# *Tax Review/Taxation*

## Daily Alert Service

**Huzaima & Ikram**
*December 23, 2016*

This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, ***Taxation*** in printed form, is sent through post and digital version of ***Tax Review International*** is made available for download at www.huzaimaikram.com.

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Kind Regards,

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### Customs values on import of heaters revised

The Directorate General of Customs Valuation Karachi has revised customs values on the import of wide range of electric heaters, pedestle sun heaters and fan heaters, from China.

According to a valuation ruling issued by the directorate here on Thursday, customs values have been revised on the import of electric heater two rods 800 watt; electric heater two rods 1200 watt; electric heater multiple rods 2000 watts; sun heater table one rod 600 watts; sun heater table one rod 1000 watts; sun heater table one rod 1500 watts; Pedestle sun heater one rod 1000-1500 watts without remote control; Pedestle sun heater one rod 1000 to 1500 watts with remote control; fan heater 1000-2000 watts and fan heater 1000-2000 watts with remote control.

The directorate has divided the companies in three different categories for assessment of duties and taxes on the import of heaters of various brands. The Category-A includes brands Black & Decker, Kenwood, Philips, Braun, Sanyo, Dawlance, Delonghi, Siemen, Tarrington, Hitachi, Moulinex and Rinnai. The Category-B includes brands Westpoint, Bester, Super Rinnai, Jackpot, Seco, Sec, Deuron, Tauras, Sogo, Geepas, Annex, Annex-plus, Gaba National, Super National, Ocarina, Super Asia, Media, Howell Xelent, General, Yeso, Fairline, Cambridge, Perfact, and Haier.

The brands falling in Category-C include Winter, Novel, Peskoe, Prime, Lion, HM, Housemaster, Huajio, Meilun, Prisma, and Armco. It was brought to the notice of the Directorate General that electric heaters were being imported at under-invoiced values. The Directorate General undertook exercise to determine the customs values on electric heaters imported from China in the light of existing international market prices. Therefore, this Directorate General initiated an exercise for determination of customs values on electric heaters.

During the course of meetings, the importers were of the view that the values of electric heaters of China origin are very low and that Department’s perception is not correct. They contended that with the passage of time, the prices have come down. They were requested to submit import invoices, sales tax invoices, literature, evidences and other relevant documents in support of their contentions. In spite of lapse of considerable time, no evidence or documents were submitted. The importers during the meeting requested that the electric room heaters and fan heaters are mostly being sold in Punjab and KPK; therefore, market inquiry shall be conducted from Punjab and KPK or from the Karachi markets where these goods are being traded.

The ruling said that the valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of electric heaters. Transaction value method provided in Section 25 (1) was found inapplicable owing to wide variation in the values being declared to the customs. Identical/ similar goods value methods provided in Section 25 (5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied upon due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under section 25(7) of the Customs Act, 1969, was conducted. For the purpose, different markets were surveyed repeatedly. The computed value method as provided in Section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. Online values of subject goods were also obtained. All the information so gathered was evaluated and analysed for the purpose of determination of customs values. Consequently, the customs values on electric heaters have been determined under Section 25(9) of the Customs Act, 1969.

In cases where declared/transaction values are higher than the customs values determined in this ruling, the assessing officers shall apply those values in terms of Sub-Section (1) of Section 25 of tile Customs Act, 1969. In case of consignments imported by air, the assessing officer shall take into account the element of air freight while assessing the goods.

The values determined vide this ruling shall be the applicable customs value for assessment of subject imported goods until and unless it is rescinded or revised by the competent authority in terms of Sub-Sections (1) or (3) of Section 25-A of the Customs Act, 1969.

The Collectors of Customs may ensure that the values given in this valuation ruling for the given description of goods are applied by the concerned staff without fail. Any anomaly observed may kindly be brought to the notice of this Directorate General immediately. Customs values determined in the ruling are for the description and specification as mentioned in this valuation ruling. HS codes are mentioned for illustrative purposes so that valuation ruling values are made accessible to the assessing officers. The assessment would be finalised on the basis of correct classification after fulfilling requisite formalities related to improbability or any other certification required thereon. In addition to this, it is further necessary to verify that there is no misdeclaration of any sort or violation of Import Policy Order or Section 15 of the Customs Act, 1969 or any other law in vogue therein. – *Courtesy Business Recorder*

**MCC Preventive Lahore to organise poster competition**

Model Customs Collectorate (Preventive), Lahore, for the first time in the history of Pakistan Customs, is organising a poster competition for young and old artists with the objective to create awareness among the general public about the role of Customs Department.

