

From: **Asif Siddiq Kasbati** <asif.s.kasbati@professional-excellence.com>

Date: Thu, Dec 18, 2025 at 5:45 PM

Subject: TLQC3397= No minimum Tax u/s 113 on Distributors on Gross sales and KC Views

## 590+ Taxes & Levies Quick Commentary - TLQC 3397

### I. BACKGROUND

1. We also refer to the related Important TLQCs **in trail, blue, italic and double Line** (a) 2643 of 15.2.24 about SST on Distributors: SCP order against Taxpayers & Recommendations (b) 2625 of 31.1.24 about SST on Distributors - SCP order against Taxpayers expected & KCV

3. We also refer to several Other TLQCs including (a) 2983 of 23.12.24 about No Minimum Tax on FATA / PATA - ATIR (b) 2865 of 6.8.24 about Manufacturers in Merged Districts of FATA & PATA are IT & ST exempt – SCP (c) 2526 of 26.10.23 about Minimum Tax u/s 113 on Freight Services Fee & not Gross Receipt - LHC

### II. EXECUTIVE SUMMARY

Whether taxpayer Mohsin Brothers (Nestlé distributor) qualifies for Commission deduction u/s 233 or faces minimum tax u/s 113 and Section 236G (as distributor vs. buyer)

Tribunal/CIR-Appeals correctly held taxpayers as Distributor (not seller), entitled to gross profit margin deduction per Distribution Agreement. No tax minimum tax u/s 113 on full gross sales.

### III. KASBATTI & CO ViEWS

Owing to TLQC2463 & 2425 of 15.2.24 & 31.1.24 respectively, there can issue at the Supreme Court. Hence, we will share our Recommendations in the upcoming QC shortly, ISA.

### IV. DETAILS

#### A. Reference & Issues

1. Further to KQU 3701 of 15.12.25, **being an important matter**, we would inform you [IT Order u/s 113 of CIR VS Mohsin Brothers, etc - ITR 80/2025 – LHC of 15.10.25](#) ([Attachment 3397.1 - not on LHC web but found from reliable resources](#)) in ensuing paragraph, with emphasis ours in **bold** & Underline for quick reading.

#### B. Reference Application Details

This reference application under Section 133 of the Income Tax Ordinance, 2001 is directed against order dated 14.03.2025 passed by the Appellate Tribunal Inland Revenue, Single Bench, Multan (the Tribunal").

#### C. Question of Law Pressed

Although multiple questions of law have been framed, however, following question has been pressed during the course of arguments:

*"Whether in the facts and circumstances of the case, the learned ATIR was justified to ignore that minimum tax under Section 113 of the Income Tax Ordinance, 2001 has rightly been charged as the taxpayer failed to substantiate his claim regarding profit margin/commission in the shape of deduction under Section 233 of the Income Tax Ordinance, 2001 rather the withholding agent/manufacturer deducted tax under Section 236G of the Income Tax Ordinance, 2001 by treating it distributor and not commission agent?"*

#### D. Tribunal's Findings Affirmed

1. The Tribunal has affirmed the findings of the Commissioner Inland Revenue (Appeals-III), Lahore (Camp at Sahiwal) ("CIR-Appeals"). The core issue is whether the respondent-taxpayer is a Distributor of M/s Nestle for Fast Moving Consumer Goods or is to be treated as a buyer. The Assessing Authority, who acknowledged the Distribution Agreement, has merely relied upon the nomenclature of the agreement to hold that the relationship between M/s Nestle and the respondent-taxpayer is that of seller and buyer.

2. Hence, further sale of the products of M/s Nestle by the Respondent-taxpayer makes the Respondent-taxpayer as a seller and hence, liable for turnover tax, which is misconceived.

## **E. LHC Deliberations and Decision**

1. The Distribution Agreement clearly envisages gross profit/margin of the Distributor, Retail price offered to the consumer and the distribution territory etc., and the respondent-taxpayer cannot act beyond the scope of the said Distribution Agreement, therefore, the respondent-taxpayer cannot be charged tax on gross sales.

2. The said findings of fact by CIR-Appeals and affirmed by the Tribunal do not merit interference and no question of law arises out of the impugned order.

3. In view of the above, the present reference application is decided against the applicant-department and in favour of the respondent-taxpayer. Accordingly, reference application is **dismissed**.

