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Subject: TLQC3416= FST Demand Based on ITR–STR Difference deleted - LHC

590+ Taxes & Levies Quick Commentary - TLQC 3416

I. EXECUTIVE SUMMARY

A. Facts: Tax authorities alleged **sales suppression** based solely on difference between:

1. **Sales Tax Returns:** Rs 4,472,301 (post-registration sales).
2. **Income Tax Returns:** Rs 22,633,709 (including pre-registration sales).
3. **Discrepancy claimed:** Rs 18,161,408 → Tax demand @17% + 3% = Rs 3,632,281 + penalty/surcharge.

B. Taxpayer's Key Defenses

1. **Authorities exceeded show cause notice scope** - Violated Supreme Court precedents (2021 PTD 1392; 2023 SCMR 1856).
2. **Appellate Tribunal order non-speaking** - Failed Section 24A, General Clauses Act, 1897 requirements.
3. **No proof of taxable supplies** - Income tax sales (pre-registration) sales tax liability; presumption invalid.

C. Court's Legal Findings

1. **Question 1:** Appellate Tribunal failed to issue **reasoned, speaking order** → **Affirmative** (in taxpayer's favor).
2. **Question 2:** Tribunal exceeded show cause notice allegations, ignoring Supreme Court law → **Affirmative**.
3. **Question 3:** Sales tax cannot be imposed by presumption or ITR-STTR difference alone → **Negative** (tax authorities unjustified).

Tax authorities must (1) stay within show cause notice scope (2) issue fresh notices for new issues post-taxpayer response, and (3) provide speaking orders - violation renders proceedings void.

II. DETAILS

A. Reference & Issues

1. Further to KQU 3732 of 10.1.26, **being an important matter**, we would inform you about [ST Act u/s 47 of Sabir Press Calendar VS CIR, Faisalabad & other, etc - STR 73619/2024 - LHC](#) (**Attachment 3416.1**) in ensuing paragraph, with emphasis ours in **bold & Underline** for quick reading.

2. Brief facts of the case are that petitioner is an Association of Persons (**AOP**). During interim scrutiny of monthly sales tax record, on account of certain discrepancies found in the results, declared by the applicant, pertaining to tax year 2022, a show cause notice was issued to the applicant-taxpayer, which culminated in passing of order-in-original dated 11.09.2023 whereof an amount of Rs 3,632,281 stood recoverable along with default surcharge and imposition of penalty under the relevant provisions of law. The aforesaid order-in-original was upheld by CIR (Appeals) vide its order dated 16.01.2024. Being dissatisfied, applicant-taxpayer preferred second appeal before learned Appellate Tribunal, which was dismissed vide order dated 20.8.24. Hence, instant Reference Application.

3. Through instant Reference Application under Section 47 of the STA, 1990 read with Section 133(1) of the ITO, 2001, following questions of law, asserted to have arisen out of impugned order dated 20.8.24, passed by learned ATIR, Lahore Bench, Lahore, have been pressed and argued for our opinion:-

B. Proposed Questions of Law

1. Question 1: Speaking Order Requirement

1) *Whether on the facts and in the circumstances of the case, the Appellate Tribunal Inland Revenue has failed to pass a just, fair, proper, reasoned and speaking order, as required under Section 24A of the General Clauses Act, 1897? If so:*

i. Whether such a non-speaking order is not sustainable in the eye of law?

2. Question 2: Scope of Show Cause Notice

2) *Whether on the facts and in the circumstances of the case, the Appellate Tribunal Inland Revenue has erred in law and fact both, while travelling beyond the allegation voiced and raised in the show cause notice and in the sheer ignorance and disregard of the law laid down by Supreme court in cases reported as (i) 2021 PTD 1392; (ii) 2023 SCMR 1856?*

3. Question 3: Tax Imposition Validity

3) *Whether on the facts and in the circumstances of the case, the Appellate Tribunal Inland Revenue was justified in ignoring that sales tax cannot be imposed firstly on the basis of presumption and without establishing and discharging onus to the effect that alleged sales were taxable supplies amenable to charge of tax under STA, 1990 and secondly tax cannot be imposed merely on the basis of difference in sales declared in the income tax return and the sales recorded in sales tax return?*

C. Learned Counsel for Applicant / Taxpayer Submission

Learned counsel for applicant-taxpayer submits that learned forums below have travelled beyond the allegation voiced and raised in the show cause notice in violation of the dictum of law laid down by the Hon'ble Supreme court in cases reported as Messrs Fateh Yarn (Pvt.) Ltd. Faisalabad v. Commissioner Inland Revenue, Faisalabad and others (2021 PTD 1392). He maintains that even otherwise, impugned Appellate Tribunal's order is absolutely non-speaking within the contemplation of the provisions of Section 24-A of the General Clauses Act, 1897.

