

E-News & Views

2023

A Publication of KTBA

January 2023 to Dec 2023

A publication covering information on recent important judicial pronouncements, circulars and clarifications

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FROM THE DESK OF THE PRESIDENT

My Dear Members,

I am pleased to present to you the comprehensive issue of the E-News and Views publication - Provincial Service Taxes for the full year 2023. This edition is the result of the united and tireless efforts of our esteemed convener, Mr. Hunain Mithani.

This issue contains all the relevant Provincial Service Tax Notifications, Circulars, and Legal Judgments issued throughout the year, serving as a ready reference for your legal writings and client communications. It is a valuable resource for all members of the Bar and the Tax fraternity.

Hunain, a young and dynamic professional, has demonstrated exceptional legal acumen and unwavering dedication to his work. His commitment to excellence is truly commendable.

I extend my heartfelt congratulations to Hunain and his dedicated team, who worked relentlessly to compile the entire year's data—an enormous task, especially considering the shift from quarterly to annual publication to cover pending publications.

Their efforts have not only closed the backlog for 2023 but have also paved the way for the upcoming 2024 edition, expected to be released in October 2025. Achieving this within such a short span of time is a remarkable accomplishment.

This publication stands as a testament to their hard work and will undoubtedly prove to be a highly beneficial and practical tool for all our members.

**Message by;
President
Ali A. Rahim**

FROM THE DESK OF THE CONVENER

Dear Fellow Members,

It is my great pleasure to present the consolidated Provincial Service Tax publication of **E-News & Views** of this Committee for the complete year 2023.

This issue compiles synopses of important Provincial Service Tax case laws reported during the year. It also contains summary of circulars and notifications issued under the all Provincial Service Tax Acts.

I extend my sincere appreciation to the E-News & Views team for their dedication and diligence in compiling this publication. It is my earnest hope that this edition will serve as both a ready reckoner and an informative resource for the esteemed members of our bar, and contribute meaningfully to the improvement of tax practice and the advancement of the profession.

Here, I would like to take a moment to pay tribute to Mr. Khadim Rasool, our respected Co-Convener, who sadly passed away this year. His contributions, wisdom, and unwavering commitment to our Committee will always be remembered and cherished. May his soul rest in eternal peace.

Looking ahead, we are pleased to announce that the publication for the year 2024 will be issued by the end of October 2025, and a separate publication for the period ending June 2025 will be released thereafter.

**Yours in service,
Hunain Mithani**

PROVINCIAL SERVICE TAX CIRCULARS AND SROS

Sindh Revenue Board Service Tax Notifications

NOTIFICATION REFERENCE	Dated	SUBJECT
SRB-3-4/01/2023	4-Jan-23	Amendment in notification No. SRB-3-4/42/2022 dated 15th November 2022-----jurisdictions and functions of the Commissionerates in SRB and units of the services sectors under the SRB Commissionerates
SRB-3-4/02/2023	9-Jan-23	Notification for the appointment of Commissioner-Appeals-III
SRB-3-4/03/2023	10-Jan-23	Amendment in notification no. SRB-3-4/28/2022 dated 5th August, 2022-----jurisdiction of the Assistant Commissioners, SRB
SRB-3-4/04/2023	19-Jan-23	Notification for the amendment on SRO. SRB-3-4/28/2022.
SRB/ADRC/06/2022-23	13-Feb-23	Notification for the appointment of the panel for Alternate Dispute Resolution.
SRB-3-4/7/2023	3-Mar-23	Time-Bound Exemption Of Sindh Sales Tax On Certain Specified Services Received Or Procured By The Projects Duly Approved By The Sindh Public Private Partnership Policy Board
SRB-3-4/11/2023	8-Mar-23	Notification for the jurisdictions of Commissioners.
SRB-3-4/15/2023	25-Mar-23	Amendment in notification no. SRB-3-4/36/2022 dated 13.09.2022 relating to the services provided or rendered for relief work relating to flood effected areas in Sindh.
SRB-3-4/17/2023	5-Apr-23	Amendment in Notification No. SRB-3-4/29/2022.
SRB-3-4/21/2023	13-Apr-23	Sindh Place Of Provision Of Services, Rules, 2023 to be effective from 01.05.2023
SRB-3-4/24/2023	27-Apr-23	Amending Notification regarding the prescribed fee payable under Notification No. SRB--4/5/2013 dated 17th June, 2013
SRB-3-4/27/2023	6-Jun-23	Amendments In Sindh Sales Tax On Services Rules, 2011--Rules Regarding Provisions In Relation To Active Taxpayers
SRB-3-4/28/2023	9-Jun-23	Exemption Of Sindh Sales Tax on Certain Specified Services Received or Procured by Health Department, Sindh in relation to the project for the extension Of Maternal and Child Health Care Facilities
SRB-3-4/29/2023	12-Jun-23	Amendment in Notification No. SRB. SRB-3-4/10/2011.
SRB/3-4/33/2023	20-Jun-23	Amendment in Rule 6 (1) of the Sindh place of provision of Services Rules, 2023
SRB-3-4/35/2023	5-Jul-23	Amendment in notification No. SRB-3-4/34/2022 dated 5th July, 2023-----jurisdiction of the Assistant Commissioners or a Deputy Commissioner, srb
SRB-3-4/34/2023	6-Jul-23	Notification regarding jurisdictions and functions of the commissionerates in SRB and units of the services sectors under the SRB commissionerates
SRB-3-4/37/2023	10-Jul-23	Amendment in notification no. SRB-3-4/28/2022 dated 5th august, 2022-----jurisdiction of the assistant commissioners, SRB
SRB-3-4/38/2023	11-Jul-23	Amendment in notification no. SRB-3-4/37/2023 dated 10th July, 2023-----jurisdiction of the assistant commissioners, SRB
SRB-3-4/39/2023	19-Jul-23	Notification regarding ops appointment of Mr. Hammad Ali Jagirani to be the Deputy Commissioners, SRB and to exercise the powers and functions of Deputy Commissioner, srb
SRB-3-4/40/2023	27-Jul-23	Amendments in the Sindh Sales Tax on Services Rules, 2011

