax on supplies by the distributors subject to some conditions.	165
SRO 519(1)/2005.	06.06.2005	SRO. 338(1)/2001, dated 31/05/2001, rescinded by the Federal Government, regarding exemption of sales tax on supplies by the manufacturer of urea fertilizer subject to some conditions.	166
SRO 520(I)/2005	06.06.2005	Exemption provided of whole of amount of additional-tax and penalties payable by a person against whom sales-tax is outstanding on account of any audit observation, audit report, demand notice or any order or has failed to pay sales-tax or claimed inadmissible input tax adjustments or refund due to any other reason than fraud, provided that outstanding sales tax amount paid by 30.06.2005 (Date extended to 31 st July, 2005 vide SRO No.723(1)/2005 dated 24 th July, 2005).	167
SRO 521(1)/2005.	06.06.2005	SRO 394(1)/2001, dated 18/06/2001, rescinded by the Federal Government, regarding exemption of whole amount of sales tax in excess of that liable to be paid at the rate of three hundred rupees per power looms on such textile weaving units; who paid the amount for the financial years 1996-97 and 1997-98 subject to some condition.	168
SRO 522(I)/2005	06.06.2005	The Sales Tax Special Procedures Rules, 2005 notified in suppression of the earlier Sales Tax Special Procedures Rules, 2004.	169
SRO 523(I)/2005	06.06.2005	NBP branches designated for payment of sales tax on prescribed return-cum-challan from by a registered person in the jurisdiction of the specified Collectorates.	170
SRO 524(I)/2005	06.06.2005	Form for filing of Reference Application u/s. 47(1) before High Court prescribed.	171
SRO 525(I)/2005	06.06.2005	All registered persons engaged in the import or supply of taxable goods, (except persons engaged in the manufacturing or supply of specified goods) are required to furnish Monthly Summary in the prescribed Form [under section 26(5)], of their purchases and sales made during a tax period by the 15 th of following month, to the Collector of Sales Tax having jurisdiction.	172

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SRO 526(1)/2005.	06.06.2005	SRO 839(1)/1998, dated 23/07/1998, rescinded by the Federal Government, regarding exemption of input tax on agricultural tractors falling under the heading of the First Schedule to the Custom act 1969, subject to some conditions.	173
SRO 527(I)/2005	06.06.2005	Raw Materials, components, sub-components and parts, as are imported or purchased locally for use in the manufacturing of such plant and machinery which is chargeable at zero rate, shall also be zero-rated of sales tax, on fulfillment of specified conditions.	174
SRO 528(1)/2005.	06.06.2005	The Central Board of Revenue appointed officers of sales tax having jurisdiction over the cases relating to the registered persons in the Large Tax Payer Units (LTU).	175
SRO 529(1)/2005.	06.06.2005	The Central Registration Office of the Central Board of Revenue transferred various registration of the registered person to the Large Tax Payer Units (LTU) Lahore, with effect from 1st July 2005.	176
SRO 530(I)/2005	06.06.2005	Imported plant, machinery and equipment, including parts thereof, if imported against statutory rate of custom duty of 5% or against a custom notification issued u/s. 19 and Supply of plant, machinery and equipment, whether locally manufactured or imported, shall be charged to sales-tax at a rate of zero per cent. However, as per explanation, the expression "plant", "machinery" and "equipment", mentioned in this notification, do not include consumer durables and office machines.	177
SRO 531(1)/2005.	06.06.2005	The Federal Government notified that, raw material, components, sub-component, and parts as are purchased locally from authorized vendors by a recognized manufacturer of tractors, falling under PCT heading 8701-9020 for use in the manufacturing of such tractors, shall be charged to Sales Tax at the rate of zero percent subject to conditions. It is also notified that the electricity and gas consumed in the plant where tractors are manufactured shall also be zero-rated for the purposes of sales tax levy.	178
SRO 532(1)/2005.	06.06.2005	SRO 886(1)/2003, dated 05/09/2003, rescinded by the Federal Government, regarding exemption of payment of sales tax leviable on locally supplies of artificial kidneys, eye cornea and others made before the 1st July 2003.	179
SRO 533(I)/2005	06.06.2005	Sales Tax Rules, 2005 notified and earlier Sales Tax Rules, 2004 repealed.	180
SRO 535(I)/2005 SRO 536(I)/2005	06.06.2005	Specified Goods falling under relevant PCT headings are chargeable to zero per cent sales-tax on both Supply and Import.	181
SRO 537(I)/2005	06.06.2005	Effective from 01.07.2005, import and supply of soyabean meal falling under customs heading No. 2304-0000 chargeable to sales tax at zero per cent.	182
SRO 538(I)/2005	06.06.2005	Directed that no exporter of textile and textile articles, leather and articles thereof, carpets, surgical goods and sport goods shall be entitled to claim any adjustment or refund of sales tax paid on his stocks, after the expiry of tax period ending 30 th June, 2005.	183
SRO 539(1)/2005.	06.06.2005	Payment of Sales Tax by the Retailers of specified goods (Special Procedure) Rules 2005 notified.	184
SRO 572(1)/2005.	06.06.2005	The condition to submit installation certificate or installation-cum production certificate for the imported	185

