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This issue contains:

- **TAX NEWS**

  Sales tax on steel industry reduced

  FBR agrees to two taxation proposals of opp parties

  SECP takes action against non-complaint market participants

  FBR extends date for availing scheme

  Women enterprepreneurs demand tax exemption

  Single digit sales tax on FBR cards

  FBR agrees to opposition''s two major proposals

  FBR to scrutinise 'auto industry development plan': Rizvi

  DTRE Scheme:
  reduction in utilisation period of input goods weighs heavily on exporters

  FED collection: Sindh still awaiting return of money

- **STATUTES**

  S.R.O. 195(I)/2012, dated February 22, 2012.

- **CASE LAW**

FOREIGN

  A.A.R. No. 958 of 2010

Kind regards

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Sales tax on steel industry reduced

As parliament debates next year's budget, the government on Thursday decided to reduce sales tax on the steel industry from Rs8 per electricity unit consumed in production process to Rs7 per unit while succumbing to pressure from lobbyists.

The move is likely to cause a revenue loss of Rs2 billion, bringing the amount estimated to be collected in additional taxes to Rs61 billion through various measures planned for next fiscal year.

The decision was taken after a meeting between Finance Minister Dr Abdul Hafeez Shaikh and a delegation of Pakistan Steel Melters Association, led by Imtiaz Safdar Warraich, State Minister for Interior.

"The delegation of steel-melting industry requested to reduce the sales tax from Rs8 per unit to Rs6 per unit, on which the finance minister asked the Federal Board of Revenue (FBR) to revise the tax to Rs7 per unit," said an official announcement.

Announcing next year's taxation measures earlier, FBR's Member Inland Revenue Shahid Hussain Asad had said that an increase of Rs2 per unit was being made to make the presumptive tax regime unattractive as the government wanted the steel industry to come into the normal tax regime.

The FBR had estimated that it would generate Rs4 billion by increasing the sales tax rate by Rs2 per unit.

For the next fiscal year, the government has set a Rs2.381 trillion tax target that includes Rs63 billion in additional taxes.

On the demand of reducing the withholding tax from 3% to 1%, the finance minister also asked the FBR to look into this matter in consultation with representatives of the steel industry and present a report shortly, said the finance ministry.

The association chairman claimed that the industry was going through a very difficult time and was unable to survive. He said the issues of sales tax, withholding tax and fuel adjustment surcharge were creating problems.

Shaikh assured the steel industry, which enjoys the blessings of the federal minister of state belonging to PPP, that the government would give more relief to it.

The association chairman further claimed that the imposition of fuel adjustment charges on a six monthly basis has put a huge burden on the industry. He proposed that the fuel adjustment

charges should be collected on a monthly basis in order to avoid the financial shock.

Replying to the proposal, the finance minister asked the Planning Commission deputy chairman to consult the relevant departments for meeting the demand.

The finance minister also constituted a committee comprising Planning Commission deputy chairman, secretary industries and representatives of FBR to look into the issues and challenges faced by the steel industry and to formulate recommendations within a month. – *Courtesy Express Tribune*

FBR agrees to two taxation proposals of opp parties

The Federal Board of Revenue (FBR) has in principle agreed to the two major taxation proposals of the opposition parities, which would be implemented from July 1, 2013 to provide incentives for new companies to opt for listing on stock exchanges.

Senator Ishaq Dar on behalf of 17 senators of the opposition parties, presented budget recommendations including amendments in the Income Tax Ordinance 2001 before the Senate's Standing Committee on Finance here on Thursday with Senator Nasreen Jalil in the chair, saying that he is not only representing Pakistan Muslim League-Nawaz (PML-N), but also the other opposition parties for submitting budgetary proposals.

Dar proposed that the listed companies with free reserves of more than 50 percent of its paid up capital must distribute at least 40 percent of taxed profit as cash dividends. The second proposal is that the tax difference of 5.0 percent between a private limited company and a public-listed company should be introduced to incentivise companies to opt for listing on stock exchanges.

Responding to the proposal of distribution of cash dividends, FBR Chairman Mumtaz Haider Rizvi said that the board has examined the proposal during the budget preparation exercise for 2012-2013. It is a revenue generation measure, which has been supported by the FBR. However, the Securities and Exchange Commission of Pakistan (SECP) and Tax Reform Coordination Group (TRCG) have opposed the proposal and the FBR has not made this proposal part of the Finance Bill 2012-13. The investors are facing liquidity crunch and there is a need to encourage investment. Keeping in view current economic situation of the country, it would not be appropriate to implement the said budget proposal during 2012-13.

The proposal may be dropped during current budget 2012-13 and consider for the next financial year (2013-14).