It is also meant to encourage our young and budding artists in their artistic pursuits by providing them a healthy competition. In order to make the competition more attractive and to get good quality of posters cash prize of Rupees 200,000/ will be given to the best poster while second prize of Rs 100,000/- will be given to second best poster and third prize will be of Rs 50,000/-. Special merit certificates will also be given to selected posters, said an announcement here on Thursday.

The theme of the competition is 'Role of Customs in Development of Pakistan'. Customs Department plays significant role in trade facilitation, protection of society, effective border management and revenue collection. The posters are expected to delve on one of these broad themes. On more detailed level Customs Department has a pivotal role in combating smuggling and effective enforcement of Intellectual Property Rights regulations. Similarly ensuring quality and standard of import and export products is yet another important function performed by Customs Department. It is also actively facilitating supply and value chain systems of trade and industry by providing swift and hassle free clearance of imports and export cargo.

In order to further facilitate selected critical industries Customs Department also allows on-site clearances. Customs Department boasts one of the state of the art and most modern automated Customs clearance system in the region, which is called Web Based One Customs (WeBOC). This online goods clearance system not only helps to facilitate the trade but also helps FBR in collection of sizeable revenue in the shape of Customs Duties, Sales Tax, Income Tax, and other import levies. So much so that during the last financial year Customs Department contributed 41% of the total revenue collected by FBR, which was in excess of Rs 3000 billion (three trillion).

Students of Fine Arts and artists across the country have been invited to participate in the event. The poster size has been defined and the medium could be manual or digital. It is expected that the artists will highlight the above important roles of Customs Department through their canvas and Customs Department will get some of the very high quality posters which will be used by FBR for subsequent tax awareness campaigns.

A high powered jury, comprising of prominent personalities from the field of fine arts in Pakistan including Madam Saleema Hashmi, Professor M. H. Jeffery (NCA) and Madam Rahat Naveed (Punjab University) shall select the winners, who will be awarded prizes on International Customs Day to be held on 26th January, 2017 in Lahore.

The activity has been organised in collaboration with National College of Arts. The Model Customs Collectorate (Preventive), Lahore has extended invitation to all the artists to take part in the event by sending their posters on the aforementioned theme up to 31st December 2016 to DC Customs Headquarters, MCC Preventive, Custom House, Nabha Road Lahore, said the sources of the Model Customs Collectorate. – *Courtesy Business Recorder*

## Lahore Orange Line set to get exemption in taxes, duties

The government is all set to grant Rs 20 billion exemption in duties and taxes, including withholding tax, on the import of equipment for Lahore Orange Line mass transit project under China-Pakistan Economic Corridor (CPEC). Sources told here on Thursday that the Ministry of Planning, Development and Reform has submitted a summary in this regard to the Economic Co-ordination Committee of the Cabinet.

According to details, Quetta Mass Transit Project sponsored by Balochistan has been agreed upon with the Chinese side for implementation through CPEC under Chinese financing. Furthermore, Karachi Circular Railway (KCR) project sponsored by the government of Sindh has also been approved by the Prime Minister for implementation through CPEC under Chinese financing. Modalities of both projects will be discussed with the

Chinese side in the forthcoming Joint Co-operation Committee (JCC) meeting scheduled to be held in Beijing, China, from 28th to 29th December, 2016. However, cost of these projects including the loan repayment will be borne by the respective provincial governments. Grant of exemptions from withholding income tax beyond 6% of E&M contract price and taxes and duties on import of equipment to be furnished / installed for Quetta Mass Transit Project and Karachi Circular Railway (KCR) may also be considered in principle.

Sources said the governments of Pakistan and China entered into a Framework Agreement on 22nd May, 2014 for construction, equipment, procurement and financing of Lahore Orange Line Metro Train Project. As per framework agreement, the Orange Line shall be designed, constructed and supervised by Chinese enterprises. Identification of Chinese companies for execution of the project from amongst the recommended companies through a competitive bidding procedure was agreed.

The project to be executed on EPC (Engineering Procurement and Construction) mode envisages construction of 27.1 kilometres long dedicated a signal-free corridor for train mass transit system in Lahore alongwith 26 stations, one depot and procurement of rolling stock with allied facilities. The project was approved by the ECNEC on 13th May, 2015 at the cost of Rs 165.226 billion including a Foreign Exchange Component (FEC) of Rs 103.0986 billion without involvement of funding from the federal PSDP. The loan amount would be repaid by the government of Punjab.