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		plant and machinery is waived in all such cases; where clearance was allowed after charging customs duty @ 5% or more in cash or without charging sales tax in term of SRO 987(1)/99 dated the 30th August 1999. All the indemnity bonds submitted for production of installation certificate or installation cum-production certificate shall stand released automatically.	185
SRO 621 (I)/2005	17.06.2005	Notification of goods falling under specified PCT headings, on which sales-tax shall be charged at the rate of zero per cent both on supply and import (Earlier SRO 535 (I)/2005 and 536 (I)/2005 both dated 06.06.2005 superceded).	186
SRO 644 (I)/2005	29.06.2005	Appointment and jurisdiction specified of Collector (Appeals) for deciding appeals against orders of the officer upto the rank of Additional Collectors.	187
SRO 645 (I)/2005 (Superceded by SRO 673 (I)/2005 dated 02.07.2005)	30.06.2005	Exemption of sales-tax allowed with effect from 06.06.2005 to raw materials, if imported by or supplied to the recognized manufacturers of pharmaceutical products or pharmaceutical active ingredients for use in the manufacture of substances registered as drugs under Drugs Act.	188
SRO 646 (I)/2005.	30.06.2005	The Federal Government notified that goods specified in this SRO, and supplied to M/s Pakistan PTA Limited by M/s BOC Pakistan Ltd, shall be charged at the rate of zero percent.	189
SRO 647 (I)/2005.	30.06.2005	Amendments made in SRO 621 (I)/2005 dated 17/06/2005 notified.	190
SRO 666 (I)/2005	30.06.2005	Sales Tax (Refund of Excess Input Tax to the Manufacturers) Rules, 2005 issued, which are effective from 01.07.2005.	191
SRO 648 (I)/2005	01.07.2005	The Federal Government specified the services on which Federal Excise Duty shall be levied and collected as if were a tax payable under section 3 of Sales Tax Act, 1990.	192
SRO 673 (I)/2005	02.07.2005	Exemption from sales-tax effective 06.06.2005 allowed to imported raw materials for the basic manufacture of pharmaceutical active ingredients and for manufacture of pharmaceutical products, on fulfillment of specified conditions.	193
SRO 694 (I)/2005	11.07.2005	Rules 122A to 122F inserted in Sales Tax Special Procedure Rules, 2005 (notified by SRO 522 dated 06.06.2005) prescribing Special Procedure for payment of Sales Tax by Manufacturers of Biscuits and Confectionary.	194
SRO 723 (I)/2005	21.07.2005	Amnesty/Exemption under SRO 520 (I)/2005 Dated 6.6.2005 of additional tax and penalties, on by 30-06-2005 extended upto 31-07-2005.	195
EXCISE LAW			
S.2 of the Fin Act, 2005 read with 1 st Sch.	01.07.2005	Central Excise Act, 1944 is repealed by a new Federal Excise Act, 2005.	196
SRO 534 (I)/2005	06.06.2005	Federal Excise Rules, 2005 have been notified in substitution of the Central Excise Rules, 1944.	197
C. No. 1/33-STB/2005	06.06.2005	Sales Tax and Federal Excise Budget Instructions issued.	198

CIRCULARS/ NOTIFICATIONS REFERENCE	DATE	ISSUES INVOLVED	ITBAK LIBRARY REF: NO.
C. No. 1(2)CEB/2005	01.07.2005	Instructions issued relating to switch over to New Excise Legislation.	199
SRO 648(I)/2005	01.07.2005	Services specified on which Federal Excise Duty shall be Levied and collected as if it were a tax payable u/s3 of the Sales Tax Act, 1990 and all the provision of said Act and Rules /notifications /orders /instructions issued there-under shall apply, with necessary modification.	200
SRO 649(I)/2005 read with SRO 684(I)/2005 dated	01.07.2005 08.07.2005	Specification of Goods produced or manufactured in the non tariff areas excluding territory of Azad Jammu and Kashmir and brought to tariff areas, on which Federal Excise Duty shall be collected in the manner prescribed by CBR.	201
SRO 650(I)/2005	01.07.2005	Specification of Goods on which adjustment of duty paid is not allowable even if used in the manufacture and production of goods.	202
SRO 651(I)/2005	01.07.2005	Fixation of Minimum retail price (excluding Sales Tax) on Cigarettes.	203
SRO 652(I)/2005	01.07.2005	Gas producing companies allowed to pay federal excise duty due on natural gas, sold during the month, by the end of the following month, subject to the condition that the accounts of production and sales in the proper form are maintained.	204
CORPORATE LAW			
Circular No. 2 of 2005	08.04.2005	Guidelines issued for issuance of Shares of a Discount by any company to whom Companies (Issue of capital) Rules, 1996 apply.	205
Circular No. 3 of 2005	10.05.2005	Clarification for holding of Election of Directors pursuant to Companies Amendment) Ordinance, 1984.	206
Circular No. 4 of 2005	23.05.2005	Directive to Moderators to refund the funds rose by them from general public under Musharika or Murabaha arrangements not later than June 30, 2005, as such raising of funds is not covered u/s 120 of the Companies Ordinance, 1984.	207
Circular No. 5 of 2005	01.06.2005	Clarifications of amendments made in Prudential Regulations for Non Banking Finance Companies (NBFCs) in regards to substantial ownership / affiliation.	208
Circular No. 6 of 2005	27.06.2005	Conditions for issuance of Foreign Currency Certificate of Deposits (CODs). And Certificate of Investments (COIs).	209
SRO 406(I)/2005	10.05.2005	SE Commission has empowered its Company Registration offices to accept petitions for alteration in Memorandum of Associations by the Companies.	210
	27.01.2005	Voluntary Pension System (VPS) Rules, 2005 notified.	211
	01.06.2005	Clearing Houses (regulation and Registration) Rules, 2005 notified.	212
SRO 188(I)/2005	21.02.2005	Amendments made in Sixth Schedule, providing for prescribed fee for providing list of Companies and Company Profile, etc.	213
SRO 233(I)/2005	09.03.2005	Rule 14B of the Companies (General Provision and Forms) Rules, 1985 in respect of qualification of company secretary substituted.	214