Dar asked the FBR chairman that instead of dropping the proposal, this could be enforced prospectively from July 1, 2013. Similarly, from July 1, 2013 tax difference of 5.0 percent between a private limited company and a public listed company could be introduced to incentivise companies to opt for listing on stock exchanges.

The FBR chairman responded that the actual impact could be seen in case both the proposals have been simultaneously implemented from July 1, 2013. Both the proposals should be clubbed so that it would be for the benefit of the small investors. The advantages of both the proposals could be visible by implementing both the proposals at the same time. The revenue loss from one proposal would be compensated with the relief provided in the second proposal. These proposals should not be considered in isolation, but simultaneously be considered for the benefit of investors as well as shareholders.

The FBR chairman said that it is a very good proposal that the tax difference of 5 percent between a private limited company and a public listed company could be introduced to incentivise companies to opt for listing on stock exchanges. Similarly, the FBR also favours the proposal that the listed companies with free reserves of more than 50 percent of its paid up capital must distribute at least 40 percent of taxed profit as cash dividends.

FBR Chief Income Tax Policy Dr Iqbal proposed that objectives of both the proposals is to provide incentives on dividends in the from of reduction in taxes. Therefore, there should be only one proposal instead of two separate proposals. Responding to this, Dar opined that both the proposals have different rationale and these cannot be considered as a single proposal.

Dar also proposed amendment in the Income Tax Ordinance 2001 so that the assessment once amended should not be re-amended except under section 122 (5) of the Income Tax Ordinance 2001 and period for such re-amendment of assessment should be reduced to three years. The FBR chairman requested the committee to defer the proposal as it is not feasible to reduce the time period from existing five years to three years during the ongoing exercise of broadening the tax-base. We are ready to reduce the time period of re-amendment of assessment from five to four years in 2013-14 but this year it is requested that the proposal

should be dropped. Taking into account the request of FBR chairman, committee dropped the proposal with the commitment that the same would be made part of the Finance Bill of 2013-14. – *Courtesy Daily Times*

SECP takes action against non-complaint market participants

As a part of its mandate to regulate the capital markets and curb unfair market practices, the Securities Market Division of the SECP took enforcement actions against the market participants for non-compliance with the regulatory framework in the month of May.

Two orders were passed for insider trading and penalties were imposed. In order to curtail the operational malpractices, 8 warning letters were issued against brokers of the KSE and other market participants for regulatory non-compliances. In an effort to protect the investors' interests, an order was passed against a brokerage house of the KSE and penalty was imposed. Show-cause notices were issued to two brokerage houses and an audit firm under various provisions of the securities laws.

In addition, 5 orders and 16 warning letters were issued to directors/owners of listed companies under for late filing of returns of beneficial ownership. During the month, 13 complaints against brokers and 6 complaints against listed companies were resolved. – *Courtesy The Nation*

FBR extends date for availing scheme

The Federal Board of Revenue (FBR) has decided to extend the date for availing the "Default Surcharge and Penalty Waiver Scheme" under SRO-547(I)/2012 and SRO-548(I)/2012 up to 25th June 2012, in view of the positive response of the taxpayers for availing the said scheme.

FBR had earlier announced a "Default Surcharge and Penalty Waiver Scheme" through SRO-547(I)/2012 of Income Tax and SRO-548(I)/2012 of ST & FED dated 22.5.2012 for Withholding Agents and Persons against whom Income Tax, Sales Tax or Federal Excise Duty was due and they could not pay in time. The scheme offered waiver of default surcharge and penalties to such tax defaulters who would pay principal amount of due tax on or before 31st May, 2012.

For further details, taxpayers should consult SRO-547(I)/2012 of Income Tax and SRO-548(I)/2012 of ST& FED dated 22.5.2012 available at FBR website. – *Courtesy The Nation*

Women enterpreneurs demand tax exemption

Women entrepreneurs, at a conference, have demanded of the government to exempt them from all kind of taxes.

They also called upon the government to introduce specific loan schemes for them besides taking tangible measures for development of women entrepreneurship in the province.

They also called for introduction of specific-shopping bazaar to promote their products in a befitting manner. The first Women Entrepreneurial Conference, jointly organized by WBDC and Smeda, was held here at local hotel.

The Minister for Social Welfare, and Women Development, Ms Sitara Ayaz was chief guest at concluding session, while Smeda provincial chief, Javed Iqbal Khattak formally opened the conference.