SRB-3-4/41/2023	27-Jul-23	Amendments in the Sindh Sales Tax Special Procedure (withholding) Rules, 2014 (effective from 1st September, 2023)
SRB-3-4/42/2023	31-Jul-23	Amendment in Sindh Sales Tax Special Procedure (online integration of business), Rules, 2022
SRB-3-4/43/2023	15-Aug-23	Exemption of Sales Tax on Services received or procured by WAPDA for the construction and completion of K-IV project (Phase-I)
SRB-3-4/45/2023	17-Aug-23	Amendment in Notification no. SRB-3-4/28/2022 dated 5th august, 2022-----jurisdiction of the Assistant Commissioners, SRB
SRB-3-4/44/2023	17-Aug-23	Partial modification of its Notification SRB-3-4/28/2022 dated 5th august, 2022, to exercise the powers and perform the functions of an Assistant Commissioner or a Deputy Commissioner.
SRB-3-4/46/2023	27-Sep-23	Notification for Sindh Sales Tax Special Procedure (Tax on specified services) Rules, 2023
SRB/3-4/52/2023	26-Oct-23	Notification for amendment in Sindh Sales Tax Special Procedure (Withholding) Rules, 2014.
SRB-3-4/62/2023	28-Dec-23	Amendments in Sindh Sales Tax on Services Rules, 2011 ----- addition of new Rule 17A relating to corrections/amendments in CPR.
SRB-3-4/63/2023	29-Dec-23	Amendments in notification no. SRB-3-4/46/2023 dated 27th September 2023 ---- Sindh Sales Tax Special Procedure (Tax on Specified Services) Rules, 2023

Sindh Revenue Board Service Tax Circulars

CIRCULAR REFERENCE	Dated	SUBJECT
CIRCULAR NO.01/2023	5-Jan-23	Condonation of the date for online submission of Option/Election Form "S" Prescribed Under Rule 421 of The Sindh Sales Tax on Services Rules, 2011
PTA/ENF/ENF W & C/12-MISC/2022/II	24-Jan-23	Curbing Of Illegal Internet Services
CIRCULAR NO. 02/2023	14-Mar-23	Extension in the last date for e-deposit of Sindh Sales Tax for the tax period February 2023 and for e-filing of tax return (form SST-03 or form SSTW-03, as the case may be) for the tax period February 2023
CIRCULAR NO.03/2023	11-Aug-23	Extension in the last date for e-deposit of Sindh Sales Tax for the tax period July 2023 and for e-filing of tax return (form sst-03 or form SSTW-03, as the case may be) for the tax period July 2023
CIRCULAR NO.04/2023	17-Aug-23	Further extension in the due date for e-deposit of Sindh Sales Tax for the tax period July 2023 and for e-filing of tax return (form SST-03 or form SSTW-03, as the case may be) for the tax period July 2023
PUBLIC NOTICE	4-Sep-23	SRB ATL (active taxpayers' list of SRB registered persons)----availability thereof for information of all concerned
PUBLIC NOTICE	11-Oct-23	Sindh Sales Tax and SWWF/SWPPF payments
AT/SRB/CIRCULAR /2023/61	6-Nov-23	Launching of the website of Appellate Tribunal Court

