



Federal Board of Revenue
Government of Pakistan

OFFICE OF THE DIRECTOR LAW-II
DIRECTORATE OF LAW LAHORE

No. 113

Dated: 25/02/2020

URGENT
COURT MATTER

To

The Chief Commissioners Inland Revenue,
Large Taxpayers Unit, Corporate Regional Tax,
Regional Tax Office-II, Lahore and RTOs Gujranwala, Sialkot,
Sargodah, Faisalabad, Multan, Bahawalpur.

Subject:- HON'ABLE LAHORE HIGH COURT, LAHORE'S JUDGMENT
DATED 10-02-2020 IN THE CASE OF M/S RAMZAN STEEL
INDUSTRIES VS FEDERATION OF PAKISTAN AND OTHERS.

Kindly refer to the subject cited above.

The titled petitioner along with other 49 petitioners / taxpayer had challenged the demand for income tax through the electricity bills for the months of July and August, 2019. The common ground of the taxpayers is that they are all engaged in the manufacturing and sales of different products of steel and that they are not liable to pay advance tax under section 235B of the Income Tax, 2001 pursuant to the rescission of the Sales Tax Special Procedure Rules, 2007 vide SRO No.695(1)/2019 dated 29.06.2019. The petitioners also claimed that they are entitled to claim exemption from Section 235B of the Ordinance which application have been made but have not been entertained on one pretext or the other.

The issue was discussed in detailed with the legal advisors of the department and necessary assistance was provided regarding scheme of withholding taxes under section 153(1)(a) and Section 235B of the Income Tax Ordinance, 2001.

The cases, under question, were fixed for hearing on 10.02.2020. The Hon'able Court has held that only those petitions are not liable to pay tax under Section 235B of the Income Tax Ordinance, 2001 who have deducted tax under section 153(1)(a) of the Ordinance and the Commissioner has issued a certificate in this regard. The relevant para of judgment is reproduced as under;

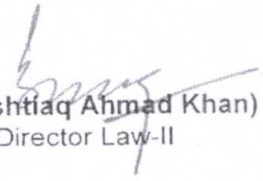
"12. Whereas the Petitioners who did not move any application seeking exemption, they are liable to pay the tax under Section 235B of the

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Ordinance in lieu of the tax required to be deducted under Section 153(1)(a). In these cases, it is necessary for the relevant Commissioner to first make a determination, whether for the required period, any tax was deducted under Section 153(1)(a). In the event that tax has been deducted under the given Section, the Petitioners cannot be made liable to pay the tax under Section 235B and the relevant Commissioner should provide a certificate in terms thereof, However, where no tax has been deducted under Section 153 of the Ordinance, in that cases the Petitioners will be liable to pay the tax under Section 235B of the Ordinance."

In view of the above the judgment of the Hon'able Court, the officer concerned may be directed to ensure the recovery of tax due under section 235B of the Income Tax Ordinance, 2001, if the same has not been deposited earlier.


(Dr. Ishtiaq Ahmad Khan)
Director Law-II

Copy to:

- 1. The S.A. to Chairman, Federal Board of Revenue, Islamabad.
- 2. The Member (Policy), Federal Board of Revenue, Islamabad
- ✓ 3. The Member (Legal), Federal Board of Revenue, Islamabad.
- 4. The Director General, Directorate of Law, Lahore

IN THE LAHORE HIGH COURT AT LAHORE,
JUDICIAL DEPARTMENT

WP No.60979/2019

Ranzan Steel Industries
Versus
Federal Board of Revenue Islamabad etc.

J U D G M E N T

Date of Hearing
Petitioners By the
following
Advocates:

10.2.2020
Mr. Muhammad Aslam Sheikh,
Ms. Saima Gul Azam,
Mr. Muhammad Ajmal Khan,
Mian Aleem Latif,
Mr. Shahid Ibrar Basra,
Mr. Muhammad Ahsan Nawaz and Rai Amer
Ijaz Khara,
Rana Sajid Rasool,
Syed Abid Raza Kazmi,
Mian Muhammad Hussain Chotya,
Malik Bashir Ahmed Khalid,
Mr. Muhammad Asif Saeed,
Malik Bashir Ahmad Khalid,
Rana Mushtaq Ahmad Toor,
Mr. Ifikhar Ahmad and
Mirza Bilal Zafar.