Other, keynote speakers included Ms Nabela Farman, Project Manager WBDC, Dr Shah Jehan from Institute of Management Studies, Ms Ayesha Khan, Nauman Khan, CEO Outlinx Outsourcing, Ms Shahnaz Kapadia, CEO ECI, Ms Mussarat Ahmed Zeb, hailing from Swat and CEO Ladore, and women entrepreneurs from different parts of province. More than 60 young and skilled women entrepreneurs took part in the conference.

Women entrepreneurs while giving their inputs and suggestions urged that the government should provide subsidy on all form of taxes so that they could sustain their businesses. They further said that a microfinance scheme should be introduced for them and disbursement of loans on easy terms be ensured. The participantssaid financing was the biggest obstacle for promotion of their products. – *Courtesy The Nation*

Single digit sales tax on FBR cards

Chairman Federal Board of Revenue Mumtaz Haider Rizvi has said that FBR has taken cognizance of disparity in rates of sales tax and is moving towards introducing single digit sales tax.

The Chairman FBR was addressing Post Budget Seminar organized by Southern Regional Committee (SRC) of Institute of Chartered Accountants of Pakistan (ICAP) at DHA Golf & Country Club, Karachi.

Mumtaz Rizvi said that FBR is eying towards a mammoth revenue target fixed by the Government and is hopeful to achieve target of Rs1952 Billion fixed for the current fiscal year.

However, he emphasized that with 7th NFC Award, major subjects have been transferred to the Provinces which are also getting significant funds as compared to the past.

He stressed the need that Local Governments, Union Councils, etc. should assist the Federal Government in reaching out to the untaxed sectors of the economy like wholesalers, middlemen and retailers.

The top tax manager of the country also appreciated ICAP's efforts for organizing the seminar and discussing the tax measures proposed in Finance Bill 2012 and underscored the importance of holding identical brain storming sessions on economy and taxation.

In his key-note address, Asad Umar, Former President, Engro Corporation Limited identified difficult access to capital, energy crisis & institutional decay as the major threats to the economy which Pakistan faces today.

However, he was optimistic that strong consumer base, wealth of natural resources coupled with Pakistan's geo-strategic location are our strengths which should be capitalized by the Government so that trickledown effect of the economic progress may be enjoyed by the masses.

The Seminar was attended by over 1300 Members of ICAP, ICMAP and representatives of trade and industry.

Chief Commissioner Shahid Jatoi, Large Taxpayers' Unit, Karachi, Khwaja Tanveer Ahmad, Chief Commissioner, Regional Tax Office and Vishnoo Raja Qavi, Commissioner, Large Taxpayers' Unit, Karachi were also present at the seminar. – *Courtesy The Financial Daily*

FBR agrees to opposition"s two major proposals

The Federal Board of Revenue Chairman Mumtaz Haider Rizvi has agreed in principle to two major taxation proposals of the opposition to amend Income Tax Ordinance 2001 including

introduction of tax difference of 5 percent between a private limited company and a public listed company to incentivise companies to opt for listing on stock exchanges from July 1, 2013.

On behalf of 17 Senators of the opposition parties, Senator Ishaq Dar presented budget proposals including amendments to the Income Tax Ordinance 2001 before the Senate Standing Committee on Finance here on Thursday, saying that he is not only representing PML (N), but other opposition parties for submitting budgetary proposals.

Ishaq Dar proposed that the listed companies with free reserves of more than 50 percent of its paid up capital must distribute at least 40 percent of taxed profit as cash dividend. The second proposal is that the tax difference of 5 percent between a private limited company and a public listed company should be introduced to incentivise companies to opt for listing on the stock exchanges.

Responding to the proposal of distribution of cash dividends, Mumtaz Haider Rizvi said that the FBR has examined the proposal during the budget preparation exercise for 202-13. It is a revenue generation measure which has been supported by the FBR. However, the Securities and Exchange Commission of Pakistan (SECP) and Tax Reform Co-ordination Group (TRCG) have opposed the proposal and the FBR has not made this proposal part of the Finance Bill (2012-13). The investors are facing liquidity crunch and there is a need to encourage investment. Keeping in view current economic situation, it would not be appropriate to implement the said budget proposal during 2012-13. The proposal may be dropped during the current budget (2012-13) and considered for the next financial year (2013-14).

Ishaq Dar asked the FBR Chairman that instead of dropping the proposal, this could be enforced prospectively from July 1, 2013. Similarly, from July 1, 2013 tax difference of 5 percent between a private limited company and a public listed company could be introduced to incentivise companies to opt for listing on stock exchanges.

FBR Chairman responded that the actual impact could be seen in case both the proposals have been simultaneously implemented from July 1, 2013. Both the proposals should be clubbed so that it would be for the benefit of the small investors. The advantages of both the proposals could be visible by implementing both the proposals at the same time. The revenue loss from one proposal would be compensated with the relief provided in the second

proposal. These proposals should not be considered in isolation, but simultaneously be considered for the benefit of investors as well as shareholders.

