

MOST IMPORTANT

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

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C.No.8(31)-SS(LIT.HC)/2016 (16407/16) *14453-12* Islamabad, the 19<sup>th</sup> July, 2016

To

All Chief Commissioners Inland Revenue  
LTUs/RTOs

Subject: WRIT PETITION NO.16407/2016 — M/S PUNJAB BEVERAGES CO.  
PVT LTD. VS. FOP ETC.—

I am directed to refer to the above subject and to enclose herewith copy of judgment of Hon'able Lahore High Court, Lahore dated 16-05-2016 passed in the subject titled case. In this case the petitioner assailed the show cause notice issued u/s 11(2) of the Sales Tax Act, 1990 for the recovery of Sales Tax not withheld on the purchase of goods. The petitioner contended that for the default of withholding of sales tax, notice u/s 11(2) cannot be issued. The Hon'able Court while dilating upon the issues has held as under;

*'Bare reading of the aforesaid section shows that Department can issue notice to the taxpayer, if there is any short payment of sales tax. In this case the petitioner was supposed to withhold input tax of the supplier at the time of purchase and according to the respondent department the petitioner failed to withhold the said amount and deposit the same in the exchequer, this falls under the category of short payment and is covered under Section 11(2) of the Act'.*

2. The judgment should facilitate in recovery of Tax not withheld and the same can be used for defending the departmental stance on the issue before the appellate fora.

*Muhammad Khalid Gill*  
19.07.2016

( Muhammad Khalid Gill )  
Second Secretary (Lit.HC)

Copy to:

- i) The Member (IR-Operation)-FBR, Islamabad.
- ii) The Member (IR-Policy)-FBR, Islamabad.
- iii) SA to the Chairman-FBR, Islamabad.

Attn: Capt Jehangir

Form No:HCJD/C-121

**ORDER SHEET**

**IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

Case No: W. P. No.16407/2016

Punjab Beverages Co. Pvt. Ltd.

Versus

Federation of Pakistan, etc

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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01. 16.05.2016.

Mr. Mudassar Shujaiddin, Advocate for the petitioner.  
Mr. Sarfraz Ahmad Cheema, Advocate for the respondents  
on Court's call.

Petitioner has impugned reconciliation (show cause) notice dated 09.05.2016 on the ground that it is not covered under section 11 (2) of the Sales Tax Act, 1990 ("Act"). It is submitted that subject matter of the notice is that the petitioner allegedly failed to withhold sales tax on the goods purchased as per input tax claim. It is submitted that under section 11 (2) of the Act such an omission is not covered, therefore, impugned notice could not be issued to the petitioner. Section 11 (2) of the Act states as follows:-

**Section 11. Assessment of Tax and recovery of tax not levied or short-levied or erroneously refunded:**

*(2) Where a person has not paid the tax due on supplies made by him or has made short payment or has claimed input tax credit or refund which is not admissible under this Act for reasons other than those specified in sub-section (1), an officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax actually payable by that person or determine the amount of tax credit or tax refund which he has unlawfully claimed and shall impose a penalty and charge default surcharge in accordance with sections 33 and 34.*

Bare reading of the aforesaid section shows that Department can issue notice to the taxpayer, if there is any short payment of sales tax. In this case the petitioner was supposed to withhold input tax of the supplier at the time of purchase and according to the respondent department the petitioner failed

23/5/16  
Copy filed Court, Karachi  
Lahore High Court, Karachi

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to withhold the said amount and deposit the same in the  
exchequer, this falls under the category of short payment and  
is covered under Section 11(2) of the Act.

2. The petitioner is free to file reply to the impugned  
notice dated 09.05.2016, if so, advised. Needless to say that  
the department shall proceed in accordance with law.
3. Disposed of in the above terms.

*Handwritten signature*  
(Syed Mansoor Ali Shah)  
Judge

*Iqbal*  
*26.5.10*

**TRUE COPY**

In Case No.....*16407/16*

Examiner: JIS (Writ Branch)  
Lahore High Court, Lahore

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