Respondents By the
following
Advocates:

Ms. Ambreen Moeen, DAG,
Mr. Ibrar Ahmad,
Mrs. Kausar Parveen,
Syed. Zain-ul-Abidien Bokhari,
Mr. Amir Wakeel Butt,
Mr. Muhammad Yahya Johar,
Mr. Shahid Sarwar Chahil,
Mr. Shahzad Ahmad Cheema, Advocate for
the Respondents,
Mr. Muhammad Nawaz Waseer,
Mr. Saeed ur Rehman Dogar and
Mr. Ali Asad Gondal and
Mr. Sarfraz Ahmad Cheema, Advocate for the
Respondents.

Ayesha A. Malik J: This common judgment decides upon
the issues raised in the instant Petition as well as connected Petitions

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detailed in Schedule "A" as all Petitions raise common questions of law and facts.

2. The Petitioners have challenged the demand for income tax through the electricity bills for the months of July and August, 2019 pursuant to letter dated 5.9.2019 issued by the Commissioner Inland Revenue, Regional Tax Office, Gujranwala. Those Petitioners who do not fall within the jurisdiction of the Regional Tax Office, Gujranwala, have also impugned the demand for arrears of advance income tax for the same months through their electricity bills.

3. The common ground of the Petitioners is that they are all engaged in the manufacturing and sale of different products of steel and that they are not liable to pay advance tax under Section 235B of the Income Tax Ordinance, 2001 ("**Ordinance**") pursuant to the rescission of the Sales Tax Special Procedure Rules, 2007 ("**Rules**") vide SRO No. 695(1)/2019 dated 29.6.2019 ("**SRO**"). The Petitioners also claim that they are entitled to claim exemption from Section 235B of the Ordinance which applications have been made but have not been entertained on one pretext or the other. Essentially the grievance of the Petitioners is that through the relevant DISCO, they have been billed for arrears in advance income tax for the months of July and August, 2019 in the bill of September, 2019 which they are not liable to pay.

4. Report and parawise comments have been filed on behalf of the Respondents. Learned counsel for the Respondents argued that the thrust of the Petitioners' case is based on the rescission of the Rules vide the SRO. However, pursuant thereof, a Clarification was issued by the Federal Board of Revenue on 2.9.2019 in which it was clarified that the benefit of Section 235B of the Ordinance shall be granted to all those steel melters and composite units which were registered under the Rules prior to 29.6.2019. Consequently, the provisions of Section 235B remain available to steel melters and composite units.

who for the purposes of Section 235B, were registered under the Rules prior to 29.6.2019 when the Rules were rescinded.

5. Heard. Record perused. In order to appreciate the arguments made before the Court, Section 235B is reproduced hereunder:-

Tax on steel melters [and composite units] (1) There shall be collected tax from every steel melter [and] composite steel units registered for the purposes of Chapter XI of Sales Tax Special Procedure Rules, 2017 at the rate of one rupee per unit of electricity consumed for the production of steel billets, ingots and mild steel (MS products) excluding stainless steel.

(2) The person preparing electricity consumption bill shall charge and collect the tax under sub-section (1) in the manner electricity consumption charges are charged and collected.

(3) The tax collected under sub-section (1) shall be deemed to be the tax required to be deducted under sub-section (1) of section 153, on the payment for local purchase of scrap.

(4) Tax collected under sub-section (1) shall be non-adjustable and credit of the same shall not be allowed to any person.

6. A bare reading of Section 235B of the Ordinance clarifies that the tax paid by steel melters and composite units at the rate of one rupee per unit of electricity consumed for the production of steel billets, ingots and mild steel (MS products) is tax deemed to be deducted under Section 153 of the Ordinance on the payment of local purchase of scrap. Therefore, Section 235B is actually a tax in lieu of the tax paid under Section 153 for purchase of local scrap. By way of background section 235B was introduced through the Finance Act, ~~2014~~ which provided that tax at the rate of one rupee per unit of electricity consumed shall be collected from steel melters and composite steel units registered under the Rules. This tax is required to be paid if the steel melter or composite unit is not deducting tax at the time of purchasing scrap as per Section 153 of the Ordinance. Section 153 requires tax to be deducted from the gross amount payable at the rate specified in Division III of Part III of the First Schedule. Essentially it is a withholding tax deducted at the time of purchase of scrap. So, either the steel melter and composite unit deducts tax at the time of payment for purchase of local scrap under Section 153 or it is paying tax under Section 235B of the Ordinance.