The FBR Chairman said that it is a very good proposal that the tax difference of 5 percent between a private limited company and a public listed company could be introduced to incentivise companies to opt for listing on stock exchanges. Similarly, the FBR also favours the proposal that the listed companies with free reserves of more than 50 percent of its paid up capital must distribute at least 40 percent of taxed profit as cash dividend.

The FBR Chief Income Tax Policy Dr Iqbal proposed that objectives of both the proposals is to provide incentives on dividends in the from of reduction in taxes. Therefore, there should be only one proposal instead of two separate proposals. Responding to this, Ishaq Dar opined that both the proposals have different rationale and these cannot be considered as a single proposal.

Ishaq Dar also proposed amendment in the Income Tax Ordinance 2001 so that the assessment once amended should not be re-amended except under section 122 (5) of the Income Tax Ordinance 2001 and period for such re-amendment of assessment should be reduced to three years. The FBR Chairman requested the committee to defer the proposal as it is not feasible to reduce the time period from existing 5 years to 3 years during the ongoing exercise of broadening the tax-base. We are ready to reduce the time period of re-amendment of assessment from 5 to 4 years in 2013-14 but this year it is requested that the proposal should be dropped. Taking into account the request of FBR Chairman, committee dropped the proposal with the commitment that the same would be made part of the Finance Bill of 2013-14. – *Courtesy Business Recorder*

FBR to scrutinise 'auto industry development plan': Rizvi

The FBR will thoroughly examine the Auto Industry Development Plan submitted by the Engineering Development Board (EDB) and the Ministry of Industries for the overall development of the auto sector, Federal Board of Revenue (FBR) Chairman Mumtaz Haider Rizvi said on Thursday. The plan seeks to make local assemblers and vendors globally competitive.

FBR Chairman informed the Senate's Standing Committee on Finance that the EDB and the Ministry of Industries had prepared

the plan that had not been included in the budget proposals for 2012-2013. The plan, he said, was received by the FBR just a day before the budget's announcement that was why it could not be included in budget proposals. There was not too much time for making the plan part of the federal budget (2012-2013).

The AIDP aims to allow concession on imports in Completely Knocked Down (CKD) condition to promote assembly activity in the country and discourage incentives on completely built up (CBU) condition. The plan, the FBR chairman said, would now be thoroughly examined and a presentation would be arranged for the Finance Committee after the passage of the budget (2012-2013).

Mumtaz Hyder Rizvi told committee that the basic exemption limit was now being raised for salaried and business individuals to Rs 400,000 to provide relief to low-income groups. "It is very necessary that burden of taxes is not increased on the salaried class that is already paying taxes. The government has honoured its commitment that the FBR will not increase the burden of taxes on honest taxpayers. However, maximum relief has been provided to honest taxpayers, including salaried persons."

FBR's Member Inland Revenue Shahid Hussain Asad informed the committee that 2% CVT had also been proposed to be imposed on immovable property in federal capital, including farm houses. The CVT on immovable properties was not being levied in Islamabad Capital Territory. There was a proposal to levy and collect CVT on transactions of immovable properties in Islamabad with identical structure adopted by the provinces, he added. – *Courtesy Business Recorder*

DTRE Scheme: reduction in utilisation period of input goods weighs heavily on exporters

The Federal Board of Revenue has made 50 percent reduction in the utilisation period of the input goods from two years to one year imported by the exporters for export of the finished products under the Duties and Tax Remission for Export (DTRE) Scheme, causing problems for the business and trade.

Tax experts told here on Thursday that the FBR has taken a measure in budget (2012-13) having direct negative impact on the exporters. Under the DTRE Scheme, the input goods acquired would be utilised in the manufacture and export of output goods within 24 months from the date of approval of DTRE application.

Under the said arrangement available as per DTRE scheme, the whole process of DTRE approval; opening of LC; processing of documents; import of input goods; manufacturing of products and exports took over 1-2 years. It is a time consuming process in view of prevailing law and order situation; energy crises and increased cost of doing business and the period was extended from one year to two years on the demand of the manufactures-cum-exporters in the past.

The utilisation period of input goods was extended from 12 months to two years in view of practical difficulties being faced by the exporters in the past. The FBR has now reduced the time period of the consumption of the input goods imported under the DTRE scheme which may create serious problems for the exporters to ensure export of the finished products within the curtailed period of one year. If the export orders are being canalled or foreign buyers delay their orders, it is practically not possible for the exporters to complete the whole process in one year under the procedure laid down in the DTRE scheme.