SYNOPSIS OF IMPORTANT CASE LAWS

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
INCOME TAX		
2005 PTD (Trib) 474	Sec 26(a) Read with Rule 5(C) of the Income Tax Ordinance, 1979 Insurance Act, 1938	In a case of Insurance company, the learned Tribunal examined the effect of repeal of Insurance Act, 1938 with reference to the Assessment Year 2001-02, where addition of excess management expenses was made on the basis of Insurance Act 1938 read with Rule 5 (c) of the Fourth Schedule of the Income Tax Ordinance,1979. It has been held that for the Assessment Year 2001-2002 the new Insurance Ordinance, 2000 would apply, where there is no restriction for curtailment or prescribed limit of management expenses.
2005 PTD (Trib) 490	Sec 114 of the Tax Ordinance,2001 and Section 58, 61 and 63 of Income Tax Ordinance, 1979	In this case, on the basis of survey conducted, statutory notice under Section 114 of the Income Tax Ordinance, 2001 was issued on 10-12-2003, which was duly served on assessee but return was not filed. Notices under Section 61 & 58 of the repealed Income Tax Ordinance 1979 were issued on 24-2-2004, which also remained un-complied with. Thereafter, after the inquiries made, notice under Section 13 (1) (aa) and 61 of the repealed Income Tax Ordinance, 1979 was served, which also was not attended to. Thus, assessing officer made addition under Section 13 (aa) framing the assessment Ex-parte. It was held by the learned Tribunal that Assessment framed by the assessing officer in the case of assessee was in slip shot manner. Notice under Section 114 of the Income Tax Ordinance, 2001 was issued calling for return of income for the Assessment year 1999-2000 and later on notice under Section 58 and 61 were also issued of the repealed Income Tax Ordinance, 1979. It has been held that it was a serious contradiction which is not curable as the assessing officer has initiated proceedings under the Income Tax Ordinance 2001, whereas subsequent proceedings were completed under the Repealed Income Tax Ordinance 1979, which according to the learned Tribunal was not possible as the assessing officer can not draw his powers from two different legislations. As such, assessment proceedings were annulled.
2005 PTD (Trib) 504	Sec 12(9) & 66A of the Income Tax Ordinance, .1979 and Sec 248,251 of the Companies Ordinance, 1984	In this case, question before the Learned Tribunal was that whether creation of reserves for bonus shares amounts to declaration of bonus shares and whether the tax on bonus shares is to be levied on the basis of declaration or on the basis of their issuance? The learned Tribunal after examining the provisions of relevant laws has held that tax will be levied when bonus shares are issued and not on the point of time when reserve for bonus shares is created.
2005 PTD (Trib) 529	SEC 66A of the Income Tax Ordinance, 1979	In this case, the IAC invoke the provision of Section 66-A to cancel an assessment which was otherwise qualified for self assessment, on sole ground that assessee had filed return in circle having no territorial jurisdiction of the case. The Tribunal has held that once the revenue having accepted the assessee was entitled to concession on full filing the legal requirements of self assessment scheme, the same could not be withdrawn for the reason that return has been filed in the previous circle. Reliance was placed on the judgment of Hon'ble Lahore High Court reported as 2003 PTD 1795.
2005 PTD (Trib) 563	Sec 13 of the Income Tax Ordinance, 1979	In this case, addition under Section 13 was made in respect of certain property. It was held by the learned Tribunal that once the valuation in the hand of the co-owner / co-sharer was accepted by the department, it was not opened to the department to discriminately adopt varying valuation of the same property in the hands of other co-owners/co- sharer. It was further held that for the purpose of Section 13, the parallel cases should be from same locality and that principle of the valuation of the property for the Wealth Tax and Income Tax should be same.
2005 PTD (Trib) 615	SEC 22, 23, 24 and 28 of the Income Tax Ordinance, 1979	In this case, expenditure was incurred on remuneration paid to the Income Tax Advisor, which was disallowed by the department on the ground that the said expenditure was also utilized on investment of capital nature. It was argued before the learned Tribunal that for the purpose of Section 28 of the Income Tax Ordinance, 1979 income computed under

