

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

Date: Tue, Dec 23, 2025 at 5:40 PM

Subject: TLQC3402= No Tax u/s 113 on Distributors per LHC but KC Urgent Recommendation as SCP order

590+ Taxes & Levies Quick Commentary - TLQC 3402

I. BACKGROUND

1. We refer to the related Important TLQCs in **trail, blue, italic and double line** (a) 3397 of 18.12.25 about **No minimum Tax u/s 113 on Distributors on Gross sales and KC Views** (b) 2643 of 15.2.24 about **SST on Distributors: SCP order against Taxpayers & Recommendations** (c) 1680 of 9.10.21 about **FMCG Distributor require Registration-May effect Pharma, Cement, Other Distributors-HC**

3. We also refer to several Other TLQCs including (a) 2625 of 31.1.24 about SST on Distributors - SCP order against Taxpayers expected & KCV (b) 2983 of 23.12.24 about No Minimum Tax on FATA / PATA - ATIR (c) 2865 of 6.8.24 about Manufacturers in Merged Districts of FATA & PATA are IT & ST exempt – SCP (d) 2526 of 26.10.23 about Minimum Tax u/s 113 on Freight Services Fee & not Gross Receipt - LHC

II. EXECUTIVE SUMMARY & KC VIEWS

1. As per TLQC 2297 of 18.12.25 (**in trail**) we sent Commentary and Views [CIR VS Mohsin Brothers, etc - ITR 80/2025 – LHC of 15.10.25](#) (**Attachment 2402.1**)

2. In that case the issue was 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). As Per LHC order of 15.10.25 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.

3. Owing to TLQC2463 & 2425 of 15.2.24 & 31.1.24 respectively, there can issue at the Supreme Court. **Hence, we are covering the History & our Recommendation in ensuing paragraphs**

III. HISTORY OF ALMOST SIMILAR CASE BUT for Sindh Sales Tax

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

You may recall our TLQC 1680 (in trail) 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.**

B. 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 trail) 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.

IV. KASBATI & CO RECOMMENDATION

1. Having stated as above, it is worthwhile to study SCP & SHC orders in detail, which are in the trail.

2. As Distributors/Traders margin (difference between sales price of Distributor and buying price of the same) is subjected to Federal Sales Tax, however supply chain issue arose in **SST taxing full gross amount**.

3. We understand that SCP & SHC order 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 Lahore but other provinces as well.**

4. Accordingly, we recommend that the Agreement with Distributors, Commission Agents be re-visited by consulting the undersigned / your Advisor / Experienced Tax Head.

5. Moreover, all the MOUs, Agreement and Contacts are executed with prior approval of undersigned / your Adviser / your Legal & Tax Team.

6. 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.

7. In certain cases, SRB has agreed to certain pre-agreed formula.

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 Statement, Advisory, Return Filing or Review services, please feel free to email

Mr Amsal at amsal@kasbati.co with CC to info.kasbati@professional-excellence.com, asif.s.kasbati@professional-excellence.com.

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

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Managing Partner

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

Date: Thu, Dec 18, 2025 at 5:44 PM

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

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. KASBATI & 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 with CC to info.kasbati@professional-excellence.com, asif.s.kasbati@professional-excellence.com.

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

From: **Asif Siddiq Kasbati** <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 trail) 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 trail) 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 with CC to 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)

From: Asif S Kasbati <asifskasbati@tax-excellence.com>

Date: Sat, Oct 9, 2021 at 11:00 AM

Subject: TLQC1680=FMCG Distributor require Registration-May effect Pharma, Cement, Other Distributors-HC

Dear Learned Recipients

A. BACKGROUND

This refers to QC 660 dated 15.1.19 (in trail, in blue, in italic and after double line) whereby we sent our Commentary on SRB Tribunal order dated _____ wherein it was held that _____ were required to be Registered; which order may affect Pharma, Cement & Other Distributors.

B. EXECUTIVE SUMMARY

1. The Traders / Appellant after loosing Appeal as discussed in Background appealed to HC. The HC vide recent order, in the case of _____ VS _____, 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 HC 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 HC 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.

4. 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, etc issues, this issue will inter alia lead to dispute before FBR and Provinces unless the same is amicably resolved by FBR & SRB in.