Through the SRO601(I)/2012 issued in budget (2012-2013), the FBR has amended the Customs Rules, 2001. Prior to amendment, the customs rules said that the input goods acquired shall be utilised in the manufacture and export of output goods within twenty-four months from the date of approval of DTRE application.

Provided that the said period may be extended by the Board in cases of exceptional circumstances. After amendment in the Customs Rules, 2001 through SRO601(I)/2012, the revised rules said the input goods acquired shall be utilised in the manufacture and export of output goods within 12 months from the date of approval of DTRE application, experts added. – *Courtesy Business Recorder*

FED collection: Sindh still awaiting return of money

Despite repeated promises, the federal government has not yet returned Rs 1.5 billion to the Sindh government collected by the Federal Board Revenue (FBR) in the head of Federal Excise Duty (FED) during early months of the outgoing fiscal year, learnt on Thursday.

Sources inside the Sindh Revenue Board (SRB) said that during a meeting held in Islamabad a few weeks ago, FBR officials had

agreed to transfer the amount of taxes on services to the provincial exchequer. After the meeting, FBR officials verified to the Finance Ministry that the federal tax collection body had collected Rs 4,478.42 million (including Sindh's Rs 1.5 billion) in the head of sales tax and FED (sales tax mode) for June, in July 2011 from all over the country, sources said.

Later, the finance ministry informed the Sindh government about this new development made by FBR and asked for the exact amount collected from Sindh, they added. In a reply, SRB wrote a letter to finance ministry on May 5 this year, stating that the FBR had collected Rs 1.5 billion from Sindh and asked it to return this amount, sources said.

According to sources, SRB authorities were hopeful that when the finance ministry would soon deposit Rs 1.5 billion in the Sindh exchequer, but the amount had not been sent to Sindh's account yet. In this connection, Sindh Chief Minister Syed Qaim Ali Shah also wrote a letter to federal Finance Minister Abdul Hafeez Sheikh but no reply had yet been received by the Chief Minister House or SRB headquarters, they said. The FBR had transferred just Rs 1.82 million out of Rs 2,492.22 million to Sindh government through the federal finance ministry a couple of weeks ago, sources said. – *Courtesy Business Recorder*

S.R.O. 195(I)/2012, Islamabad, the 22nd February, 2012.– In exercise of the powers conferred by section 505 of the Companies Ordinance, 1984 (XLVII of 1984), read with section 470 thereof and clause (c) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), the Securities and Exchange Commission of Pakistan is pleased to direct that the following amendments shall be made in the Sixth Schedule to the said Ordiannce, namely:–

In the aforesaid Schedule, after item XIII, the following shall be **added**:

XIV.	For Processing under Fast Track Registration Services (FRS), the FRS fee shall be in addition to normal fee and charged as given below:			
			In case of online submission.	In case of offline submission.
	(a)	For incorporation of company…	Equal to normal fee but subject to maximum of Rs.10,000.	Equal to normal fee but subject to maximum of Rs.20,000.
	(b)	For availability of any proposed name for registration of a company…	Rs. 500.	Rs. 1,000.
	(c)	For seeking approval of Change of Name…	Rs. 2,500.	Rs. 5,000.
	(d)	For filing, registering or recording any document notifying particulars relating to a mortgage/charge or other interest created by a company, or any modification therein or satisfaction thereof…	Rs. 5,000.	Rs. 7,500.

2012 PTR 1219 (Trib. Ind.)

AUTHORITY FOR ADVANCE RULINGS
(INCOME TAX) NEW DELHI

P.K. Balasubramanyan, Chairman

FACTS/HELD

1. **Composite contract cannot be split to exempt profits from offshore supply of goods. A joint contract constitutes an AOP despite separate responsibility of parties**
2. The Applicant, a foreign company, entered into a consortium agreement with three other companies for the submission of a joint bid in response to the Bangalore Metro Rail Corporation Ltd's (BMRC) tender for "design, manufacture, supply, installation, testing & commissioning of signaling/ train control and communication systems". The consortium parties agreed to be jointly and severally liable to BMRC for the performance of all obligations under the contract. However, *the respective obligations of the parties was split up & each was separately responsible for its own profit/loss*. The bid was accepted by BMRC and a contract between BMRC and the Consortium was entered into. The applicant filed an applicant for advance ruling and claimed, relying on Ishikawajima–Harima 288 ITR 408 (SC), Hyundai Heavy Industries 291 ITR 482 (SC) & Hyosung Corp 341 ITR 18 (AAR), that the income derived by it from *offshore supply* of plant and materials was not taxable in India as the title to the goods had passed, and payment was received, outside India. It was also claimed that as each consortium member had *separate responsibility and was accountable for its own profit/ loss*, the fact that the contract with BMRC was joint, did not make the consortium an "AOP". HELD by the AAR rejecting the plea:
   (i) Though in Ishikawajima–Harima 288 ITR 408 (SC), Hyundai Heavy Industries 291 ITR 482 (SC) & Hyosung Corp 341 ITR 18 (AAR), it was held that that a composite contract was capable of being dissected and it was open to the assessee to raise the contention that parts of the contract should be treated separately for the purpose of deciding whether income from the performance of that