7. So far as Section 235B of the Ordinance is concerned, there was no issue in its application until the rescission of the Rules vide the SRO on 29.6.2019. At that point, an anomaly was created as to whether the provisions of Section 235B of the Ordinance are still available, given that the requirement of registration under the Rules has been done away with. The Petitioners before the Court state that since the Rules have been rescinded, Section 235B is no longer applicable to them, hence they cannot be charged arrears under Section 235B for the months of July and August, 2019. This argument of the Petitioners is misconceived to the extent that the Petitioners are required to decide whether they will pay tax under Section 153 or under Section 235B of the Ordinance. The basic issue being that they have to pay tax under either of the Sections as Section 235B clearly stipulates that the tax paid under Section 235B is in lieu of the tax required to be paid under Section 153 of the Ordinance. The Federal Board of Revenue clarified the anomaly vide its Clarification dated 2.9.2019 in which they stated that the benefit of Section 235B shall be available to all those steel melters and composite units who were registered prior to 29.6.2019 under the Rules. The relevance of the date of 29.6.2019 being the date of rescission of the Rules vide the SRO. Therefore the Federal Board of Revenue made the application of Section ~~235B~~ available to those steel melters and composite units who wanted to avail the benefit of this Section in lieu of the tax required to be deducted under Section 153 subject to being registered under the Rules prior to 29.6.2019.

8. In the cases before the Court, the argument that with the rescission of the Rules, there is no liability under Section 235B is without merit as the liability to pay tax as per the Ordinance is either under Section 235B or Section 153. Essentially Section 153(1) imposes the obligation of being a withholding agent on the steel melters or composite units at the time of purchase of scrap meaning

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thereby that they are required to deduct tax under Section 153D(a) of the Ordinance on the purchase of scrap. The Petitioners can seek exemption under Section 235B in order to deduct tax under Section 153 of the Ordinance. Therefore the only impact of the rescission of the Rules is to the extent that registration shall be considered prior to the rescission by the SRO and the rescission shall not abrogate the Petitioners from their liability to pay tax under the Ordinance.

9. The only issue left is whether or not the Petitioners moved applications before the relevant Commissioners seeking exemption for payment of tax under Section 235B of the Ordinance. Learned counsel for the Respondents has pointed out that among the Petitioners before the Court, some have moved applications which are still pending. Others have moved applications which have been decided and then there are number of Petitioners who have not moved any application whatsoever.

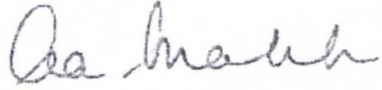
10. Under the circumstances and given that the Respondents themselves admit that there was an anomaly with the decision of the Rules, for those Petitioners who have already moved applications seeking exemption from the relevant Commissioners which have not been decided, it is directed that decisions be taken on those applications within one week's time of receipt of certified copy of this order and the Petitioners be given the benefit of the pendency of the applications, meaning thereby that if they are entitled to the exemption, they should be granted such exemption.


11. So far as those Petitioners who have the relevant exemption certificates and have been exempted from the liability under Section 235B, those certificates may be produced before the relevant DISCO for adjustment in the bills, such that the arrears being claimed for the months of July and August, 2019 if exempted should be granted to them.

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12. Whereas the Petitioners who did not move any application seeking exemption, they are liable to pay the tax under Section 235B of the Ordinance in lieu of the tax required to be deducted under Section 153(1)(a). In these cases, it is necessary for the relevant Commissioner to first make a determination, whether for the required period, any tax was deducted under Section 153(1)(a). In the event that tax has been deducted under the given Section, the Petitioners cannot be made liable to pay the tax under Section 235B and the relevant Commissioner should provide a certificate in terms thereof. However, where no tax has been deducted under Section 153 of the Ordinance, in that case the Petitioners will be liable to pay the tax under Section 235B of the Ordinance.