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
(2005) 91 Tax 188 (Trib)	Sec 65 of the Income Tax Ordinance, 1979	the head Capital Gains, the cost of acquisition of capital asset and any expenditure wholly and exclusively incurred in connection with the transfer thereof shall be deducted. It was stated that since the remuneration paid to the investment advisor was recurring in nature and could not be linked with acquisition of Capital Gain, therefore, addition was illegal. The learned Tribunal agreed with the above submissions and held that Commissioner of Income Tax (Appeals) correctly held that assessing officer has failed to establish nexus between the expenditure to the Income from Capital Gains. Therefore, the direction given by the Commissioner of Income Tax (Appeals) was held to be proper.
(2005) 91 Tax 177 (Trib)	Sec 32 of the Income Tax Ordinance, 1979	In this case, action under Section 65 was taken by the Department on the point that Car purchased was not shown in the balance sheet. The assessee took the plea that before the end of financial year, due to financial constrained, the car was sold. An affidavit was submitted in support of purchase and sale. However, addition was made by the assessing officer. The said issue came up for consideration before the learned Tribunal, which was please to hold that action of re-opening of the case was proper. However, it has been held that assessing officer had no justification to make addition in view of the affidavit filed by the purchaser that car was sold before the end of the year and same was rightly not shown in the balance sheet. The addition was deleted.
(2005) 91 Tax 161 (Trib)	Sec 13 of the Income Tax Ordinance, 1979	In this case, the assessee's accounts were rejected. The assessee claimed that his sales should have been accepted for the reason that the same were cross checked and audited by the Sales Tax Department. The learned judicial member after examining the issue at length held that Sales pitched by a Government Agency i.e. Sales Tax Department should be accepted without exception. It was further held that it is a Government department which has determined the sales after going through the various factors connecting therein and estimate of sales tax department may not be true picture of the actual affairs of the business. However, unless it is proved otherwise the figures determined by the Sales Tax department has to be accepted. It was further held that there is no reason the pitching the sales to a figure other than what has been determined by the Sales Tax department without any other substantial or objective reason or proof. It was held that since such a proof was missing in the case, the sales determined by the Sales Tax department may be adopted. The learned accountant member disagreed with the above findings, therefore,, the matter was referred to third learned member who agreed with the learned Judicial Member by observing that Sales tax assessment do not have binding force on the Tribunal but it has got a persuasive value and can not be ignored being on the same issue.
(2005) 91 Tax 161 (Trib)	Sec 13 of the Income Tax Ordinance, 1979	In this case, an addition under Section 13(1) (d) was challenged inter alia on the ground that no double approval of addition was taken for making an addition and nor any specific notice under Section 13 was issued. The learned Judicial Member after examining the issue at length vacated the assessment order and directed to delete the addition. Whereas learned Accountant Member dis-agreed with the learned Judicial Member for the reason that concept of double approval or double confrontation, requirement for making addition under Section 13 (1) (aa) to (e) has been a contention till 1-7-1992 when it was decisively resolved following procedural amendments were made in Section 13 through Finance Act 1992 that single approval and single confrontation are sufficient for making addition. He further held that since it was a procedural amendment, as such, it is applicable retrospectively. The matter was referred to the third learned member, who that non-confrontation and non-obtaining double approval can not be held to be a deficiency in the form of notice or breach of notice or form, in fact non-observance of mandatory requirement of law is factual legal flaw which can not be cured by setting aside the addition made under Section 13. In respect of retrospectively or prospectively of the application of the amendment made, it has been held that amendment made is in nature of creating new charge and obligation, as such, the amendment is not procedural one. On the issue that since the assessment has been made after 1-7-1992, the requirement of law was single approval or single consultation. It has been held by learned member that provisions relating to two approvals for making addition shall remain in force till assessment year 1992-93 and not thereafter. It was further held that effect of amending law would apply not only to those