5. We understand that it may have significant impact on not only Distributors of an _____ but may also have effects on Distributors of Pharma, Cement, Lubricants, Tea, Soap, Cars, Packed Food & related items, Other Distributors and / Commission agent of Sindh and Punjab.

6. Accordingly, we suggest that the Agreement with Distributors & Commission Agents be re-visited by consulting the undersigned.

C. DETAILS

In Basic Facts paras 1.1 & 1.2, emphasis in **bold** ours.

1. Basic Facts

1.1 The Applicant is a registered Taxpayer engaged in the business of buying and selling of goods, holding a valid Federal NTN. The Respondent sent a Show Cause Notice dated 2.5.17 to the Applicant, in terms of which, the Applicant was called upon to show cause as to why it should not to be compulsorily registered under section 24B of the SST Act as it was providing distribution services to the manufacturer named as ABC (Para 2 of order).

1.2 In reply, the Applicant took the position that it was not rendering any service including delivery services to ABC in the capacity of its distributor, and for such a Tax incidence, the Applicant was already registered and paying Federal ST under the Federal ST Act, therefore, the SST Act was not applicable to it (Para 2).

1.3 The Respondent / SRB did not accept the submissions made by the Applicant and passed Order-in-Original (**OnO**) 86/2017 against the Applicant and hence led to Compulsory Registration (Para 2).

1.4 Being aggrieved, the Applicant filed Appeal before the Respondent however, the said the Respondent vide its Order-in-Appeal upheld the OnO. After being compulsorily registered under the SST Act, the Applicant was directed by the

Respondent to furnish records and documentation for its assessment under section 52 of the SST Act, vide notice dated 1.10.18 against which the Applicant filed an Appeal before the Respondent on the grounds that the order passed by the Commissioner (Appeals) was bad in law, and on the facts of the case. The Tribunal, however, rejected the Appeal vide the impugned order dated 22.11.18 passed in Appeal 81/2018 and connected Appeals (including Appeal 61/2018 - refer to QC 660 in trail) (Para 2).

2. Learned Counsel for Applicant / Taxpayer Submissions

2.1 Orders passed by previous forums were illegal, based on misreading of facts and misinterpretation of the relationship between the Applicant and ABC being regulated through the appointment letter dated 5.1.16 proved that the Applicant at all material times remained a buyer/purchaser of the goods from the manufacturer/ABC. A distribution agreement indicates a long-term relationship between a manufacturer and distributor, who in essence remains a buyer of latter's goods. However, instead of a one-time or a random purchase, the frequency of purchases between a manufacturer and his distributor is regulated and governed through a distribution agreement instead, and in the present case, the Applicant does not provide any services to the manufacturer. The agreement/appointment letter proves that after purchasing goods, the Applicant acquires absolute right / discretion to sell those to any person of its choice (Para 3).

2.2 After buying goods from the manufacturer against FST invoices under the FST Act, the Applicant sells those to wholesalers and retailers, which are the Applicant's own customers, and issues FST invoices to them in its own capacity under the ST Act and if the Applicant was to sell goods as an agent of the manufacturer, in that scenario, the manufacturer would have had to directly issue Sales Tax invoices to each retailer and the wholesaler (Para 3).

2.3 Since latter is not the case (i.e., not an agent, therefore, the Applicant at all material times remained a buyer of the goods and as such, is not providing any service under the Tariff Heading 9845.0000 [supply chain management or distribution (including delivery) service] of the Second Schedule of the SST Act. Reliance was placed on the judgment reported as ----- (Attachment 1680.1) where the Apex Court held that the mere fact a person was called distributor cannot exclude him from the category of a wholesale dealer. Reference was also made to an Indian case reported as ----- (Attachment 1680.2). The Applicant is already paying Taxes under the federal ST regime on the Taxable supplies of goods made by it, compulsorily registering the Applicant under the SST Act when Applicant is not performing any services, amounts to forcing the Applicant to do something which law does not require him to do, making it a violation of Articles 3 and 4 of the Constitution. The instant reference application may kindly be accepted, and the questions raised herein may be decided/answered in favor of the Applicant (Para 3).

3. Learned Counsel for Respondent / Department Submissions

The orders passed were supported against the Applicants at different levels and stated that the Applicants have miserably failed to prove that the arrangement they had with the respective manufacturers could escape from the definition of Supply Chain Management or distribution etc services falling under Tariff Heading 9845.0000 and requested that the reference be answered in favor of the department and against the Applicant (Para 4).