D. Department's Response

Contrarily, learned Legal Advisor for respondent-department defends the impugned order by contending that learned counsel for applicant-taxpayer has failed to point out any illegality or legal infirmity therein.

E. LHC Deliberations

1. Factual Background Analysis

1.1 The record reveals that the taxpayer was served with a show cause notice regarding alleged suppression or concealment in sales tax records when compared to income tax records for the period under consideration. The stance of the learned counsel for the applicant-taxpayer is that the learned forums below have exceeded the scope of the allegations raised in the show cause notice. Specifically, the alleged suppression of sales for the purpose of sales tax was based on a single claim: that there was a difference in the sales declared in the Income Tax Returns and the Sales Tax Returns.

1.2 The counsel argues that the learned forums below have failed to consider that the sales declared in the Sales Tax Returns reflect sales transacted after the taxpayer's sales tax registration, whereas the sales declared in the Income Tax Return reflect sales conducted prior to the registration.

1.3 It is contended that declarations made under the ITO, 2001, alone cannot form the basis for determining taxable supplies under the STA, 1990, as the dynamics of the two fiscal laws are distinct from one another.

1.4 Furthermore, unless taxable supplies are identified and the onus of proof is discharged by the respondent authorities, such sales cannot be presumed to be taxable supplies under the STA, nor can they be subjected to tax. The taxpayer asserts that the tax authorities should not take unilateral, arbitrary action or exceed the scope of the original show cause notice.

1.5 For facility of reference, operative part of the show cause notice is reproduced hereunder:-

“Whereas during interim scrutiny of monthly sales tax records, you, of M/s SABIR PRESS CALENDAR, Faisalabad bearing Sales Tax Registration No.3277876252322 have declared results for the tax periods mentioned below and the following discrepancies have been observed:-

SALES SUPPRESSION / CONCEALMENT IN SALES TAX RECORDS WHEN COMPARED TO INCOME TAX RECORDS

During comparison of monthly sales tax returns with income tax returns for the tax years mentioned below, it has been noticed that the registered person being Manufacturer / Importer / Exporter / Service Provider has declared less sales / supplies in sales tax returns. The detailed discrepancy is as under:-

<i>Tax year</i>	<i>Sales declared in sales tax returns</i>	<i>Sales declared in income tax returns</i>	<i>Sales suppression</i>	<i>ales tax recoverable @ 17% plus further tax @ 3%</i>
<i>2022 (01.07.2021 to 30.06.2022)</i>	<i>4472301</i>	<i>22633709</i>	<i>18161408</i>	<i>3632281</i>

Now, on the basis of aforesaid facts, you M/s SABIR PRESS CALENDAR, Faisalabad are charged with the violation of section 3, 6, 7, 11, 22, 23 & 26 of the STA, 1990 and are accordingly called upon to show cause under section 11(2) of the STA, 1990 as to why sales tax amounting to Rs.3632281/- may not be recovered along with default surcharge and penalty under section 34 and 33 of the STA, 1990 respectively.

3. Initial hearing of the case has been fixed for 06.06.2023 at 11:00 AM in the office of the undersigned situated at Regional Tax Office, Jail Road, Faisalabad. You are directed to attend the date of hearing so fixed either yourself or through your legal representative along with relevant record to defend the charges. If no one appeared or no written reply to the show cause notice is received within the stipulated time, the case will be decided ex-parte on the basis of the facts available on record.”

2. Show Cause Notice - Operative Part

2.1 Where, in response to a show cause notice, the taxpayer raises substantial grounds or presents significant factual aspects that were not covered in the initial notice, and which therefore require further inquiry or verification by the department, a fresh or supplementary show cause notice should be issued to the taxpayer if necessary after conducting such further inquiry.

2.2 No determination can be made regarding these new grounds or facts unless the taxpayer is given the opportunity to respond to any deficiencies or misrepresentations found in relation thereto, with such issues specifically alleged in a fresh or supplementary show cause notice.

2.3 Therefore, it would be appropriate that, instead of proceeding under the original show cause notice, a fresh or supplementary notice be issued to the taxpayer in light of the defense presented. In light of the grounds or facts raised in the taxpayer's defense, which were unknown to the tax authorities and thus not part of the original. show cause notice, no further action should be taken under the initial notice.