## **V. FURTHER DETAILS & SERVICES**

Should you require any clarification or explanations in respect of the above or otherwise, or require Income Tax, Federal & Provincial Sales Tax or Withholding Tax Statement, Advisory, Return Filing or Review services, please feel free to email Mr Amsal at [amsal@kasbati.co](mailto:amsal@kasbati.co) with CC to [info.kasbati@professional-excellence.com](mailto:info.kasbati@professional-excellence.com), [asif.s.kasbati@professional-excellence.com](mailto:asif.s.kasbati@professional-excellence.com).

Best regards for Here & Hereafter  
Asif S Kasbati (FCA, FCMA & LLB)

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*From: Asif Siddiq Kasbati <[asif.s.kasbati@professional-excellence.com](mailto:asif.s.kasbati@professional-excellence.com)>*

*Date: Thu, Feb 15, 2024 at 3:58 PM*

*Subject: TLQC2643= SST on Distributors: SCP order against Taxpayers & Recommendations*

## **A. BACKGROUND**

*This refers to following TLQCs (in trail, blue, italic and after double line):*

*(a) 2625 of 31.1.24 about SST on Distributors - SCP order against Taxpayers expected & KCV*

*(b) 2307 of 17.4.23 about SCP Interim order regarding FMCG SST, etc issue*

*(c) While as per TLQC 1969 of 5.9.22 we informed about Leave to appeal has been granted by the Supreme Court (SCP) in cases relating to SST on Distributors but hearing was neither conducted nor stay was granted, hence, the SHC order is the law of the land to the extent of Sindh. It was also then recommended that the Agreement with Distributors & Commission Agents be re-visited by consulting the undersigned or your Advisor.*

*(d) 1680 of 9.10.2021 it was informed about the SHC order of September 2021 against FMCG Distributors who were required by SRB for Compulsory Registration. It was also indicated that judgment could have affected / may affect Cement and Other Distributors too.*

(e) 660 of 15.1.2019 about SRB Tribunal order about FMCG Distributors requiring Registration - May effect Cement & Other Distributors.

## B. UPDATED COMMENTARY

### B1. SHC Order Executive Summary - as SCP order is very Brief

You may recall our TLQC 1680 (in trial) whereby we covered the following in the Executive Summary:

1. *The Traders / Appellant after losing Appeal, as discussed in Background appealed to SHC. The SHC vide recent order, in the case of Distributors of ABC VS SRB, gave its verdict on the following questions are reproduced below in Italics for ready reference:*

(i) *Whether the Applicant is liable to be registered under the SST Act and the Rules made thereunder, since it is not performing any services that may attract the provisions of the SST Act?*

(ii) *Whether the nature of transaction of sale and purchase of goods between the Manufacturer and the Applicant, as envisaged under the letter of appointment dated January 05, 2016 (the "Appointment Letter") executed between the Applicant and the Manufacturer, is distinct from the Taxable service of "supply chain management or distribution (including delivery) service" as stipulated under tariff Heading 9845.0000 in the second schedule of the SST Act?*

(iii) *Whether the learned Appellate Tribunal has misinterpreted and misapplied the Tariff Heading 9845.0000 "supply chain management or distribution (including delivery) service", as stipulated under in the second schedule of the SST Act?*

2. *The SHC held that the nature of transaction of sale/purchase of goods between the manufacturer and the Applicant established through the agreement / appointment letter aims to propel a service performed by the Applicant which could rightly fall under the head of "supply chain management/distribution (including delivery) service", hence attracts the provisions of the SST Act. The SRB Tribunal did not misinterpret or misapplied the relevant tariff heading 9845.0000 to the case of the Applicant. Resultantly Questions I and II are answered in Affirmative and Question III is answered in Negative.*

3. *It is worthwhile to note although Agreement between Traders/Distributor and Manufacturers differs from one to other, however, the SHC order has a far reaching effect on Traders / Distributors as well as Manufacturers. Hence, we understand the matter of several entities will land into Appellate Forums and Court.*

### B2. SCP Brief order

Further to KQU 2665 dated 15.2.24, **being an Important matter**, we would inform you about SCP very brief order in CPs 6007 to 6022, etc of Mubbashir Traders, etc VS SRB, etc (Attachment 2643.1).

2. You may recall from our TLQC 2625 (in trial) that, as per reliable sources, the SCP has finally heard the Appeals heard and the Appeals are likely to be decided **against the Taxpayers**. We are now able to lay our hands on the SCP order.

3. The SCP held that the Contentions raised by the Learned Counsel for the Petitioners have been convincingly answered in the impugned judgment. No jurisdictional error, illegality or irregularity in the impugned judgment has been pointed out to the SCP. In this background the SCP is of the view that the impugned judgment does not warrant any interference. Leave is, therefore, declined and these petitions are dismissed.