CITATION	RELEVENT STATUTORY PROVISION	ISSUES INVOLVED
Un-Reported ITA NO 309 to 311 of 1999 High Court of Sindh	Sec 87& 156 of the Income Tax Ordinance, 1979	cases where assessment have not been made by the assessing officer or where appeal was pending either before the first appellate authority or the Tribunal or a reference or the Appeal is subjudice before the High Court or the Supreme Court as the case may be at the time of amending law enacted. It was also held that since the amendment has been introduced as on 1-7-1992, therefore, this would apply to all the assessments which would be made next following assessment years 1992-1993 and not to the earlier assessment years.
Un-Reported C.P No. 643 of 2004 High Court of Sindh	Sec 122(5A) of the Income Tax Ordinance, 2001.	It will be recalled that learned Income Tax Appellate Tribunal in the case reported as (1995) 72 Tax 165 (Trib) had held that Additional Tax u/s 87 can be charged along with the assessment, and if the same is not charged, than it can be charged under Section 156, with in four years. The above view has been recently upheld by the Hon'ble High Court of Sindh in ITA No. 309, 310 and 311 of 1999.
Un-ReportedC.P No. 1047,1048 & 1096 of 2004 High Court of Sindh	Sec 177 of the Income Tax Ordinance, 2001	In a recent judgment, the Hon'ble High Court of Sindh has held that provisions of Section 122 (5A) are not retrospective and are not applicable to the assessments passed before 1.7.2003. For the convenience of learned Members of the Bar, the operative part of the judgment is reproduced below in extenso. "The facts and circumstances in the present petitions being squarely similar, we are persuaded to agree with the contention of Mr. Mansoor-ul- Arfin, learned counsel for the petitioners that the provision contained in subsection (5-A) of Section 122 of the Income Tax Ordinance, 2001, inserted with effect from 1.7.2003, is not retrospective in operation. Consequently, the assessments finalised before 1.7.2003 cannot be reopened/revise/ amend in exercise of jurisdiction under the above provision. Admittedly, all the notices impugned in these petitions are in respect of the assessments finalised before 1.7.2003 and consequently all the impugned notices are without jurisdiction, illegal and void ab-initio. All the notices impugned in these petitions are therefore, hereby quashed along with proceedings in pursuance thereof. The Petitions are allowed accordingly. "
Un-ReportedC.P No. 1047,1048 & 1096 of 2004 High Court of Sindh	Sec 177 of the Income Tax Ordinance, 2001	In these cases, Notices under Section 177 of the Income Tax Ordinance, 2001 were challenged on the ground that notices were issued without assigning any reason or giving details for doing so. Reliance was placed on case reported as PTCL 2004 CL 532 decided by Hon'ble High Court of Lahore. The Hon'ble High Court of Sindh after examining Section 177 has held that it was necessary for the Commissioner who intended to initiate proceedings under Section 177, to have incorporated the relevant grounds, reasons and clauses of Section 177 to enable the assessee to find out the rationale/criterion and justification for selection of case, as under Section 120(b) a return qualified for acceptance under the universal self assessment deemed to be the assessment order made and issued by the Commissioner on the date the return was furnished. It was observed that the return thus enjoyed protection against bald or arbitrary action which will be against the very spirit of the self Assessment scheme available under the Ordinance. The Petitions were disposed of with the observation that the proceedings initiated by the department on the basis of impugned notices/letters are defective, therefore no further action shall follow against the petitioner on the basis of such defective notices. It was however, also observed that it will be open to the Commissioner and Taxation Officer to initiate fresh proceedings of audit against the petitioner but strictly in terms of Section 177.
2005 PTD (Trib) 854	Sec 24(i) of the Income Tax Ordinance, 1979	In this case, an assessee being a non-salary Director of the Company was reimbursed medical expense which was added in the hands of the company under Section 24(i). The learned Tribunal after examining the definition of an employee in Section 16 and Section 24(i), held that since the employee / Director was not drawing salary, the addition under Section 24 (i) could not be made.
2005 PTD 849 High Court Lahore	SEC 80 D of the Income Tax Ordinance, 1979 read with SEC 4 of the Workers Welfare Fund Ordinance.	In this case, the Hon'ble High Court of Lahore has held that Industrial establishment covered by provision of Section 80-D were not liable to charge Workers Welfare Fund. The ratio of earlier decision reported as 2002 PTD 2112 has been relied upon. In addition to it, it has been held by the Hon'ble High Court that Workers Welfare Fund is not chargeable to the assessee covered by provision of Section 80-D . It was, therefore, observed

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
		that in such cases, an assessee was required to pay certain fix amount on its turn over and the aggregate of the declare turnover was deemed to be income of the assessee to be charged at the 0.5% It was observed that on the other hand, the provision of Section 4 of Workers Welfare Fund Ordinance were attracted only where declared / assessed income of an Industrial establishment exceeds Rs.100,000 or more.
2005 PTD (TRIB) 668	Sec 80 C of the Income Tax Ordinance, 1979	In this case, the learned Tribunal after examining the scope of Section 80C has held that all receipts of payment on which tax is deductible u/s 50(4) of the Income Tax Ordinance, 1979 on account of services rendered would fall outside the purview of presumptive tax u/s 80C and tax deducted in such cases would not be final discharge of their tax liability
(2005) 91 TAX 224 High Court Lahore	Sec 50(4) of the Income Tax Ordinance, 1979	In this case, fore the assessment year 2000-2001 a return was filed under the Self Assessment Scheme. The case was not selected for total audit, however petitioner received notice u/s 61 dated 26.11.2001 for compliance till 30.12.2001. The Petitioner challenged this action on the ground that said notice could not be issued after the amendment made through Finance Ordinance, 2001 wherein sub-section (4) of Section 59 was inserted. The Hon'ble High court after examining the amendment has held that such amendment will be attracted to the returns filed for the assessment year 2000-2001.
(2005) 91 TAX 231 High Court Lahore	Sec 13 and 65 of the Income Tax Ordinance, 1979	In this case, the Hon'ble High Court has reiterated that reopening of case cannot be made merely on the basis of parallel property which would not amount to definite information.

SALES TAX

2005 PTD 480 SC PAK	Sec 36, 65 of the Sales Tax Act, 1990 & Article 185(3) of the Constitution of Pakistan, 1973	<p>In this case, the Hon'ble Supreme Court has dilated on provisions of section 36(1) & (2) of the Act and held that show-cause notice issued without completion of pre-requisites and supply of the grounds / reasons in clear and explicit words to ascertain to under which subsection the case would fall, renders the notice invalid and the demand of the authorities had not legal consequence. The Hon'ble Court observed that it was essential for the Tribunal to examine the scope of section 65 of the Act and it should have given clear verdict in the matter, to which the Tribunal failed, and the Hon'ble High Court also committed the same error. The Hon'ble Supreme Court remanded back the case to the Tribunal framing certain questions with direction to decide them afresh.</p> <p>In this case, the petitioner had been supplying the petroleum products without levy of sales tax on its supplies, despite withdrawal of exemption contained in Entry No. 8 of Sixth Schedule to the Act, on the assumption that nothing could be added in the price of the products fixed by the Government.</p> <p>In petition before the Hon'ble Supreme Court, the petitioner also took additional questions, which were not taken before the Tribunal as well as the High Court, that price is fixed by the Government; and the supply of goods for the price fixed by the Government being not defined as 'sale' in terms of section 3 of the Act, the sales tax on such supplies cannot be charged. The Hon'ble Supreme Court admitted the additional questions holding that question of law arising out of the facts of the case relating to fundamental issues involved therein, even if was not raised before the lower forum can be allowed to be taken before the higher forum. Reference was made to 1999 SCMR 1072.</p>
2005 PTD 647 HIGH COURT LHR	Sec 33 & 47 of the Sales Tax Act, 1990	In this case, the Hon'ble High Court dismissed the appeal holding that no question of law arises from the order of the Tribunal, as the appellant never agitated issue of lack of proper opportunity before the Tribunal and the order-in-original specifically mentioned that appellant had failed to participate in original proceedings.