Punjab Revenue Authority's Service Tax Notifications

Notification Reference	Date	Description
2023_01	19 April 2023	Place of Provision of Supply of Taxable Services (Rules)
2023_02	05 July 2023	Notification - State Bank of Pakistan as "Collecting Agent"
2023_03	08 August 2023	Notification Jurisdiction (Commissioner Appeals)
2023_04	11 August 2023	Extension in Return Filing Date Till 18th August 2023
2023_05	16 August 2023	Gazette Notification State Bank of Pakistan 16-08-2023
2023_06	17 August 2023	Extension in Return Filing Date Till 24th August 2023
2023_07	31 August 2023	Franchisers of Restaurant Services as Collecting Agent
2023_08	06 September 2023	GIZ Blanket Exemption notification
2023_09	12 September 2023	Amendment Notification Under Sec.5 of the PSTS Act Dated 12.9.2023
2023_10	18 October 2023	Gazette Notification State Bank of Pakistan 18-10-2023
2023_11	15 December 2023	Pakistan Mercantile Exchange (PMEX) as "Collecting Agent"
2023_12	15 December 2023	CDC and NCCPL as "Collecting Agent"

Khyber Pakhtunkhwa Revenue Authority's Service Tax Notification

Date	Description
February 9, 2023	Notification of Infrastructure Development Cess one percent (1%) Rate
April 10, 2023	Circular: Clarifications Regarding Tax Exemptions
July 26, 2023	Notification of Sales Tax Exemption for Ex FATA & PATA
August 11, 2023	Extension in Date of payment of Sales Tax and submission of Returns for the Tax Period July 2023
August 18, 2023	Extension in Date of payment of Sales Tax and submission of Returns for the Tax Period July 2023

Baluchistan Revenue Authority's Service Tax Notification

Notification Reference	Date	Description
		NIL

Islamabad Capital Territory (Tax on Services)'a Notification

Notification Reference	Date	Description
		NIL

SYNOPSIS OF IMPORTANT CASE LAWS – PROVINCIAL SERVICE SALES TAX

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTCL 801 Islamabad High Court GUARANTEE- SALEX-THALES JOINT VENTURE VS FEDERATION OF PAKISTAN THROUGH SECRETARY REVENUE DIVISION & OTHERS	S. No. 5 of the Schedule Islamabad Capital Territory (Tax on Services) Ordinance, 2001	Petitioner filed writ petition against the notice issued for recovery of Sales Tax on Services of Rs.479,462,677/- on rendering of contractual / construction services. It is the stance of the petitioner that since the Project is Government civil works, therefore, exempt from levy of tax in terms of clause 5 of the Schedule to the Ordinance of 2001. Incorrect rate of tax has been applied in the impugned notice. The Schedule to the Ordinance has been amended thereby reducing the levy of tax from "sixteen percent" to "five percent". The Schedule to the Ordinance of 2001 whereby the rate of levy of tax was determined as "sixteen percent" was amended through Finance Act, 2015. The contract between the petitioner and CAA was concluded prior in time, hence past and closed transaction. The amendments could not have been given retrospective effect; even if any tax has to be paid, the same is payable by the CAA. On the other hand, the learned counsels for the respondent/Department has argued that the construction work done under the Civil Aviation Authority is not Government civil work, hence not exempt; services means the time at which the services are rendered or provided; tax is charged at the time of rendering of