13. All the Petitions are disposed of in the above terms.


(AYESHA A.MALIK)
JUDGE


20/9/2020

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DETAILS OF WITH PETITIONS DISMISSED
Dated 10.2.2020 passed in WP No.60979/2019

Sr. No.	WP No.	Parties Name
1	60979/19	Ramzan Steel Industries v. Federal Board of Revenue etc
2	69690/19	Kamal Steel Re-Rolling Mills Private Limited etc v. Federal Board of Revenue etc
3	71386/19	Salamat Shah v. Federation of Pakistan etc
4	69832/19	Shalimar Steel Re-Rolling Mills Private Limited Federation of Pakistan etc
5	69727/19	New Shalimar Steel Industries Private Limited v. Federation of Pakistan etc
6	64382/19	Rehman Steel v. Federation of Pakistan etc
7	61851/19	Madina Steel Casting Mills etc v. Federation of Pakistan etc
8	61825/19	Zahoor Ahmad v. Federation of Pakistan etc
9	62139/19	Khuwaja Steel Mills v. Federal Board of Revenue etc
10	70187/19	Madina Steel Casting Mills etc v. Federation of Pakistan etc
11	2758/20	Jeway Madina Steel Furnace v. Federation of Pakistan etc
12	2755/20	M.M. Steel Mills v. Federation of Pakistan etc
13	2759/20	Sandhu Steel Mills v. Federation of Pakistan etc
14	70194/19	Royal Steel Mills v. Federation of Pakistan etc
15	2757/20	Royal Steel Mills v. Federation of Pakistan etc
16	77843/19	Sandhua Steel Mills etc v. Federation of Pakistan etc
17	2756/20	White Gold Steel Furnace v. Federation of Pakistan etc
18	61836/19	Shehbaz Steel Mills etc v. Federation of Pakistan etc
19	62893/19	PAK Steel Furnace v. Federation of Pakistan etc
20	62140/19	G.M. Steel Industries v. Federal Board of Revenue etc
21	61837/19	Rauf Steel Furnace etc v. Federal Board of Revenue etc

22	77699/19	Muhammad Malik etc v. Federal Board of Revenue etc
23	75878/19	Abdul Majid Steel Furnace etc v. Federal Board of Revenue etc
24	70939/19	Badami High Steel etc v. Federal Board of Revenue etc
25	69663/19	Madina Steel Mills etc v. Federal Board of Revenue etc
26	62865/19	Gujranwala Steel Casting etc v. Federal Board of Revenue etc
27	70731/19	Sufi Steel Industries etc v. Federal Board of Revenue etc
28	78552/19	A One Steel etc v. Federal Board of Revenue etc
29	77908/19	Sardar and Sons Re-Rolling Mill v. Federal Board of Revenue etc
30	61822/19	Waqas Steel Furnace etc v. Federal Board of Revenue etc
31	62894/19	MID Steel Furnace v. Federal Board of Revenue etc
32	68808/19	Moghal Steel Mills etc v. Federal Board of Revenue etc
33	63449/19	Ahmed Yar Steel Casting v. Federal Board of Revenue etc
34	71046/19	Sindhu Steel Mills v. Federal Board of Revenue etc
35	76592/19	Chaudhry Steel Re-Rolling Mills Private Limited etc v. Federal Board of Revenue etc
36	69206/19	Kashif Yunus etc v. Federal Board of Revenue etc
37	62631/19	Zubair Akhtar v. Federal Board of Revenue etc
38	68116/19	Madina Steel Industry etc v. Federal Board of Revenue etc
39	76737/19	Ittefaq Iron Industries Limited v. Federal Board of Revenue etc
40	68169/19	Amaz Steel Mills etc v. Federal Board of Revenue etc
41	72895/19	Roshan Steel Furnace etc v. Federal Board of Revenue etc
42	2696/20	Subhan Allah Steel etc v. Federal Board of Revenue etc
43	72624/19	S.J. Steel etc v. Federal Board of Revenue etc
44	69665/19	S.B. Steel Mill etc v. Federal Board of Revenue etc
45	68509/19	Chenab Steel etc v. Federal Board of Revenue etc
46	71467/19	Nabi Steel (Nadia Steel) & General Mills Private Limited etc v. Federal Board of Revenue etc

47	72434/19	Muhammad Nawaz etc v. Federal Board of Revenue etc
48	63208/19	Daska Steel Industries etc v. Federal Board of Revenue etc
49	69664/19	Shabbir Steel Re-Rolling Mills etc v. Federal Board of Revenue


(Ayesha A. Malik)
Judge