## C. KASBATI & CO VIEW/RECOMMENDATION

1. As Distributors/Traders margin (difference between sales price of Distributor and buying price of the same) is subjected to Federal Sales Tax. Hence, we also expect that like Toll Manufacturing (though resolved now), etc issues, this issue will inter alia lead to dispute before FBR and Provinces unless the same is amicably resolved by FBR & SRB.
2. We understand that it may have significant impact on not only Distributors of FMCG (as in this case) but may also have effects on Distributors of Cement, Pharma, Lubricants, Tea, Soap, Cars, Packed Food & related items; not only in Sindh but other provinces as well.
3. Accordingly, we recommend that the Agreement with Distributors, Commission Agents be re-visited by consulting the undersigned / your Advisor / Experienced Tax Head.
4. Moreover, all the MOUs, Agreement and Contacts are executed with prior approval of undersigned / your Adviser / your Legal & Tax Team.
5. We have a long experience to do so, in Professional as well as Industry for over 30+ Years; as evident from the Background of this as well as several Commentaries.

#### **D. FURTHER DETAILS & SERVICES**

Should you require any clarification or explanations in respect of the above or otherwise, or require Income Tax, Federal & Provincial Sales Tax or Withholding Tax Advisory, Statement or **Return Filing or Review** services, or related accounting matters like the above, please feel free to email Mr Amsal at [amsal@786tax.com](mailto:amsal@786tax.com) with CC to [info.kasbati@professional-excellence.com](mailto:info.kasbati@professional-excellence.com). Your Goodself may continue to get other services from your current Tax & Legal Advisors.

Best regards for Here & Hereafter  
Asif S Kasbati (FCA, FCMA & LLB)

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From: **Asif Siddiq Kasbati** <[asif.s.kasbati@professional-excellence.com](mailto:asif.s.kasbati@professional-excellence.com)>  
Date: Wed, Jan 31, 2024 at 3:28 PM  
Subject: TLQC2625= SST on Distributors - SCP order against taxpayers' expected & KCV

Dear Learned Professionals

#### **A. BACKGROUND**

This refers to TLQCs (in trail, blue, italic and after double line) related to this TLQC:

- (a) 660 of 15.1.2019 about FMCG Distributors requiring Registration - May effect Cement & Other Distributors.
- (b) 1680 of 9.10.2021 it was informed about the SHC order of September 2021 **against FMCG Distributors** who were required by SRB for Compulsory Registration. It was also indicated that judgment could have affected / may affect Cement and Other Distributors too.
- (c) While as per TLQC 1969 of 5.9.22 we informed about Leave to appeal has been granted by the Supreme Court (SCP) in cases relating to SST on Distributors but hearing was neither conducted nor stay was granted, hence, the SHC order is the law of the land to the extent of Sindh. It was also then recommended that the Agreement with Distributors & Commission Agents be re-visited by consulting the undersigned or your Advisor.
- (d) 2307 of 17.4.23 about SCP Interim order regarding FMCG SST, etc issue

#### **B. UPDATED COMMENTARY**

As per reliable sources, the SCP has finally heard the appeals heard last week and the appeals are likely to be decided against the taxpayers.

*We understand the order is being drafted and will be released shortly. We will keep you posted of any update as soon as it comes to our knowledge, keeping in view yours and our time constraints.*

### **C. KASBATI & CO VIEWS (KCV)**

*We reiterate our earlier recommendation that the Agreement with Distributors & Commission Agents be re-visited by consulting the undersigned or your Advisor, considering the SHC order and upcoming SCP order and forward to all your relevant Departments.*

### **D. MULTIPLICATION**

*Although all the Commentaries are to the extent of the Subscribed IDs only, however, your Goodself is allowed to share this QC for the Noble Cause to Impart Knowledge and be ready for serious repercussions by all your relevant Departments and remain Updated by having KC Commentaries with proper Background for Better Tax Planning & Savings, on a Timely basis in the Competitive Market and for your Jobs & Clients' Survivals.*

### **E. FURTHER DETAILS & SERVICES**

*Should you require any clarification or explanations in respect of the above or otherwise, or require Income Tax, Federal & Provincial Sales Tax or Withholding Tax Advisory, Statement or Return Filing or Review services, or related accounting matters like the above, please feel free to email Mr Amsal at [amsal@786tax.com](mailto:amsal@786tax.com) with CC to [info.kasbati@professional-excellence.com](mailto:info.kasbati@professional-excellence.com). Your Goodself may continue to get other services from your current Tax & Legal Advisors.*

*Best regards for Here & Hereafter  
Asif S Kasbati (FCA, FCMA & LLB)*