

IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL,
MOST BENEFICENT



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DISCLAIMER

Khilji & Co (Chartered Accountants) is pleased to present Firm's Newsletter. The only purpose of this document is to provide updated information to our clients about recent circulars/ notifications issued by various authorities during this month and also to provide our clients with information on latest useful decisions of appellate courts. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This newsletter is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

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LAHORE HIGH COURT, LAHORE

Writ Petition No. 47110 of 2019

Petitioner(s): Dar Es Salaam Textile Mills Limited and another Vs

Respondent(s): Federation of Pakistan and others

This Writ Petition and the connected writ petitions were filed which raised identical question of Law.

The brief facts are that the petitioners claim to be exporter or manufacturer of goods liable to zero percent tax under section (4) of the Sales Tax Act, 1990 as it existed prior to promulgation of Finance Act, 2019 read with SRO .112591/2011. They claim exemption from payment of Advance Income Tax through monthly electricity bills which is done in pursuance of section 235 (3) of the Income Tax Ordinance, 2001. The petitioners rely on clause 66 contained in Part IV to the Second Schedule of the Ordinance which according to them grants them unconditional exemption from the provisions of section 235 without the requirement of exemption certificate from Commissioner Inland Revenue and the electricity distribution companies being the collecting agent cannot charge from them advance income tax through the monthly electricity bills.

However, the respondent stated their contention that an exemption certificate is mandatory in order to claim exemption from payment of Advance Tax under section 235. It was pleaded that that exemption from payment of advance income tax was predicated on two conditions (i) the taxpayer falls under zero rated regime of sales tax; and (ii) the tax payer is registered with the sales tax department as exporter or manufacturer of the five export oriented sectors. Moreover, it was asserted that an electricity distributing company has no means of knowing or verifying as to which person is liable to exemption under section 235. It was contended that the acceptance of the plea of the petitioners could result in evasion of tax.

The honorable Lahore High Court stated that with the substitution of section 4 (c) of the Act and repealing of SRO No.1125(I)/2011 and STGO No. 117 of 2015, the zero-rated tax regime as enumerated therein for the five sectors effectively came to an end. With the abolition of zero rated tax regime, the petitioners do not fulfill the essential condition of Clause 66 contained in Part IV to the Second Schedule of the Ordinance, hence, they cannot claim exemption from the provisions of section 235 of the Ordinance.

The honorable Lahore High Court further stated that it was an oversight that Clause 66 was not suitably modified in conjunction with the substitution that was brought in section 4 (c) of the Act through Finance Act, 2019. However, during the course of proceedings in these petitions, the learned Assistant Attorney General on 03.01.2020 informed about the promulgation of Tax Laws (Second Amendment) Ordinance, 2019 through which Clause 66 was suitably amended.

Therefore, the honorable Lahore High Court dismissed the Writ Petitions being devoid of any merit in the following words:

Quote "It is obvious that the Zero-Rated Tax Regime has now been omitted in amended Clause 66. Be that as it may, the amended Clause 66 is not the issue in these writ petitions and right of the petitioners to claim exemption from the provision of Section 235 of the Ordinance can be adjudicated appropriate proceedings. In the result, this writ petition along with the connected writ petitions being devoid of any merit are dismissed"
Un-Quote

SINDH HIGH COURT

I.T.R. No.67 of 1998

Petitioner(s): Messrs. Pfizer Laboratories Limited Vs

Respondent(s): The Commissioner of Income Tax, COS II Karachi

The instant matter was referred by the Income Tax Appellate Tribunal (ITAT) for consideration of following question of law that;

“Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal was justified in holding that the assessing officer has rightly applied section 79 of the Income-tax Ordinance, 1979 and thereby confirming the additions in the three assessment years under reference.”

The brief facts of the case is that the appellant is a pharmaceutical company who filed its returns of income tax for the assessment years 1989-90 to 1991-92, however, the Assessing Officer (A.O.) after proceeding with the matter under section 62 of the Repealed Ordinance assessed the incomes of the assessee through his assessment orders by making additions of Rs. 34,982,815/-, Rs. 119,190,098/- and Rs. 80,851,459/- respectively, under Section 79 of the repealed Ordinance. The matter went to the Commissioner (Appeals) who upheld the additions made by the A.O. Being aggrieved with the order of the Commissioner (Appeals), appeals were preferred before the ITAT, who deleted the additions in respect of raw material Piroxicam for the assessment years 1990-91 and 1991-92 and also deleted the additions made in respect of the raw material Doxycycline for the assessment years 1989-90 and 1990-91. However, the additions made on account of raw material Doxycycline was confirmed in the assessment year 1991-92.