part of the contract arose onshore or offshore and that part of the income attributable to offshore transaction cannot be taxed in India, ***this is no longer good law*** in view of the larger bench decision in **Vodafone International Holdings** where it was held that the transaction has to be looked at as a **whole and not by adopting a dissecting approach**. The basic principle in interpretation of a contract is to read it as a whole and to construe all its terms in the context of the object sought to be achieved. Reading parts of the contract as imposing distinct obligations is not the proper way to understand a composite contract;

(ii) On facts, the contract entered into with BMRC was a **composite one** for the design, manufacture, supply, installation, testing & commissioning of signaling system for which a lump sum consideration was paid. **Such a contract cannot be split up into separate parts** as consisting of independent supply or sale of goods and for installation at the work site, leading to the commissioning and so on (Linde AG AAR 962/2010 & Roxar Maximum (AAR) followed).

(iii) Further, as the applicant and the others came together for **jointly executing** the project, they constituted an **AOP** & were liable to be taxed as such. The argument that the obligations undertaken by the Consortium jointly and directly under the contract were not relevant in considering the question whether there was an AOP but what was relevant was only their relationship inter se is not acceptable. **The fact that between themselves, the members of the Consortium divide the performance of the obligation does not affect the nature and content of the obligation undertaken by them jointly**

Order accordingly.

A.A.R. No. 958 of 2010.

Decided on: 7th June, 2012.

Present at hearing: N. Venkatraman, Sr. Counsel, Satish Aggarwal, FCA, Akhil Sambhan, ACA, Vinay Aggarwal, ACA and Atul Awasthi, CA, for Applicant. Bhupinderjit Kumar, ADIT (Int. Taxation), for Department.

JUDGMENT

P.K. Balasubramanyan:– (Chairman)

On 4.6.2009, the Bangalore Metro Rail Corporation Limited (hereinafter referred to as 'BMRC') floated a tender for "design, manufacture, supply, installation, testing & commissioning of signaling/ train control and communication systems". The applicant along with, Alstom Projects India Limited('APIL), Thales Security Solutions & Services, S.A, Portugal ('Thales') and Sumitomo Corporation, Japan ("Sumitomo') entered into a Consortium Agreement on 1.9.2009. The same was executed and registered in Bangalore in India. It is recited in the said Consortium Agreement that "the parties wish to cooperate on an exclusive basis in the submission of a joint tender to the employer for the project and if the tender is accepted, in the negotiation and performance of the ensuing contract". The employer referred to therein is BMRC. The contract therein is defined to mean the contract awarded to the party by the employer. The agreement specified that the parties were coming together to prepare and submit a tender and to negotiate for securing the award of the contract. Nothing in addition to the contract was to be taken up by any of the parties in respect of the work for which the tender was floated. The parties were to be jointly and severally bound by the terms of the tender and were to be jointly and severally liable to the employer for the performance of all obligations under the contract. The bid submitted by the Consortium was accepted by BMRC. The contract between BMRC and the Consortium of four, was entered into on 16.9.2009. The consortium was jointly and severally responsible for the work tendered. The contract was "to implement the design, manufacture, supply, installation, testing and commissioning of signaling/ train-control and communication system" for BMRC project. The contractor, namely, the Consortium, agreed thereunder to perform efficiently and faithfully all of the work and to design, manufacture, supply, installation and testing & commissioning of signaling/ train-control and communication system and to supply spares, O & M manuals and provide training of O &M personnel, supervision of maintenance and to supply or provide all equipment, materials, labour, and other facilities requisite for or incidental to successful completion of the works and in carrying out all duties and obligations imposed by the contract. BMRC agreed to pay for the total cost of the works, a portion to be paid in Indian rupees and another to be paid in EUROs. The contractor was to complete whole of the works within 178 weeks from the commencement date. The contract was enforceable and was to be construed under the applicable laws of the Republic of India.