CITATION	SECTION(S)	ISSUES INVOLVED
Decision		services; the tax shall be levied at the rate of five percent from July, 2016 onward. CAA has argued that the petition has been incompetently filed. The contract includes arbitration clauses and in case of any dispute between petitioner and CAA with regard to terms and conditions thereof, the matter at the first instance shall be filed before the arbitrator. Adequate alternate remedies are available to the petitioner for redressal of its grievances. Show Cause notice is not an adverse order. This Court cannot sit in appeal over the impugned notice. The matter is purely contractual in nature. The instant petition is not maintainable. Court, considering the earlier judgments and legal provisions, held that The assumption of jurisdiction is, therefore, not in contravention of section 30 and 31 of the Act of 1990 or the provisions of the Ordinance of 2001. The second challenge to the impugned notice is on the ground that since the CAA is an organ of the Federal Government. Therefore, the services provided by the petitioner to CAA are exempt from tax in terms of clause 5 of the Schedule to the Ordinance of 2001. This ground taken by the petitioner is misconceived as (i) the petitioner is an independent third party contractor i.e. a joint venture (ii) the tax is charged on the "services provided" by the petitioner pursuant to contract, and (ii) the CAA being government entity is not the "provider of services" in the case in hand. Jurisdiction of this Court in matters assailing a show cause notice is, therefore, limited to the inquiry where the show cause notice is issued. As noted above, the petitioner is at liberty to agitate all the grounds raised in the petition in hand before the Department. The applicable law provides various remedies to the petitioner in case an adverse order is passed. In absence of any jurisdictional defect, the remedies available to the petitioner under the applicable law in respect of the grievances are adequate and efficacious The instant petition is without merit and is, therefore, accordingly dismissed.

CITATION	SECTION(S)	ISSUES INVOLVED
2023 PTD 56 2023 PTCL 413 (2023) 128 TAX 379 Peshawar High Court KHYBER PAKHTUNKHWA, REVENUE AUTHORITY (KPRA) THROUGH DIRECTOR GENERAL, PESHAWAR VS MESSRS LEGACY PHARMACEUTICAL (PVT.) LIMITED, PESHAWAR	Section 40 & 68 KPK Finance Act, 2013	Tax Authority filed a reference against the order of Tribunal who gave decision in favor of taxpayer. It was alleged that the respondent has received taxable services from different service providers for the period of September 2015 to June 2018, involving sales tax amounting to Rs.1,150,667/-, which was neither declared nor deposited. Consequently, a show cause notice was served upon him under sections 40(2) and 68(2) read with para 11(1) of the Khyber Pakhtunkhwa Sales Tax on Services Special Procedures (Withholding) Regulation, 2015 (now repealed), asking therein to deposit the said amount in terms of the provisions contained in the Khyber Pakhtunkhwa Finance Act, 2013, besides penal actions. The appellant relied upon section 40(1A) and section 68(2) of the Finance Act, 2013 read with Khyber Pakhtunkhwa Sales Tax on Services Special Procedures (Withholding) Regulation, 2015 (now repealed). It is also an admitted fact that section 40(1A) of the Act ibid was added through an amendment introduced in July 2019, and claim for recovery of amount in question relates to the periods prior to the said amendment. A plain reading of section 68 mentioned above reveals that it does not relate to withholding agent, whereas sub-section (1) of section 40 of the Act relates to service provider, which has no relevance with the instant case. However, there was no enabling provision in the Act, whereby an officer or Authority could issue a show cause notice and determine/assess the payable withheld tax. Noticing this flaw in law, an amendment was introduced by the legislature in section 40 and inserted sub-section (1A) in section 40 of the Act, which clearly indicates that the original statute (section 40) did not provide for determination of default on the part of a withholding agent and imposition of penalty and surcharge on default of such agent. It is not denied that the said amendment was brought in section 40 of the Act in July 2019, whereas claim of the appellant for recovery of amount in question relates to the period 1st September 2015 to 30th June 2018, prior to insertion of section (1A) in section 40 of the Act. High Court held that an amendment in the fiscal statute has always prospective effect unless retrospective effect is given to it by the legislature. It is an admitted fact that no retrospective effect has been given to the amendment
Decision		