Thereafter the applicant moved applications under Section 136(1) of repealed Ordinance by requiring from the ITAT to refer as many as six questions to this Court. However, the learned ITAT deemed it expedient to refer only one question to this Court, as reproduced above.

It is pertinent to mention here that additions made under Section 79 of the repealed Ordinance by the A.O. were mainly due to the fact he found that the raw materials imported by the appellant from its parent company were at much higher rate than the rate prevailing in the international market for the similar raw material. It is noted that the A.O. has compared the price of the raw materials imported by the assessee from its parent company from the raw material imported by the other companies from other sources and thereafter made the additions in respect of the difference of the imported price of the raw materials.

The honorable high court stated that an Arm's length transaction means the transaction entered between the parties based on equal footing. The A.O. made the additions by invoking Section 79 of the Ordinance about transfer pricing but had he made some exercise with regard to arm's length dealing of the parent company of the assessee with other sister concerns of neighboring countries as to about at which price these raw materials were sold by the parent company to these sister concerns, then the position would have been totally different. However, it is noted that the A.O. who simply compared the raw material imported by assessee from its parent company with that of the raw material imported by other pharmaceutical company (majority of which are local companies) with the raw material imported by them either from China or India. In our view, this would not justify the additions made under section 79 of the Income Tax Ordinance as for invoking the said provision of law onus lies upon the department to prove arm's length transaction and to establish that the course of business was so arranged between the two companies that profits have been transferred by the subsidiary company by way of adopting the method of transfer pricing to its parent company. High Court further stated that by simply analyzing the difference in the imported price of the raw material by an internationally reputed company from its parent company with that of raw material imported by a local pharmaceutical company either from China or India would not justify the said addition as there are a number of other factors also which have to be kept in view.

Moreover, it was held that that any aggrieved person whether or not he was a party has the right to approach an appellate forum. The Honorable Supreme Court of Pakistan further stated that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract.

Hence, the honorable Supreme Court of Pakistan dismissed the Petitions whereby refusing Leave to Appeal in following words:

Quote “The learned counsel for the petitioner has not been able to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment of the Division Bench is well reasoned, based on settled principles of law on the subject and the conclusions drawn are duly supported by the record. We are therefore not inclined to grant leave to appeal in this matter.” Un-quote

NOTIFICATIONS / CIRCULARS

FBR INFORMATION

INTRODUCTION

Federal Board of Revenue issued Informative Circular, wherein it has condoned the time limit for filing of Annex-H for the tax period of *July 2019 and August 2019 up to February 15, 2020.*

Annexure - H:

In Sales tax return Annexure H is a summary of stock (i.e. details of opening, closing stock, stock sold/consumed etc.). This annexure is mandatory for refund claimants and they may submit this statement within 120 days from due date of return filing of particular tax period.

<https://khilji.net.pk/wp-content/uploads/2020/01/20201916140188222020-01-09ExtensionindateforAnnex-H.pdf>

FBR SALES TAX GENERAL ORDER

Introduction

Federal Board of Revenue (Inland Revenue Policy Wing) had issued Sales Tax General Order No. 1 of 2020 dated January 16, 2020, in order to remove difficulty arising from insertion of new sub-section in section 73 of the Sales Tax Act, 1990 through [Tax Laws \(Second Amendment\) Ordinance, 2019](#).

Commentary

The aforesaid newly inserted sub-section (4) of Section 73 of the Sales Tax Act, 1990 restricts manufacturers to make all the supplies to a registered person excluding supplies not exceeding value of 10 million per month / 100 million per year, failing which the supplier shall not be entitled to claim input tax attributable to such supplies to unregistered person.