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
2005 PTD 662 HIGH COURT LHR	Sec 7, 47 & 59 of the Sales Tax Act, 1990	In this case, the Hon'ble High Court has held that, under the peculiar circumstances of the case, appellant is entitled to claim input tax adjustment, paid before withdrawal of exemption and it cannot be made to pay the sales tax on the raw material twice. In this case, the appellant's supply of sugar was exempt from sales tax upto 01-04-1998. In the return for tax period of April, 1998, the appellant claimed input tax adjustment for raw-material purchased before 01-04-1998 against output tax charged on supplied made during the month of April, 1998 contending that such raw-material was consumed in producing taxable supplies.
2005 PTD 676 HIGH COURT LHR	Sec 3 & 47 of the Sales Tax Act, 1990	In this case, the appeal has been disposed of in the light of earlier judgment of the Hon'ble High Court reported as 2002 PTD 632 in which it was held that the Tribunal was not vested with any jurisdiction to hold that SRO. No. 207(l)/98 as amended vide SRO NO. 751(l)/2000 is ultra vires and to that extent the judgment of the Tribunal is set-aside. Further, that the SRO 751 was merely an amending SRO, it being beneficial in nature could be retrospective as well to that extent. It was further held that benefit of fixation of value under SRO 207 was only confined to the sales tax only and not to further tax.
2005 PTD 700 HIGH COURT LHR	Sec 2(36), 6, 22, 23, 26, 46 & 47 of the Sales Tax Act, 1990	In this case, the Hon'ble High Court remanded back the case to the Tribunal with direction to dispose of legal as well as factual issues raised before it. Facts of the case were that the Department charged tax on appellant due to contravention of different provisions of the Act. Appeals filed before the Tribunal by the taxpayers and the Department were disposed of by remanding matter to original authority, on the ground which was not even the grievance of the Revenue.
2005 PTD (Trib) 731	Sec 45B, 45(3) of the Sales Tax Act, 1990	In this case, the Tribunal relying on Hon'ble High Court judgement reported as PTCL 1993 CL 656, held that the main provisions of sub section (4) of section 45B is of director nature and not mandatory character, and the right of appeal granted to an aggrieved person from any decision / order was an inalienable right and could not be made ineffective / redundant, on account of non-deposit of 15% of the principal amount of tax. The judgment contains detailed discussions on requirement for deposit of 15% tax under section 45B(4) of the Act. Members are requested to go through the judgment for better understanding.
2005 PTD 743 HIGH COURT LHR	Sec 2(25), 3(1A) & 47 of the Sales Tax Act, 1990	The Hon'ble High Court, relying on earlier judgment in Writ Petition No. 21776 of 2001 dated 19-2-2002 held that further tax was not leviable in respect of supplies made to persons who were liable to be registered with the Sales Tax Department even though they were not in actual fact so registered.
2005 PTD 803 HIGH COURT LHR	Sec 45 & 47 of the Sales Tax Act, 1990	In this case, the Hon'ble High Court observed that the scheme of the Act makes it clear that before the Collector (Appeals) as well as the Tribunal the department is represented through the concerned officer who could either be appellant or a respondent. Whereas, for the purpose of High Court, it is only a collector of Sales Tax, as distinguished from Collector of Sales Tax (Adjudication), who can either be an appellant or respondent.
2005 PTD 812 HIGH COURT LHR	Sec 47 of the Sales Tax Act, 1990 and sec 36C of Central Excises Act, 1944	In this case, against the order of the Tribunal, the taxpayer and the Revenue Department filed appeals before the High Court. The Hon'ble Court held that when both the parties feel aggrieved of the impugned order, it needs to be set-aside in its entirety so that the matter remains open for both of them to re-assert their legal and factual positions.
2005 PTD 874 HIGH COURT KAR	Sec 7, 13 & 45A of the Sales Tax Act, 1990 and SRO 600 dt. 7-6-1990 & 697 dt. 4-8-1977	In this case, the main issue before the Court was the applicability of word 'machinery' as used in the SROs. The Hon'ble Court held that this word has been given wider meaning than its ordinary dictionary meaning. Further, the language of this SRO does not spell out any intention of law makers that its applicability is only restricted to supplies / sales of articles which are