2. The applicant approached this Authority for a Ruling on the basis that as one of the Consortium members, it was concerned with offshore supply of plant and materials including supply of spare parts and offshore designing and training of operating and maintenance personnel

and asking whether the payments received for those activities would be taxable in India under the provisions of the Income-tax Act, 1961 and the Double Taxation Avoidance Convention between India and France and whether the amounts received by the applicant under the contract for offshore services are chargeable to tax in India under the Act and the Convention. Having overruled the objections of the Revenue to the allowing of the application under section 245R(2) of the Act, this Authority allowed the application for giving a ruling under section 245R(4) of the Act on the following two questions:

1. *"On the facts and circumstances of the case, whether the amounts received/receivable by ALSTOM Transport SA ('Applicant or 'ASTA'), under Contract No.2 S&T- DM vide Contract Agreement Document dated 16 September 2009 and Supplementary Contract Agreement Document dated 08 December awarded by Bangalore Metro Rail Corporation Limited ('BMRCL') to the consortium for design, manufacture, supply, installation, testing & commissioning of signaling/train control and communication system including supply of spares are chargeable to tax in India under the provisions of Income-tax Act, 1961 (the 'Act') and Double Taxation Avoidance Agreement between India and France ('India-France tax treaty')?*
2. *On the facts and circumstances of the case, whether the amounts received/receivable by ATSA under the BMRCL contract, for offshore services are chargeable to tax in India under the provisions of the Act and India-France tax treaty?*

3. On behalf of the applicant, it was contended that the design and supply of equipment by the applicant took place outside India and being an offshore transaction, income therefrom is not chargeable to tax in India. Title to the goods passed outside and payment was received outside India and no part of the income either arose in India or can be deemed to arise in India. Therefore, the questions have to be ruled on in favour of the applicant.

4. On behalf of the Revenue, it was contended that the contract was one and indivisible and could not be split up as sought to be done by the applicant. There was no contract for offshore supply of any equipment. The contract was one for design, manufacture, supply, installation, testing & commissioning of a system in India and the contract cannot be split up since it was a composite contract for the commissioning of a project. There was no occasion to deal with offshore supply, so called, separately. The representative for the Revenue also raised the contention that Members of the Consortium who came forward to bid, formed an Association of Persons within the meaning of section 2(31) of the Income-tax Act. There was clearly a common purpose in their coming together and common management. The coming together was with the intention to undertake an activity with a view to earn profits. They were acting in

concert in furtherance of their respective businesses. Two of the consortium Members were also the subsidiaries of the applicant. Hence, the Consortium Members including the applicant are liable to be assessed as an Association of Persons and the income from the transaction was chargeable to tax in India.

5. Since the question of Consortium Members being an AOP was agitated by the Revenue only at the time of hearing under section 245R(4) of the Act, at the request of the counsel for the applicant time was given to him for argument on this question and the application was further heard on that question. Before the ruling which was reserved could be given, Member (Revenue) who was part of the Authority at the time of hearing, retired and in view of that, the hearing was re-opened and the application was posted again for a fresh hearing so as to ensure that the ruling was given by the very Authority which finally heard the application. The ruling is being delivered thereafter, after hearing both sides afresh. A detailed written submission has also been made.

6. The tender floated by BMRC was a composite tender. The bid submitted by the Consortium of which the applicant is the leader was for the work tendered. Subsequently, the contract that was entered into by the consortium with BMRC, is a contract for design, manufacture, supply, installation, testing & Commissioning of signaling/ train control and communication system. The object of the contract and the purpose of the contract were the installation and commissioning of a signaling and communication system. The contract provided for the payment for the work in lump and it cast a joint and several liability on the consortium for carrying out the work. A contract has to be read as a whole in the context of the purpose for which it is entered into. A contract for the installation and commissioning of a project like the present one, cannot be split up into separate parts as consisting of independent supply or sale of goods and for installation at the work site, leading to the commissioning and so on. In the case on hand, on a true construction of the contract between the parties, I am clearly of the view that this is a contract, the main purpose, if not the sole purpose of which is installation and commissioning of a signaling and communication system and its delivery to BMRC. In recent rulings in AAR/962/2010 and in AAR/979/2010, this Authority has discussed this aspect and has taken the view that such contracts should be read as a whole in the context of the object sought to be achieved and they cannot be split up into different parts for the purpose of taxation.