However, in order to clear certain queries of manufacturers regarding supplies to persons who are not liable to be registered under the Act, FBR had issued the above mentioned Sales Tax General Order No. 1 of 2020, wherein it has been clarified that the provisions of sub-section (4) of Section 73 shall not apply to supplies made to:

- (a) Federal/Provincial/Local Government departments, authorities, etc. not engaged in making of taxable supplies;
- (b) Foreign Missions, diplomats and privileged persons;
- (c) All other persons not engaged in supply of taxable goods.

Moreover, the threshold of 10 million per month / 100 million per year is applicable on goods supplied to one specific person by the registered manufacturer.

Link of Document

<https://khilji.net.pk/wp-content/uploads/2020/01/20201161211519971STGONO.01OF2020DATED16.01.2020.pdf>

FBR NOTIFICATION

INTRODUCTION

SRO36(I)/2020 dated January 21, 2020 has been issued by FBR to amend SRO 1190(1)/2019 issued in October 2019 relating to application of section 8B of Sales Tax Act, 1990 which limits the input tax amount to be adjusted during a period to 90% of the output tax for that period.

The Federal Revenue Board (FRB) issued S.R.O.1190(I)2019 dated October 02, 2019 provides that limit of 90% of output tax will not be applicable in following sectors:

1. Persons registered in electrical energy sector
2. Oil marketing companies and petroleum refineries
3. Fertilizers manufacturers
4. Persons making zero rated supplies, including exports, provided that value of such supplies exceeds 80% of value of all taxable supplies in a tax period
5. Distributors
6. Gas Distribution companies
7. Telecommunication services
8. Pakistan Steel, Bin Qasim, Karachi
9. Registered persons other than manufacturers, making supplies of items covered under the Third Schedule to the Sales Tax Act, 1990, on which sales tax has been paid by the manufacturer or importer on retail price, provided that value of such supplies exceeds 80% of value of all taxable supplies in a tax period.
10. Commercial importers where value of imports subject to 3% value addition as prescribed in Twelfth Schedule to the Act exceeds 50% of the value of all taxable purchases, including imports, in a tax period.

Further, for Retailers importing goods in bulk and operating chains of stores the limit of input adjustment has been prescribed at 95% of the output tax for that tax period with excess amount to be carried forward to next tax period.

Now through Notification SRO36(I)/2020 dated January 21, 2020, Automobile manufacturing companies which are listed on Pakistan Stock Exchange has also been added to the list of registered persons those are allowed to adjust input tax upto 95% output for that period. However, this amendment will only be applicable to these companies till December 2020.

DOCUMENTS LINK

SRO36(I)/2020 dated January 21, 2020

<https://khilji.net.pk/wp-content/uploads/2020/01/20201211115439398SRO36OF2020DATED21.01.2020.pdf>

SRO 1190(1)/2019 issued in October 2019

<https://khilji.net.pk/wp-content/uploads/2019/10/20191031110235897SRO1190-2019.pdf>

SRB (Sindh Revenue Board) Notification

Introduction

Sindh Revenue Board (SRB) had issued Notification No. SRB-3-4/05/2020 dated January 21, 2020, whereby exemption has been granted to the taxable services involved in terms of the its earlier issued Notifications SRB-3-4/9/2017 dated 2nd June, 2017 and SRB-3-4/3/2018 dated 6th February, 2018 if such services are rendered or provided during the period from 01 July 2019 to 30 June 2020.

Commentary

For better understanding, notification issued in 2017 and 2018 are discussed hereunder:

Notification No. SRB-3-4/9/2017 dated 2nd June, 2017

Notification No. SRB-3-4/9/2017 dated 2nd June, 2017 provided exemption on the part of the tax as is in excess of an amount equivalent to 2% of the value of the following services:

- Contractor of Building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air-conditioning), multi-disciplinary works (including turn-key projects) and similar other works
- Construction Services

as are directly received or procured by Departments of the Government of Sindh in relation to such of the "new" development schemes and projects as are included in Sindh ADP of 2017-18, and are funded out of Annual Development Program (ADP) of the Government of Sindh, subject to certain limitations and conditions as mentioned therein.