4. HC Deliberation

4.1 The HC examined the letter/agreement which created relationship between the Applicant and the manufacturer/ABC. Full text of the Agreement between these parties is reproduced below in Italics for ready reference; while **bold** matters are those used in the HC para deliberation as per our standing:

M/s M. Distributors of ABC,
Sadjadpour

Dear Sir/s,

We are pleased to appoint you as distributor/s for all products manufactured & traded by the company.

(1) Your appointment will be effective from 05/01/2016 and will remain in force till it is terminated by the Company at its sole discretion.

(2) This is understood that no territory has been exclusively allotted or assigned to you for marketing, sole and distribution of our products and the Company shall not be bound to limit any area. The company will be entitled to appoint one or more distributors for the same area or may give one or more brands to the same or more distributors as the Company may deemed appropriate.

(3)(a) The Company gives prompt payment discount if payment(s) are received in advance or within 24 hours of delivery of stocks.

(b) The payments will be made through bank drafts drawn/payable at Karachi. and drawn in the name of the company or deposited in the bank(s) authorized by the company.

(4) All supplied to you will be invoiced at the rates applicable on the date on which the goods will be dispatched by the Company. Goods once sold will not be taken back. The terms and condition of sale may be altered by mutual consent.

(5) You shall make advance payments for all the orders placed with the company in case of a discrepancy between the value of the order placed and the quantity of goods dispatched, the difference will be adjusted against your next order.

(6) The Company may, in its discretion, extend to you, credit facilities, on such terms and conditions as it may deemed proper, in which case the Company will have lien on the stock lying with you and the Company's representatives shall be entitled to check the same periodically for which you will extend all reasonable facilities during normal business hours.

(7) Each of your order shall be subject to acceptance at the Head Office of the Company. Transactions shall be deemed to have been concluded at Karachi.

(8) You shall use your best endeavors to promote and increase the sale of products. You shall always maintain a reasonably adequate stock of the / Company's product at your place to ensure prompt deliveries to customers. You shall maintain a Sales force and to ensure reasonably frequent visits to potential customers.

(9) You will place with the Company Security deposit in cash Rs.20,000 (Rupees Twenty Thousand Only) which shall be refunded or adjusted against the bill's receivable on final settlement. in the event of termination. In the meantime, the funds be available to the company for use at its business operation at its sole discretion and no interest, return or profit shall be payable on such deposit

(10) During the term of your distribution ship, the Company may accept and execute any direct order received by it from any customer(s):

(11) No distributors' trade profit will be allowed to you on Sales made by the Company direct to Government Departments, Army authorities and Canteen Stores Departments and you shall not be entitled to make any claim. whatsoever, on the Company in respect of such Sales made directly by the J Company or through any other person or organization.

(12) Our responsibilities will cease as soon as the goods are handed over to the Railway Authorities or Road Transport service and the Company shall not be liable for any damage or shortage that might occur in transit from our place of supply to the destination. In the event of a breakdown of machinery in or any labor trouble at our Factory, or inadequacy of transport facility or Force Majeure or other causes beyond our control, the existence and sufficiency of which the Company shall be the sole judge, if the Company is not liable to execute any order within stipulated time, you will have no right of claim of any sort whatsoever against the Company in respect of non-delivery of goods to you with the stipulated time.

(13) Should you, in our opinion, fail to maintain an increase the Sales of our goods or this arrangement be found unsatisfactory, or should you fail to make payments against the goods ordered by/dispatched to you or commit any breach of terms and conditions mentioned herein, the Company reserve the / right to cancel this Letter of

Appointment at any time without notice. The Company shall be the sole judge as to whether your work and/or this arrangement is satisfactory or not. This Letter of Appointment cancels all previous letters and arrangements. if I any, in writing or otherwise and an existence between you and the Company for the sale of our products and our right and obligation under the cancelled arrangement will remain enforceable against you.

(14) You will submit to the Company daily, weekly, fortnightly and / or monthly stock reports as may be required by us from time to time.