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
2005 PTD 880 SC PAK	Sec 7, 33, 34 & 36 of the Sales Tax Act, 1990 and Article 185(3) of the Constitution of Pakistan	directly made to the industrial units so as to be identifiable for intended use only with machinery and not to the supplies / sales made otherwise in open market. The Court further held that after clarification of CBR, no room for discrimination was left open for the department on the basis of mode of sales / supplies of the articles in question. In this case, the Tribunal had held that notification SRO 1185(I)/97 dt: 20-11-1997 was issued in furtherance of newly amended law for compliance of the parties who were liable for payment of duties and taxes. The Tribunal had further observed that the authorities could not take a roundabout and inflict the taxpayer for that period which was consumed in negotiation. The Hon'ble High Court and Supreme Court have maintained the order passed by the Tribunal holding that it had given cogent and valid reasons in arriving at the conclusion and no other conclusion could have been drawn in view of the clear language of the notification.
(2005) 91 TAX 105 SC PAK	Sec 2(28) of the Sales Tax Act, 1990 and Article 188 of the Constitution of Pakistan	In this case, the Honourable Supreme Court dismissed the civil petition seeking review of interpretation given to term 'General Public' in its earlier judgment dated 15-04-2002. The Hon'ble Court held, in principle, that specified word had not been correctly interpreted by the Supreme Court was no ground for review as review was not for a rehearing matter. The Hon'ble also held that points raised in the review petitions were already considered and repelled in earlier judgment; hence no case for review is made out.
(2005) 91 TAX 162 HIGH COURT KAR	Sec 38,40,40A of the Sales Tax Act, 1990 and Article 199 of the Constitution of Pakistan	In this case, exercising powers conferred u/s 38 & 40A, the Petitioner's main office and store of the Mill were sealed, while the registered office was searched and the record, files, cheque books, diskettes, books and registers were seized. While deciding this constitutional petition on the issue of 'Search without warrant', the Hon'ble High Court held that all conditions specified in section 40A are to be complied with strictly failing which action u/s 40A shall not be sustainable in law, be treated to be invalid, without jurisdiction and void ab-initio. As such, the search and seizure is illegal and of no legal consequence and all subsequent proceedings held in pursuance of such illegal search are also void ab-initio and are quashed. The Hon'ble High Court also observed that the statement of ground must be transcribed before the raid / search is conducted and not after the completion of raid / search. Further, tax officer not below the rank of Assistant Collector must have reasons to believe that any documents or things which, in his opinion, may be useful for, or relevant to, any proceedings under the law are concealed or kept in any place. The learned members are requested to read this judgment to understand the operation of law.
(2005) 91 TAX 215 HIGH COURT LAHORE	Sec 3, 3(4), 47 of the Sales Tax Act, 1990 and Articles 77, 127 of the Constitution of Pakistan	In this case, the members of Association of re-rolling steel mills entered into an agreement with Revenue to pay 20% more tax in year 1996-97 as compared to year 1995-96 and, in return, no audit of any member will be carried out by the Revenue. Due to default by the members of Association including appellant in this case, Revenue directed to pay certain amount of sales tax along with additional tax and penalty. The Hon'ble High Court held that mere minutes of meeting between the Association and the Revenue were not enough to change the tax regime supported by section 3(1) of the Act and the view of the Tribunal that the matter stood settled by way of an administrative agreement cannot be accepted as correct statement of law. The Hon'ble High Court further held that no levy against the express words of the statute can be made on the basis of such an agreement, much less to say of imposition of additional tax or penalties in case of non-compliance with the terms of agreement. The agreement having never been converted into law through the prescribed process, no person could be forced to comply with the same.

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
(2005) 91 TAX 263 HIGH COURT KAR	Sec 2(4), 13 of the Sales Tax Act, 1990	In this case, the Hon'ble High Court held that SROs are statutory rules and have its legal force, which cannot be replaced through instructions or interpretation of CBR. The CBR cannot change the rulings unless conditions of the SRO are also changed in accordance with law.

The Hon'ble High Court also laid down the principle that once it is established that a tax is chargeable then for the purpose of availing exemption, a person has to establish that the claim is squarely covered under the exemption granted and the law pertaining to exemption is to be strictly interpreted and cannot be allowed on the basis of mere inferences or any presumption.

The learned members are requested to read this judgment to understand construction of statutes.

FEDERAL TAX OMBUDSMAN

(2005) 91 TAX 139 FTO PAK	Sec 7, 8, 33 & 73 of the Sales Tax Act, 1990	In this case, the complainant (an exporter) had claimed sales tax refund making adjustments of input tax paid on supplies procured from different supplies. The claim was rejected by the Department holding that the invoices submitted by the complainant were fake and the claim did not fulfil requirements either section 8(1)(a) or 7(2)(1) of the Act inter alia including failure to produce cartage and octroi bills / receipts in support of delivery of inputs to the complainant. Consequently, penalty under section 33(4) was also imposed.
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The Hon'ble FTO observed that the only obligation of the buyer (i.e. complainant) under the law (as was in force during the period relevant to the case) was to ensure and prove that the supplier was a registered person, that the payment against the tax invoices was made through cross cheques issued in the name of such supplier collectable in payees account only and that the quantity of goods recorded in such invoices were consumed in manufacturing for export / domestic sale or exported in same state.

The Hon'ble FTO further observed that neither adjustment / refund of input tax can be denied nor any penal action can be taken unless it is conclusively proved through due process of law that tax invoices were not issued by registered units and payment was not collected by the vendor in his bank account or no goods had been procured by the buyer / complainant against such tax invoices from the vendor and used as input against taxable or zero rated output / export.

While dilating on the definition of the term 'maladministration', the Hon'ble FTO also observed that to justify a decision, process, recommendation, act of omission or commission which is 'contrary to law', as settled by the binding decisions of judicial forums or where the language of law does not beg any interpretation, on grounds of bonafide inter alia, covers a decision, process, recommendation is inconceivable.