CITATION	SECTION(S)	ISSUES INVOLVED
		quoted above. Therefore, it was rightly held by the learned Appellate Tribunal that the assessment made by the appellant for the period prior to inserting section (1A) in section 40 of the Act was illegal.
2023 PTCL 402 2023 PTD 1 Lahore High Court M/S WORLDCALL TELECOM LTD. VS GOVT. OF THE PUNJAB & OTHERS Decision	Section 5(3) of the Punjab Sales Tax on Services Act, 2012	The petition challenges the Notification dated 22.05.2013 (the Notification) on the following grounds. Firstly, it offends the provisions of Section 5(3) of the Punjab Sales Tax on Services Act, 2012 (Act, 2012). Secondly, it has not been issued with the approval of Cabinet sitting as a whole and has been promulgated by the Governor of Punjab. The precise submission with regards to first ground of attack is in relation to sub-section (3) of section 5 of the Act, 2012 which obliges the government to lay before the Provincial Assembly of Punjab all the notifications relating to amendments in the Second Schedule during the current financial year. The notification under sub-section (1) was gazetted on 22.5.2013 and was issued by the Governor. By the impugned notification, an amendment was made in the Second Schedule of the Act, 2012 which provides for taxable services under Section 3 of the Act, 2012. The learned A.A.G as well as learned counsel for Punjab Revenue Authority (PRA) admit that the notification was not laid before the Provincial Assembly. High Court held that the notification was not laid before the Provincial Assembly, it is ultra vires and must be struck down. It is however made clear that since the challenge in this petition is merely to clause 2 (a)(iii) of the notification which amends clause (c) and entry relating thereto in Sr.No.6 of the Second Schedule (in column No.2) this decision will only be confined to the extent of the amendment brought under challenge in this petition and not to the rest of the notification.
2023 PTCL 561 (2023) 127 TAX 774 2024 PTD 793 Sindh High Court M/S. TUFAIL CHEMICAL. VS PROVINCE OF SINDH AND OTHERS	Heading 9824.0000 of Sindh Sales Tax on Services Act, 2011	These matters pertain to the levy of sales tax on Toll Manufacturing. There existed a dispute between the Federation and the Province of Sindh regarding the collection of said sales tax. The Petitioners do not dispute that sales tax has to be paid, but it should be either to the Federation or the Province, as the case may be. They have been continuously paying such sales tax to the Federal Government. The Petitioners further argue that Toll Manufacturing does not fall within the definition of a service in any manner.

CITATION	SECTION(S)	ISSUES INVOLVED
		During the pendency of these Petitions, a meeting of the National Tax Council (NTC) was held on 09.06.2022, with all Provinces and the Federation present. According to Para-8(ii) of the minutes of the meeting, it was agreed that sales tax on Toll Manufacturing would be under the jurisdiction of the FBR. Subsequently, on 28.06.2022, the Province of Sindh issued a Notification stating that, effective from 01.07.2022, sales tax on services of Toll Manufacturing would be exempted. The Additional Advocate General Sindh submits that the Province of Sindh's stance is that such exemption is only applicable from 01.07.2022. Prior to that date, the Province claims the right to levy and collect Sales Tax on Toll Manufacturing, which they consider a service under the Sindh Sales Tax on Services Act, 2011. The Additional Advocate General Sindh further submits that any consent recorded in the NTC meeting is not binding on the Province of Sindh, and the very constitution and formation of the National Tax Council lacks legal support. Therefore, the minutes of the meeting do not impede the Province's stance that sales tax on toll manufacturing should be paid to the Province, as it is considered a service. The argument that Toll Manufacturing is still a service under the Sindh Sales Tax on Services Act, 2011, and has only been exempted from 01.07.2022, implies that from the promulgation of the 2011 Act until 30.06.2022, the tax in question should be paid to the Province instead of the FBR. This argument is not only misconceived but also practically unenforceable. The tax already paid by the Petitioners to the Federation through the FBR for toll manufacturing is their final discharge of liability concerning sales tax, whether under the Sales Tax Act, 1990, or the Sindh Sales Tax on Services Act, 2011. They will not be obliged to pay any further sales tax on such activity. As a consequence, any proceedings initiated by the Province of Sindh under the 2011 Act to this extent stand abated/disposed of in these terms. If the Province intends to claim any share of the sales tax already collected by the FBR under this head, it may approach the Federation for an amicable settlement, as advised.