(15) If any stock of the Company's products or lying unsold with you at the time of termination of your Appointment, these will be taken back at the discretion of the Company, in partial settlement of your account, provided these are in saleable condition. Further the value of these stocks, adjustable against your outstanding will be net of ST, Excise Duty and other dues including transport and miscellaneous expenses to be incurred.

(16) In the event of any dispute arises out of these Presents either as to the construction, meaning or interpretation thereof or of the rights and liabilities of the parties or the performance or non-performance thereof, or as to any matter of whatsoever nature, touching or pertaining these Presents, such dispute, litigation, or difference of opinion shall first be referred for arbitration to Sole Arbitrator, to be appointed by mutual consent. Resort to arbitration shall precede any other legal proceeding shall be governed by the laws of Islamic Republic of Pakistan and jurisdiction shall lie in the Honorable Court of Sindh.

(17) **This Appointment Letter does not authorize you to act as an Agent, Partner or Sole Distributor.** As such it does not authorize you to pass on the benefit of / this Letter of Appointment to any other person, organization or enterprises by sub-letting or sale for any consideration or otherwise.

(18) The arrangements made with you for the sale of the Company's products shall not be assignable transferable.

(19) You will be entitled to appoint your staff at your risk and costs to promote and organize the sale of the Company's product and for which the Company will not be responsible in any manner.

(20) To comply with any rules, regulations and by laws framed by the Government from time to time or any legal requirements, the Company will be entitled to make such changes as may be necessary from time to time in the Letter of Appointment.

4.2 As it could be seen, the Applicant was appointed as a distributor and not as an end-user/customer of goods the of the manufacturer meaning thereby the Applicant becomes a part of the supply chain flowing from the manufacturer to the end-users or customers. The assertion of the learned counsel that after purchasing the goods the Applicant becomes absolute owner thereof has been challenged at all forums The OnO treated this arrangement as one of distribution/supply chain and held that M/s M. Distributors of ABC receive a consideration in the form of trade discount which the Principal offer and pay to them for rendering all such services and carrying out all these activities in the time and manner prescribed in the agreement. Such a trade discount, being the consideration, is given as percentage of the invoice price on items to item basis (Para 7).

4.3 The person is not independent in his actions and all such activities relating to distribution and door to door delivery of goods/products of ABC, are completely regulated by the terms and conditions set out in the agreement which also negates the contention of the person that they are the owner of the goods/products and act independently for the trade of goods and products. Even they are bound to follow the company's policies and directives in connection with the distribution of their products in given territory. It's their obligation to protect and promote the name/brand and interests of the Principal (Para 7).

4.4 The above position explicitly shows that M/s M. Distributors of ABC is engaged in providing or rendering Taxable services of distribution for ABC for which they receive consideration in the form of discounts, bonuses, or trade margins (KC Comments: Bonuses and Trade Margins is not specified in the above quoted Letter). Even their decisions of passing on the commission amount, offering discounts and bonuses to customers, clients, retailers, and wholesalers are influenced by the terms of agreement. The company continuously monitors the progress of the distributor and may cancel the contract in case of unsatisfactory performance which also shows that they do not independently. The ABC company facilitates the person to take back the saleable stock if contract is cancelled (Para 7).

4.5 The person cannot sublet the activities or pass the benefit of the contract to another person. The contract is alterable to fulfill any legal requirements. Moreover, any dispute arising during the execution of the contract is subject to arbitration by the Arbitrator or the High Court. The abovementioned facts of the case unambiguously show that M/s M. Distributors of ABC is doing all activities for and on behalf _____ against a certain consideration, hence providing or rendering services as distributor. Moreover, such services are Taxable services under Second Schedule to SST Act at 13% of the value of services (Para 7).

4.6 The Order in Appeal, in connection with the relationship between the parties emanating from the above quoted agreement/appointment letter observes that now, if these meaning are read with the facts and circumstances of the instant case, it will be understood that the transaction involved comprises of the activities more than the mere activities of distribution or the delivery services. And the nature of transaction in hand can be determined by the terms and conditions of the Agreement which is evident and is explanatory of the same. In other words, the spirit underlying the value addition is founded on the fact that the appellant providing or rendering services as a distributor are not self-consumed and the services are rendered or delivered in furtherance of an activity in a supply chain management (Para 8).