Notification No. SRB-3-4/3/2018 dated 6th February 2018

Sindh Revenue Board vide its Notification No. SRB-3-4/3/2018 dated 6th February, 2018 notified total exemption on the services as specified in the above Notifications No. SRB-3-4/9/2017 dated 2nd June, 2017, and are received by the respective project implementation agency in relation to the development projects located in the Province of Sindh and funded, partially or fully, through the Federal PSDP of the Government of Pakistan in the Financial Year 2017-18 or will continue as "on going" projects in the subsequent Federal PSDPs of the Government of Pakistan.

Subsequently, Sindh Revenue Board had withdrawn total exemption vide Notification No. SRB-3-4/14/2019 dated June 27, 2019, and it prescribed that the services provided or rendered in relation to such "new" development projects and their "on-going" projects of the financial years 2019-20 or thereafter shall be exempt from Sindh sales tax as are in excess of tax rate of 5%.

CURRENT NOTIFICATION (SRB-3-4/05/2020 DATED JANUARY 21, 2020)

Now taxable services involved in terms of the above notifications of 2017 and 2018 shall be exempt from the tax leviable thereon if provided or rendered in terms of the said notifications during the period from 1st July 2019 to the 30th June, 2020. Summarizing above, sales tax applicability on construction services in the province of Sindh is presented in the table below:

Tariff Heading	Description of services	Concessionary rate of tax/exemption of tax	Terms and conditions for the eligibility to concessionary rate of tax or exemption
1	2	3	4
9824.0000	Construction services	8%	<p>1. The benefit of reduced rate shall not be available to persons, engaged in providing or rendering the construction services, who elect or opt to pay the statutory rate of tax at 13 per cent under the Special Procedure prescribed by the Board and avail of the input tax credit/adjustment facility as prescribed in the Act and rules made thereunder.</p> <p>2. Input tax credit/adjustment shall not be admissible.</p>
		Exempt	<p>Construction services related to:</p> <p>i. Construction work undertaken by a person whose annual turnover does not exceed 4 million rupees in a financial year.</p> <p>ii. Construction and development of EPZ, SEZ and diplomatic and counselor buildings; and</p> <p>iii. Construction of an independent private residential house, other than residential unit covered by tariff headings 9807.0000 or 9814.3000, having total covered area not exceeding 10,000 square feet.</p>
	Construction service in relation to Government Civil Works for which expenditure is paid out of the expenditure budget of the Federal Government or the Local Government or the Cantonment Board	Exempt	<p>1. Exemption applicable during the period from 1st July 2019 to the 30th June 2020.</p> <p>2. Input tax credit/adjustment shall not be admissible</p>

DOCUMENT LINK

http://www.srb.gos.pk/contents/Notifications/20200121_NOT_3-4-5.PDF

FBR CIRCULAR

Federal Board of Revenue has issued Circular No 01 of 2020 (ref: C.No.2(1)Contd/I.Tax/2018 on January 31, 2019. This Circular states that

1. **FOR INDIVIDUALS and AOPs** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 has been **extended upto February 28, 2020.**
2. **FOR COMPANIES** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 (**Conditional upon 95% payment of admitted tax liability on or before September 30, 2019.**) has been **extended upto February 28, 2020.**
3. The date of Filing of Return of Total Income / Statements of final taxation for Companies for tax Year 2019 which was due on **December 31, 2019** has been **extended upto February 28, 2020.**

Please click below to read the entire Circular

<http://download1.fbr.gov.pk/Docs/2020131181327864IncomeTaxCircular01OF2020.pdf>

EVENT OF THE MONTH

MR. SHARIF UDDIN KHILJI, FCA, CHIEF EXECUTIVE, KHILJI AND CO participated in a Group Discussion and delivered lecture in an event, The Institute of Chartered Accountants of Pakistan (ICAP) Islamabad organized Professional Development Activity for ICAP trainee students having more than 6 months of experience in any TOs. The activity was designed to groom and nurture our trainee student in a wide array of areas which could be pivotal for their professional and training duration.



SOCIAL MEDIA PRESENCE

We at Khilji & Co, Chartered Accountants are fully aware of the fact that in this modern day and age connectivity is the key. Hence, we keep of striving for this through various social media forums. Please visits our pages and do provide your valuable comments.

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- **YOUTUBE:** https://www.youtube.com/channel/UCA4UjhDS_AMKNOFVu7_Qjyg