Punjab transport department is getting the project implemented through the Punjab Mass Transit Authority and Lahore Development Authority respectively. Bids from two Chinese companies, namely CR-NORINCO JV and SINORAIL - JV, were received on 18th July, 2014. The government of the Punjab signed the commercial contract agreement on 20th April, 2015 with the lowest evaluated bidder ie CR-NORINCO-JV for implementation of the project. 'The commercial contract includes provision and installation of electrical and mechanical (E&M) equipment with testing and commissioning besides civil work being sublet to the Pakistani side.

The contractor included withholding income tax at the rate of 6% applicable at the time of bidding in the bid price as per the Commercial Contract. According to the Commercial Contract, the income withholding tax for E&M works, which is 6% of contract price for E&M works, has been considered. The employer shall be responsible for the payment of balance due to increase in income withholding tax rate in accordance with the regulations of Pakistan. Unless otherwise stated, the contractor would be exempted from all obligations or responsibilities for the payment of all the other Pakistani taxes arising of the contract such as sales tax and contract tax.

Furthermore, the Chinese contractor, under the Commercial Contract, will be importing all E&M equipment under its own name for subsequent ownership of the Pakistani side. The Commercial Contract further reads that unless otherwise stated in this contract, the employer would pay all customs, import duties and taxes in consequences of the importation of equipment to be furnished in the Orange Line Project. If the contractor is required to pay such customs, import duties and taxes, the employer would reimburse the amount, thereof, with 30 days upon submission of proper documentation, invoice and proof of payment.

The ECC was told if the total incidence of tax on CR-NORINCO JV increases beyond 6%, the additional tax liability, if any, will have to be paid for by the Pakistani side in accordance with the provisions of contract agreement. As a result, the government of Punjab has estimated that roughly Rs 20 billion are to be paid in the form of taxes and duties on import of equipment for Lahore Orange Line Metro Train Project which will have to be borne by the provincial government as charge on Provincial Consolidated Fund, if exemptions are not granted.

The government of Punjab has requested for a grant of exemption from the ECC in respect of Lahore Orange Line Metro Train Project on the lines allowed to NHA for CPEC infrastructure projects on grounds that this project is acknowledged within CPEC framework by the Chinese side as ongoing building of CPEC in the framework agreement.

The ECC was requested; (i) CR-NORINCO JV may be exempted from withholding income tax beyond 6% of E&M contract price; (ii) the Chinese contractor may be exempted from all tax amounts including but not limited to income taxes, withholding taxes, sales taxes, custom duties and taxes on import of equipment to be furnished in Orange Line Project. – *Courtesy Business Recorder*

## Duty/tax collection: banks to stay open on December 31

In order to facilitate collection of government duties/taxes, following the directives of the State Bank of Pakistan (SBP), the concerned branches of commercial banks will remain open on December 31, 2016 (Saturday), till such time that is necessary to facilitate special clearing for government transactions. – *Courtesy Business Recorder*

## Genuine grievances of businessmen to be addressed: FBR chief

The Federal Board of Revenue (FBR) Chairman Nisar Muhammad Khan has said the genuine grievances of the business community would be addressed once budget proposals of the Lahore Chamber of Commerce & Industry (LCCI) are received. He was talking to the LCCI delegation, led by its President Abdul Basit. He said that no one else could be interested in development of trade and industry than the FBR as revenue would automatically be increased if businesses flourished.

The government needs revenues to run its affairs smoothly and tackle the security and poverty challenges, he said. The number of provincial taxes is much higher than the federal taxes; therefore, the business community should take up this issue with their relevant governments. He informed the delegation that tax-free import is allowed to only machinery and equipment for China-Pakistan Economic Corridor (CPEC) adding the raw materials have been excluded by the government from this list on the request of FBR.

On the issue of 38-B of the general sales tax, he said that tax officials have been directed to treat the business community with due honour, he added. LCCI President Abdul Basit said that number of taxes and frequency of paying taxes must be reduced. Moreover, taxes may be paid quarterly instead of every month. For that matter, all Para tariffs must be merged in the main tariffs, he said.

Similarly, there should be electronic communication between taxpayers and tax departments. These proposals can make noticeable difference and win the confidence of taxpayers. The government must ensure that Chinese investors and companies engaged in CPEC must consider the indigenously produced inputs. The goods which are not manufactured / produced in Pakistan, for example, soybean meal and grandparents chicks should not be taxed, he said.

He said that Section 38-B of Sales Tax Act, 1990 is being adversely used by the officials of Tax department. They are paying illegal visits to markets and godowns to harass the business people without any justification. He suggested that teams from Tax department should visit the markets, if indispensable, but they should be bound to follow due legal process and immediately stop harassing business community.