CITATION	SECTION(S)	ISSUES INVOLVED
Decision		
2022 PTD 1226 2022 PTCL 887 (2023) 127 TAX 373 Balochistan High Court INDUS MOTORS COMPANY LIMITED VS GOVERNMENT OF BALOCHISTAN, FINANCE DEPARTMENT and 2 others	Subsection (3) of section 14 of the BSTS Act, 2015	The Additional Commissioner, Balochistan Revenue Authority (BRA), Government of Balochistan vide Show-Cause No. BRA/STA A/1 127-1128 dated 20-05-2019 confronted the petitioner that the petitioner is a prescribed registered person and withholding agent of BRA within the meaning of the clause (f) of sub-rule (2) of rule 1 of the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 read with section 2(134) of the Balochistan Sales Tax on Service (BSTS) Act, 2015. Hence, the petitioner was required to withhold sales tax on services from its agent M/s. Toyota Zarghoon Motors Quetta and deposit the same in Government of Balochistan Treasury in terms of subsection (2) of section 14 of the BSTS Act, 2015. The officer has issued impugned show-cause for tax periods of 2016, 2017 and 2018 ignoring the fact that the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 were notified vide notification No.BRA/BSTS/06/2018 dated 27th June 2018. Firstly, the officer has issued impugned show-cause for tax periods of 2016, 2017 and 2018 ignoring the fact that the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018 were notified vide notification No.BRA/BSTS/06/2018 dated 27th June 2018. Further Subsection (3) of section 14 of the BSTS Act, 2015 which creates a liability on the withholding agent and empowers the authority to personally hold responsible a withholding agent if he fails to withhold sale tax on services was also inserted to the BSTS Act, 2015 through Balochistan Sales Tax on Services (Amendment) Act, 2019. Again subsection (6) of section 52 of the BSTS Act, 2015 which provides the mechanism for recovery of sales tax on services required to be withheld by a withholding agent in case the withholding agent fails to withhold such sales tax on services was also inserted to the BSTS Act, 2015 through Balochistan Sales Tax on Services (Amendment) Act, 2019 notified on 15-01-2019. Secondly the officer has demanded total amount of sales tax on services from the petitioner vide impugned show-cause notice dated 20-05-2019 which was payable by M/s. Toyota Zarghoon Motors Quetta. The officer has ignored the fact that the same sum of money was already ordered as recoverable from M/s. Toyota Zarghoon Motors Quetta through orders-in-original dated 06-05-2019. The letter and spirit of law is that the withholding

CITATION	SECTION(S)	ISSUES INVOLVED
Decision		agent is liable to withhold certain portion of tax payable by a withholder (from whom tax is to be withheld). Such tax actually is liability of the withholder and the withholding agent just withhold a portion of total liability of the withholder. It cannot be recovered simultaneously from the withholder as well as withholding agent. Once the withholder discharges his tax liability then the withholding agent is only liable to default surcharge under section 49 of the BSTS Act, 2015 High Court held that the impugned show-cause notice has been issued without legal authority and the officer has misread the relevant provisions of BSTS Act, 2015 as well as the Balochistan Sales Tax Special Procedure (Withholding) Rules, 2018. We have therefore no hesitation to hold the impugned show-cause notice as unlawful and void ab initio, as such, the instant petition is allowed.
(2023) 128 TAX 521 2024 PTCL 71 2024 PTD 837 Lahore High Court M/S NISHAT HOTELS & PROPERTIES LTD & ANOTHER VS PROVINCE OF PUNJAB & OTHERS	Section 52 of Punjab Sales Tax on Services Act, 2012	Primarily, the challenge is to the constitution of the Authority under the Punjab Revenue Authority Act, 2012 (“the Authority”). Further challenges have been laid to the issuance of show cause notices by the officers of the Authority under Section 52 of the Punjab Sales Tax on Services Act, 2012 (“Act, 2012”). The power to make rules has been conferred by section 76 of the Act, 2012 and the power vests in the Authority which may enact rules with the approval of the government and by notification in the official gazette. Sub-section (2) of section 76 further provides that all rules made under Sub-section (1) during a financial year shall be laid in Provincial Assembly of the Punjab at the time of presentation of the Annual Budget for the next financial year. Thus, appointment of the officers and authorities for the purposes of the Act, 2012 has to be done by the Authority by firstly enacting rules as this is the only prescribed manner in which the appointment can be made. The power vesting in the Authority under Section 39 relates to appointment of officers in relation to any area or cases specified in the notification. It indubitably follows that unless there are rules which have been enacted for the specific purpose of appointment of officers mentioned in section 39 to exercise jurisdiction in relation to certain areas or cases, those officers cannot assume the jurisdiction to exercise powers in terms of section 52 of the Act, 2012 and to issue show cause notice. PRA admits to the position regarding absence of the rules in this regard. He, however, invited this Court to