2.4 Any adjudication on these grounds would be legally unsustainable, rendering the entire process redundant. Charges or allegations in a show cause notice must be specific; otherwise, the taxpayer would be prejudiced and denied the right to a fair trial. The adjudicating authority must confine the proceedings to the specific charges and allegations clearly stated in the show cause notice. Adjudicating a charge or allegation not addressed in the notice would not be legally valid.

2.5 In the present case, after the appellant's response to the show cause notice, the new situation that emerged should have been addressed through a fresh show cause notice, but this was not done. The rationale for not exceeding the scope of the show cause notice is that the aggrieved party must be given the chance to present their case; otherwise, this would violate the principles of natural justice, as the aggrieved party would not have been aware of the new grounds or factual elements and could not have properly defended themselves before the concerned authority. Reference can be made to Commissioner Inland

Revenue v. Messrs RYK Mills (2023 SCMR 1856), Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad v. Messrs Rose Food Industries, Faisalabad and another (2023 SCMR 2070) and Hyderabad Chamber of Commerce and Industry (HCCI) through duly authorized person v. Ministry of Commerce Government of Pakistan through Directorate General of Trade Organization and 4 others (PLD 2024 Islamabad 350).

2.6 While dealing with similar proposition, the Hon'ble Supreme Court in the case of Messrs Fateh Yarn supra, observed as under:-

“7. Likewise, it is an accepted fact that the allegation levelled against the petitioner in the notice was for the period ending in March 2005. However, the subsequent orders passed by the fora below have imposed a tax liability on the petitioner for the period ending in January 2006. This Court has already held in The Collector Central Excise and Land Customs v. Rahm Din (1987 SCMR 1840) that an order of adjudication passed on the basis of a ground not stated in the notice is 'palpably illegal and void on the face of it [para 7]. We see no reason why the same logic should not extend to an order imposing a tax liability for a time period not mentioned in the notice. The purpose of serving a notice on a taxpayer is to notify him of the case against him. When such a document contains incomplete information it can seriously prejudice the taxpayer's defence. As the petitioner has undoubtedly been saddled with a tax liability for a period which was not disclosed in the notice, we exclude the said additional period (March, 2005 till January, 2006) from the purview of the impugned orders passed by the Collector and Collector (Appeals). Accordingly, the taxing officer shall recalculate the outstanding tax liability of the petitioner from the period December, 2001 to February, 2005.”

2.7 In Ramlala v. State of U.P. and others [2023 SCC OnLine (All) 2479], the High Court of Judicature at Allahabad observed that a person must be accorded a fair chance to put up his case and therefore the authorities cannot traverse beyond the show cause notice. In Associated Switch Gears and Projects v. State of U.P. and others (2024:AHC:12780), the High Court of Judicature at Allahabad ruled that the significance of adhering to the confines of a show cause notice lies in upholding the rule of law and preventing the arbitrary exercise of powers.

2.7.1 Any action taken by an authority beyond the scope defined in the notice risks transgressing the boundaries of legality and procedural fairness. Such overreach not only undermines the legitimacy of the authority but also compromises the rights of the individuals or entities involved, potentially leading to legal challenges and eroding public trust.

2.7.2 The Supreme Court of India in the case of The Board of High School and Intermediate Education, U.P. v. Kunari Chitra Srivastava [(1970) 1 SCC 121] has categorically stated that the principle of audi alteram partem was required to be followed even if the same was burdensome in nature. In the said case, Justice S.M. Sikri observed: *Principles of natural justice are to some minds burdensome but this price – a small price indeed – has to be paid if we desire a society governed by the rule of law.*

2.8 A bare perusal of the record reveals that the learned Appellate Tribunal has not independently addressed the material aspect of the matter. As a result, the impugned order fails to meet the requirements of a speaking order as contemplated under Section 24-A of the General Clauses Act, 1897. It was obligatory for the Appellate Tribunal to examine the case with proper application of mind and to provide reasons in support of the impugned order. However, such reasoning is conspicuously absent in this case, rendering the impugned order unsustainable in the eyes of the law. Reference can be made to Pakistan Water and Power Development Authority (WAPDA), WAPDA House, Lahore v. The Commissioner Inland Revenue and others (2022 SCMR 824).

F. LHC Decision

In view of the above, our answer to the proposed questions No.1 & 2 is in the **affirmative** and, to question No.3 is in the **negative** i.e., All questions in favour of applicant-taxpayer and against the respondent-department.

III. 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)

Managing Partner

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