"Bank accounts should not be attached without prior notice to the taxpayer and after seeking approval in writing from the Commissioner. The recovery should be after the decision of the Tribunal and not before that. Finances of business people in their bank accounts help sustain their business. He said the alternative dispute resolution mechanism has to be strengthened and the FBR must accept its recommendations.

He proposed that instead of bringing changes in Customs values, duty/tax rates should be rationalised which would certainly be more effective to increase government revenue. The exporters are facing serious issues including shortage of working capital. All the backlog of refunds should be cleared within two months after filing of the income tax return. The FBR should pay mark-up at bank rate to the person whose refunds are stuck up by the department for onward deposit against the bank's loans. – *Courtesy Business Recorder*

**2016 TRI 584 (H.C. Bom.)**

**HIGH COURT OF BOMBAY**

# M.S. Sanklecha and S.C. Gupte, JJ.

***Commissioner of Income Tax Central-II, Mumbai***
***v.***
***M/s. Greenfield Hotels & Estates Pvt. Ltd.***

**FACTS/HELD**

**S 50C does not apply to transfer of land and building, being leasehold property**

1. The issue before the Tribunal was whether Section 50C of the Act would be applicable to transfer of leasehold rights in land and buildings. The Tribunal followed its decision in Atul G. Puranik vs. ITO (ITA No.3051/Mum/2010) decided on 13 May 2011 which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings. On appeal by the department to the High Court HELD dismissing the appeal:

   *The Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik (supra). Thus, it could be inferred that it has been accepted. Our Court in DIT vs. Credit Agricole Indosuez 377 ITR 102 (dealing with Tribunal order) and the Apex Court in UOI vs. Satish P. Shah 249 ITR 221 (dealing with High Court order) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of Atul Puranik (supra). In the above view, the question as framed by the Revenue does not give rise to any substantial question of law. Thus, not entertained.*

***Appeal dismissed.***

**Income Tax Appeal No. 735 of 2014.**

**Decided on: 24th October, 2016.**

**Present at hearing: Ashok Kotangale, a/w Padma Divakar, for Appellant. Sanjiv M. Shah, i/b Sanjay B. Sawant, for Respondent.**

## JUDGMENT

*P.C.:–*

This appeal under Section 260-A of the Income Tax Act, 1961 ("the Act") challenges the order dated 23 October 2013 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order relates to Assessment Year 2007-08.

2. The Revenue urges the following question of law for our consideration:

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the order of the CIT(A) in deleting the addition of Long Term Capital Gain of Rs.80,58,000/-on the ground that provisions of section 50C of the IT Act, 1961 were not applicable to transfer of land and building, being a leasehold property?"

3. The impugned order of the Tribunal has dismissed the Revenue's appeal from the order dated 15 June 2012 passed by the Commissioner of Income Tax (Appeals). The issue before the Tribunal was whether Section 50C of the Act would be applicable to transfer of leasehold rights in land and buildings. The impugned order of the Tribunal followed its decision in *Atul G. Puranik vs. ITO* (ITA No.3051/Mum/2010) decided on 13 May 2011 which held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings.

4. Mr. Kotangale, learned Counsel for the Revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik (supra). Thus, it could be inferred that it has been accepted. Our Court in *DIT vs. Credit Agricole Indosuez* 377 ITR 102 (dealing with Tribunal order) and the *Apex Court in UOI vs. Satish P. Shah* 249 ITR 221 (dealing with High Court order) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of Atul Puranik (supra).

5. In the above view, the question as framed by the Revenue does not give rise to any substantial question of law. Thus, not entertained.

6. Appeals dismissed. No order as to costs.

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**No. 1(8)Rev Bud/2014** Islamabad, the 23rd December, 2016

To,

**All Chief Commissioners Inland Revenue**
Large Taxpayers Units, Regional Tax Offices,
Corporate Regional Tax Offices

Subject: **Collection of duties/taxes on 30th and 31st December, 2016 by authorized branches of State Bank of Pakistan, National Bank of Pakistan and National Institute of Facilitation Technologies (NIFT)**

I am directed to refer to subject and to state that all Inland Revenue Offices will remain open and observe extended working hours on 30th and 31st December, 2016 as per detail given below:–

i. **Friday 30th December, 2016 until 08:00 pm**

ii. **Saturday 31st December, 2016 until 10:00 pm**

2. The Chief Commissioners are also requested to establish liaison with State Bank of Pakistan and authorized branches of National Bank of Pakistan to ensure transfer of tax collection by these branches before or on 31.12.2016 to the respective offices of State Bank of Pakistan on the same date so as to account for the same towards the collection for the month of December, 2016.