The Hon'ble FTO overruled the objections and set-aside the order-in-original with recommendations for issuance of refund, after fulfilment of obligations under the law by the complainant.

(2005) 91 TAX 189 FTO PAK	Sec 2(37), 21(4), 40A of the Sales Tax Act, 1990	In this case, the Hon'ble FTO has held suspension of sales tax registration as arbitrary, contrary to law and against established practice without any reason and bonafides.
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The Hon'able FTO also reaffirmed the principal of nature justice that even if no provision is made for affording opportunity of being heard before an order is passed, it is incumbent on every authority and court to issue notice and opportunity of hearing be afforded before passing any order against him.

CITATION	RELEVANT STATUTORY PROVISION	ISSUES INVOLVED
(2005) 91 TAX 203 FTO PAK	Sec 2(12), (35 of the Sales Tax Act, 1990	In this case, the Hon'ble FTO has held that while maladministration alleged on account of inattention to complainant's claims and inordinate delay in responding to applications for refund is proved, the prayer for recommendation to issue the refund is premature, considering that the chargeability of goods under reference is subjudice in Hon'ble Supreme Court of Pakistan and the complainant has failed to cite any precedence where the Department has issued refund in any identical case.

CUSTOMS

2005 PTD 729	Sec 19(3) of the Customs Act, 1969	In this case, the assessee had imported certain items and at the time when the letter of credits were opened, the said items were exempted from Customs duty. However, when the goods arrived at Karachi, the exemption was withdrawn. It was contended that vested right had accrued to the Petitioner which was also protected by Section 6 of the Pakistan of Economic Reforms Act 1992. Reliance was also placed on PLD 2002 SC 208. On the other hand, it was argued that Under Section 19 (3) of the Customs Act, 1969 provides that no exemption premised on the ground of promissory estoppels and notwithstanding anything contained in the Protection of Economic Reforms Act or any other law or any other judgment of the Court could be obtained. The Hon'ble High Court of Sindh accepted the legal position arising from Section 19(3) and dismissed the Petition.
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GENERAL LAW

PLD 2005 Lah 177		It has been held that it is the duty of the court to apply correct law and to justly administer the right and remedies of citizens, such duty of court is fundamental and enshrined in the concept of administration of justice
PLD 2005 Lah 190		Provisions of law which are expressed in negative are generally considered as mandatory unless intention of legislature appear to be contrary.
PLD 2005 Kar 128		If law has provided a particular thing to be done in a particular manner, then it should be done in that manner or not at all.
PLD 2005 SC 193		In a very recent decision, the Hon'ble Supreme Court of Pakistan has given detailed judgment in which scope of Article 18 (Freedom of Trade, Business or Profession) and Article 25 (Equality of Citizens) have been examined. (Members of Bar are requested to read the entire judgment for detailed study and better understanding.)

CORPORATE LAW

Appeal No. 23 of 2004 (Appellant Bench)	Reg 5.1 of the CDC Regulations, sec 9(4) of the Securities & Exchange Ordinance, 1969 and clause 32(1)(ff) of the Listing Regulations	In this case, the learned Appellant Bench held that the appellant has not plausible reason to refuse joining the CDC. Per facts, CDC declared the shares of the appellant as eligible securities but it failed to join the CDC. Commissioner (Securities Market) directed the appellant to join CDC by specified date. The appellant filed appeal to the Appellant Bench and contended that the company was going through financial constraint and was not liable to afford the extra cost of joining CDC.
Appeal No. 1 of 2005 (Appellant Bench)	Sec 17, 22, 24 & 25 of the Securities & Exchange Ordinance, 1969	In this case, the issue before the learned Bench was levy of penalty by the Commissioner (Securities Market) under section 24 due to violation of section 17 of the Ordinance by the appellant. The other legal issue in appeal was the extent of powers of the Commission in presence of section 25 which provides that the cognizance of all offences punishable under the Ordinance is to be taken by court not inferior to Court of Session.

CITATION

RELEVANT
STATUTORY
PROVISION

ISSUES INVOLVED

The learned Bench held that when cognizance is granted to a court or tribunal under a statute, it is for the offence and not in terms of types of punishments prescribed in the same provision. In principle, the Bench held that the Commission cannot impose penalty u/s 24, but at the same time, the Bench is of the view that it does not mean that jurisdiction cannot be granted to two forums at all. The Bench also observed that the Court of Session has not been granted the exclusive jurisdiction to try the contravention of section 17. Further, it would defeat the entire purpose and objects of the two primary legislations, if it were to be said that the Commission does not have the power to take cognizance of such a serious offence of market manipulation. The Bench held that the legislature has left the discretion with the Commission to decide whether the offence is severe enough to prosecute the offenders in the Court of Session or impose penalty itself. However, it can either impose the penalty under section 22 or file a criminal proceeding with the Court of Session. The Bench thus finally held that imposition of penalty provided in section 24 on the appellant was wrong and set-aside the matter for afresh adjudication.

It is an interesting case on corporate laws. The learned members are requested to go through the decision.

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FUTURE CPE ACTIVITIES

DATE	SEMINAR / WORKSHOP	SPEAKERS	VENUE
October 2005	Islamic Banking and Financing	To be announced later	ICAP Auditorium, Karachi.

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