CITATION	SECTION(S)	ISSUES INVOLVED
Decision		hold that the words “in the prescribed manner” is a drafting error on the part of Provincial Assembly and must be ignored. This is a fantastic argument to say the least and cuts across the fundamental rule of interpretation to the effect that redundancy cannot be attributed to the legislature. In my opinion, if the legislature intended the Authority to appoint officers by firstly enacting rules in this regard, then the ineluctable conclusion is that no officer can either be appointed nor can he exercise jurisdiction unless the Authority acts under the rules which have been formulated for the purpose. Since none exists, the act of the Authority in conferring jurisdiction upon the officers to issue show cause notices in respect of cases and areas is ultra vires the powers of the Authority. It is not clear as to how the jurisdiction was conferred on the officers who issued show cause notices to petitioners. Not only that there are no rules in place which lay down the decision-making process but also that, admittedly, the constitution of the Authority took place vide notification dated 01.04.2022 (produced in Court today) and thus no decision could have been made by a truncated Authority with no legal pedigree. It is declared that the show cause notices have been issued incompetently and are without lawful authority and of no legal effect. They are struck down. The judgments relied upon by learned counsel for the respondents-PRA are not relevant for the controversy in hand and need not be discussed in details. It is made clear that the Authority may proceed in accordance with law if the allegations against the petitioners are sought to be pursued.
(2021) 123 TAX 174 2023 PTD 1380 Appellate Tribunal Inland Revenue ADDITIONAL COLLECTOR, HEADQUARTER, KHYBER PAKHTUNKHWA REVENUE AUTHORITY, PESHAWAR VS	Khyber Pakhtunkhwa Finance Act, 2013	Second appeal filed against the order and judgment passed by the learned Collector (Appeals) in C (A)-71/2020 wherein the first appeal has been partially accepted. M/S SSI stated that the authority had erred in imposing penalty to the extent of Rs.615,511 /- and default surcharge without considering that the element of mens rea was missing. The authority passed the order without taking into consideration the factum of busyness of the M/S SSI in collecting the relevant information; the Covid-19 pandemic was a hurdle to the M/s SSI The learned Collector (Appeals) decided that imposition of penalty and default surcharge was not according to law because the element of mens rea was lacking.

CITATION	SECTION(S)	ISSUES INVOLVED
M/S SCHLUMBERGER SEACO INCORPORATED, ISLAMABAD Decision		Similarly criminal intention was missing. The appeal of M/S SSI was partially accepted to the extent of setting aside penalty and default surcharge while the M/S SSI declared at the very outset (in the court of learned Collector-Appeals) that principal amount was deposited; the authority admitted the same. The default surcharge is required to be paid for retaining the tax for the period (the time when it was due till actual payment) inter alia it covers the devaluation of the amount which should have been reached the exchequer in due time; it has no nexus with fraud or criminal liability of the taxpayer and as such mens rea is not required. So in context of default surcharge the appeal is accepted. It transpires that the specific element of mens rea for particular offence was not observed in strict sense by the authority. When some part of the charge of tax was found justifiable then mistake or miscalculation on the part of M/S SSI cannot be ruled out; thus allegation of offences is out of place. The Assessment Order has not brought home the presence of element of mens rea. The order and judgment of Collector (Appeals) has declared that the same (penalty) cannot be maintained, as criminal intention is essential ingredient for applying penal provisions; and penalty was set aside for lack of mens rea. At this Tribunal what to say of confidence inspired evidence in support of element of mens rea, no proof was provided.
(2022) 126 TAX 160 2023 PTD 1782 Peshawar High Court TELENOR MICROFINANCE BANK LIMITED VS APPELLATE TRIBUNAL FOR SALES TAX ON SERVICES		The petitioner vehemently argued that the learned Tribunal has unjustly remanded the case to the authority of KPRA for decision afresh without first deciding whether or not the assessment order was barred by time The Additional Collector/respondent No.3 has passed assessment order after the lapse of 237-days from the date of issuance of show cause notice to the petitioner. Now question arises when Additional Collector/respondent No.3 was having a jurisdiction under sub-section 3 of section 40 to extend the time for making an assessment order then why he has approached the authority to condone the delay caused in passing assessment order within time as visualized in aforesaid provision of the ibid Act. We are also failed to understand as what prevailed with authority to condone the delay of 237-days caused in making assessment order by the Additional Collector/respondent No.3 after