4.7 The Appellant is to act as a distributor and to use its facility to store the products on behalf of the Manufacturer and further the Appellant must use its resources for delivery and distribution of the product to the market level furthermore, it is to be seen that the transaction involved comprises of two ends. One is the end of provision of service and the other is the distribution of goods to market. And further fact is that the trade discount is given to the Appellant by the Manufacturer (Para 8).

4.8 In this regard the sample Sales invoices provided by the Appellant have been examined and perused. As already established above, the role of the Appellant is that of an intermediary/distributor. And for performing and acting as such the Appellant is providing or rendering services to the Manufacturer who is consumer of services and the market entities are the receiver of products. Thus, factually, the burden of consideration/trade discount has been passed onto the end consumer of the service (i.e., the Manufacturer) (Para 8).

4.9 The services and their value can also be quantified in the shape of discount granted by the service recipient (i.e., the Manufacturer). As a matter of fact, even after the deduction of trade discounts, the service recipient (i.e., the Manufacturer) has a certain margin of interest over the marketable price. And in such a case the Appellant is liable to charge the Tax on services over and above the discounted price; it will be the service recipient (i.e., the Manufacturer) who bears the burden for being the recipient of services. And because of this arrangement, the profit margin of the service recipient (i.e., the Manufacturer) may reduce but the price of the product will neither increase nor the end consumer of product suffer, therefore, no disharmony may be due to price fixation by the ST Act (Para 8).

4.10 The Tribunal in its impugned order has a/so held that even if it is considered that on payment of consideration by the appellant the goods become its property and ownership along with risk and reward transferred to the appellant one thing is clear that the appellant cannot exercise full control over the goods and is bound by the instruction of CPO regarding sale, fixing of price and the area in which the goods are to be sold. In this case, the appellant as distributor acquired goods against cash consideration or credit for supplying to the wholesalers or retailers and in this way, he supplied goods of its principal against fixed margin. From the contents of the agreements produced before us the substance of the same appears to facilitate sale and delivery of goods and not simple sale of goods (Para 9).

4.11 In the HC's view, in addition to the modes adopted by the supra forums, relationship between the parties as knitted through the above quoted appointment letter can also be analyzed under the "**doctrine of the exhaustion of rights after first sale**". The said doctrine means that an owner of a particular good ceases to have control over further sale of his goods once he has made a valid transaction of sale. It is usually considered as a litmus test in the cases of intellectual property rights. However, the same ratio could also be used in all such cases where a court must examine residual effect of a sale agreement. In a typical sale of goods agreement, upon receipt of considerations, the seller assures delivery of goods in the hands of the buyer, however at certain times the seller is also made responsible to provide for warranties. Other than that, usually such agreement is a close-end arrangement where buyer is free to use, sell, lend, or even abandon or destroy the goods if found unfit for the purpose. If, however, there appears that even after the first sale, the seller retained power to exercise control over the goods, the doctrine of exhaustion of rights becomes an instrument to microscopically analyze such relationship (Para 10).

4.12 In the current case, when the Applicant claims that it has made full and final payment for the goods and has received possession thereof one cannot fail to observe that even after that sale, the seller (as in clause B for example) has retained right to check that the buyer has sufficient resources for re-sale of the goods. The arrangement also casts duty on the Applicant “**to make endeavors to promote and increase the sale of products and to maintain at all times a reasonably adequate stock of the goods at its place to ensure prompt deliveries to the customers and be vigilant to look for potential customers**”. The Sale of Goods Act, 1930 only permits seller’s rights on the goods through sections 46 and 47 where the seller could have a lien on the goods if part of the consideration remained unpaid, which is not the case at hand as the Applicant claims that there is no lien of the manufacturer on the goods as it has made full payment in advance (Para 11).

4.13 The HC therefore do not see the arrangement between the parties as a typical sale/purchase one and clearly the Applicant is mandated to perform some services for the benefit of the manufacturer even after making full and final payment (Para 11).

4.14 This is exactly where the definition of the term “service” comes handy which as defined by the SST Act, is to mean “**anything which is not goods and to include but not be limited to the services listed in the First Schedule of the said Act**”. Explanation-I to this definition clause clarifies that a service shall remain and continue to be treated as service regardless of whether the providing thereof involves any use, supply, disposition, or consumption of any goods either as an essential or as an incidental aspect of such providing of service. Hence, the stance of the Applicant that it pays ST on the goods under the ST Act does not qualify him for any credit under the SST Act (Para 11).