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Decision		issuance of show cause notice to petitioner in exercise of its jurisdiction under section 99 of the ibid Act. As in our view, the authority while condoning the delay, has out rightly ignored the provision of sub-section 3 of section 40, as under it the Additional Collector/respondent No.3, was having the jurisdiction to extend the time by assigning reason thereof for making an assessment order in the case of petitioner. The learned Tribunal has committed a serious legal error as it after observing that petitioner was of the view that assessment order was being barred by time became past , closed transaction, therefore, could not be reopened, without answering the same has remanded the matter to Additional Collector for passing fresh reassessment order. Hence, the aforesaid two questions of law are answered positively and thereby the instant reference is returned as positive.
2023 PTD 384 Punjab Revenue Appellate Tribunal Messrs PAKISTAN GUM AND CHEMICALS LIMITED VS ADDITIONAL COMMISSIONER, ENF-III, PRA, LAHORE	Punjab Sales Tax on Services (Adjudication and Appeals) Rules, 2012	This is an appeal filed under section 66 of the Punjab Sales Tax on Services Act, 2012 (hereinafter referred to as The Act) by Messrs Pakistan Gum and Chemicals Limited (hereinafter referred to as the appellant) being aggrieved of the order dated 1-3-2021 of the Commissioner (Appeals), Punjab Revenue Authority, Lahore Tribunal is of the view that the case in hand was not dealt fairly by both the lower forums. The learned Commissioner (Appeals) has failed to look into the relevant record mentioned above and the evidence produced before her in shape of annexure-A i.e copies of invoices and breakup / summery of expenses on the prescribed format and passed the impugned order which indicates that the documents provided by the appellant were not looked into properly as apparently there was some haste in the mind of the Commissioner (Appeals) at the time of the passing of the impugned order. Although soon after the passing of the impugned order dated 01.03.2021 by the Commissioner (Appeals), the appellant preferred an application / letter of request to learned Commissioner (Appeals) bearing No. ST/ Pakistan Gum and Chemicals/21/508 dated 06.05.2021 requesting to recall and rectify with assertion that during the course of hearing of the appeal he had submitted copies of party-wise system generated ledgers in respect of both the account heads i.e. Freight charges and Sales promotion whereas as per observation of learned

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Decision		Commissioner (Appeals), the A.R has not produced a single document to substantiate his contention taken before the assessing officer regarding the heads of sales promotion and freight charges. The said application also met the same fate as it was declined by the Commissioner (Appeals). It is strongly observed that this could have been avoided easily by granting an opportunity to the appellant after specifying the nature of the invoices and ledgers to be provided. It is important to mention that the primary duty is always of the authority to dig out the truth which enables it to assess the tax demand in exact terms and not on presumptions. In tax regime no presumptions or guess work is allowed to be the basis of tax demand/assessment rather the demand/assessment, essentially requires to be in exactness. It is held that the case of the appellant needs a fresh decision therefore, the appeal in hand is accepted, resultantly the impugned order dated 01.03.2021 is set aside. The case of the appellant is remanded to the competent authority i.e. Commissioner (Appeals), PRA with a direction to decide the case afresh after going through the available record.
2023 PTD 1419 2023 SCMR 1776 2024 PTCL 509 (2024) 129 TAX 479 Supreme Court of Pakistan SINDH REVENUE BOARD through Secretary Government of Sindh, Karachi and others VERSUS Messrs QUICK FOOD INDUSTRIES (PVT.) LIMITED and others	Section 5 of Sindh Sales Tax on Services Act, 2011	The Respondents, as service providers and its recipients, are subjected to sales tax on services under the Act which is charged based on the rates specified in its Second Schedule under two different tariff headings i.e., labour and manpower supply services, and security agency services. A dispute arose between the parties on the interpretation of the value of taxable services, as to whether the tax is to be levied on the gross amount charged inclusive of salaries and allowances (collectively, salaries) that are paid to the security personnel (guards, etc.) and labour and manpower (collectively, security and manpower) in supply of services. SRB's argument that the gross amount charged includes all amounts, including reimbursable expenses such as salaries, lacks merit. This is because these amounts are actually paid by the service recipient, and neither do they form part of the economic activity conducted by the service provider, nor of the consideration paid for by the service recipients for the services rendered. Gross amount charged, for the purposes of sales tax on services, relates to the consideration in money paid for the value of the taxable service under section 5, the applicability of which is restricted by section 8 defining

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		the scope of the tax, which means that quantum is charged for the service alone, nothing more and nothing less. The value of taxable service is determined on the basis of the value of economic activity carried out in the provision of the service and salaries, being reimbursable expenses, are not part of the taxable service or its value; thus, they are not included in value of the service. The consideration paid is only for the services rendered and cannot include the cost borne by the service recipient in respect of the salaries paid to the security and manpower it procured. In the provision of a service, some expenses are expenses incurred on behalf of the service recipients which are later reimbursed to the service provider, meaning that these expenses have no nexus with the service or its value
Decision		Therefore, the sales tax on services can only be levied on consideration paid for service provided or rendered, and salaries paid by the employer to the employees are not part of the service rendered for this purpose, and so are not taxable. The Rules were framed to set out for the process and procedure to levy and collect the sales tax on services, which can only be charged on the value of taxable service. However, the sales tax demanded by SRB on the salaries of security and manpower is inconsistent with mandate of the Act.

Note: Members are advised to read complete Case laws, Circulars and SROs/ Notifications for better understanding of respective issues.