4.15 Coming back to the relationship established between the parties through the agreement/letter, even if it is considered that on full payment of consideration by the Applicant the goods become its property and ownership along with risk and reward is transferred to it, it is however clear from the above relationship that the Applicant is restricted from exercising full control over the goods and is bound by further instructions of ABC (which do not relate to warranty or after sale service). From the contents of the agreement, it becomes clearer that the arrangement between the parties, while aims to facilitate sale and delivery of goods to the consumers, leaves a residual element of control of the manufacturer on the goods which is exercised through the hands of the Applicant, which clearly does not fit the regime of a classical sale of goods agreement (Para 12).

4.16 The HC also cognized the legal position that while construing a document, whole document is to be read and be considered to ascertain the and object of the document. In other words, for determining the true purpose of a document, one must investigate its substance and not the form. In the case of ----- v. ----- (----- - Attachment 1680.3) divisional bench of this court has held that “statute/instrument/document is to be read as whole, and an attempt has to be made to reconcile various clauses for a rationale meaning while avoiding redundancy to any part thereof”. In the other reported judgment in the case of ----- v. ----- (----- - Attachment 1680.4). It has been held that “... in Revenue cases one must look at the substance of thing and nor at the manner in which the account is stated” (Para 13).

4.17 In the presence of these precedence, when the doctrine of exhaustion of rights seems to indicate that the seller is still exercising rights over the goods, one cannot hold that the present arrangement is devoid of any element of service provided by the Applicant to foster the aims and objects of the manufacturer through the Applicant’s hands. We therefore cannot obviate from our minds that some service is performed by the Applicant aimed to give a value-add to the manufacturer’s profitability (Para 13).

4.18 Now coming to the case law cited by the learned counsel for the Applicant viz Pakistan through the Secretary Ministry of Finance. ----- v. ----- (----- - Attachment 1680.1), ipso facto, the HC did not see any relevance of the said judgment with the facts and circumstances of the present case. In the cited case, the question before the Hon’ble Supreme Court was that at what value Excise Duty be charged under Central Excises and Salt Act, 1944, as there was a dispute that it should be charged at wholesale price rather than the gate-out price of the manufacturer. Our Lords held that the intention of the legislature was that excise duty should be paid at the prices received by the manufacturer and not on the retail value of the goods, considering that in the distribution chain, discounts are usually given to wholesalers and distributors (Para 14).

4.19 With regards to the other case law cited by learned counsel being ----- v. ----- (----- - Attachment 1680.2) the question before the Supreme Court of India was as to whether Tax would be imposed on the assessed for the goods directly sent by the manufacturers to the consumers falling within the distributorship region of the Applicant. After

detailed analysis of the relevant provisions of the law considering the nature of agreement between the parties and in the light of surrounding circumstances, court held that the assessed as distributor was not an agent of the company in respect of the transaction in question but was a purchaser, hence the transactions were liable to be included in the turnover of the assessed (Para 14).

5. HC Decision

The HC held that the foregoing position of law makes it clear in our minds 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, and the Tribunal did not misinterpreted or misapplied the relevant tariff heading 9845.0000 to the case of the Applicant. Resultantly Questions I and II are answered in Affirmative and the Question III is answered in Negative (Para 15).

D. KC VIEWS AND ASSISTANCE

- 1. The HC 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 the Question III is answered in Negative.*
- 2. It is worthwhile to note although Agreement between Traders/Distributor and Manufacturers differs from one to other, however, the HC order has a far reaching effects on Traders / Distributors as well as Manufacturers. Hence, we understand the matter of several entities will land into Appellate Forums and Court.*
- 3. 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, etc issues, this issue will inter alia lead to dispute before FBR and Provinces unless the same is amicably resolved by FBR & SRB in _.*
- 4. We understand that it may have significant impact on not only Distributors of an _____ but may also have effects on Distributors of Pharma, Cement, Lubricants, Tea, Soap, Cars, Packed Ford & related items, Other Distributors and / Commission agent of Sindh and Punjab.*
- 5. Accordingly, we suggest that the Agreement with Distributors & Commission Agents be Re-visited by Consulting the Undersigned.*

Best regards

Asif S Kasbati (FCA, FCMA & LLB)