7. In this context, great reliance was placed by learned Senior counsel for the applicant on the decisions of the Supreme Court in [1]*Ishikawajima – Harima Heavy Industries Limited vs. DIT*; [2]*CIT vs.*

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[1] 288 ITR 408

[2] 291 ITR 482

Hyundai Heavy Industries Co. Limited, and on a Ruling of this Authority in Hyosung Corporation v. DIT [AAR/773/2008]. I must take note of the fact that the two decisions and the Ruling relied on were rendered prior to the pronouncement of Supreme Court decision in [1]*Vodafone International Holdings BV vs. UOI & another*. In *Ishikawajima – Harima Heavy Industries Limited vs. DIT*, a two Judge Bench of the Supreme Court held that a contract of this nature was capable of being dissected and it was open to the assessee to raise the contention that parts of the contract should be treated separately for the purpose of deciding whether income from the performance of that part of the contract arose onshore or offshore and that part of the income attributable to offshore transaction cannot be taxed in India. In the Vodefone judgement rendered by three-Judge bench of the Supreme Court it is clearly laid down that "it is the task of the Revenue/Court to ascertain the legal nature of the transaction and while doing so it has to look at the transaction as a whole and not to adopt a dissecting approach." Thus, the approach adopted in *Ishikawajima – Harima Heavy Industries Limited vs. DIT* now stands disapproved or overruled, if not expressly, definitely by clear implication. In fact, with great respect, the basic principle in interpretation of a contract is to read it as a whole and to construe all its terms in the context of the object sought to be achieved and the purpose sought to be attained by the implementation of the contract. Reading parts of the contract as imposing distinct obligations may not be the proper way to understand a composite contract especially for installation and commissioning and delivery of a project or a system.

8. What was the purpose for which the tender was invited by BMRC cannot be in doubt in this case. It was for installing the signaling and communication system for the metro rail. It was not for supply of offshore equipments independently of the installation and commissioning. Nor was it for independent installation and commissioning, divorced from the design and supply of the equipments necessary. Such a contract has necessarily to be read as a whole and is not capable of being split up. On reading the contract in the context of the tender floated and the purpose sought to be achieved, in the light of the arguments raised by learned Senior counsel for the applicant, I am satisfied that the contract involved herein is a composite contract and it cannot be dissected into parts even if a dissecting approach is permissible after the Vodefone decision. Thus, looking at and reading the contract as a whole, I overrule the claim of the applicant that a part of the transaction sould be treated as a contract for offshore supply not liable to be taxed in India. I find that for the purpose of taxation, the contract must be taken as one, for installation and commissioning of a project in India.

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[1] 341 ITR 1

9. I also find considerable force in the argument on behalf of the Revenue that the applicant alongwith other members of the Consortium are liable to be taxed as an AOP. In the Ruling in AAR/962/2010, this aspect has been considered in detail. The relevant decisions starting from that of the Calcutta High Court in B.N. Elias & others, In re [3 ITR 408] have been considered. It is to be noted that what emerges from the decisions is that the question whether an AOP is formed, has to be decided on the facts of a given case.

10. I have already indicated that the applicant and the others came together for bidding for the work tendered, after jointly preparing the bid. They came together for executing the project if their tender were to be accepted. The contract was for performing the entire work at the joint responsibility of the four Members of the Consortium who came together to perform the contract. The Members of the Consortium were all in business and they came together in pursuance of an intention to promote their businesses. The common object was to perform the contract and earn income thereform. Thus, there was a common object in the coming together. There was a common purpose and there was concerted action. Here is a combination of persons formed for the promotion of a joint enterprise banded together, to borrow the language of the decision in B.N. Elias. It does not appear to be necessary to repeat the reasons given in the ruling in AAR/962/2010 of this Authority on this aspect. Suffice it to say that, on the facts of this case, there is no difficulty in holding that the applicant, alongwith the other members of the Consortium, formed an Association of Persons liable to be taxed as such.

11. Learned Senior counsel for the applicant contended that the observations in the decision in Vodafone should be understood in the context in which they were made and they cannot be relied on in construing a contract like the present one especially in the face of the decision in *Ishikawajima – Harima Heavy Industries Limited*. It is true that the observations in Vodafone were made in the context of that case. But, what the Court has laid down as guidance to the Revenue and the Courts is that a transaction must be taken as a whole and not dissected from the angle of taxation. As I understand it, it is a reiteration of a principle in the approach to taxation of a transaction by the Authorities under the Income-tax Act. To refuse to follow the 'look at' test clearly postulated by the Supreme Court, would in effect be a refusal to follow the ratio of that decision.

12. It is true that the Supreme Court in Vodafone has not overruled Ishikawajima – *Harima Heavy Industries Limited* or dealt with a situation similar to the one that was available in *Ishikawajima – Harima Heavy Industries Limited*. But that does not mean that the clear disapproval of the dissecting approach in Vodafone in the context of Section 9 of the Income-tax Act, can be ignored or bypassed by this Authority, any court or the Income-tax Authorities. It is not possible to

accept the submission that the Vodafone ratio of non-dissecting approach to a transaction cannot be applied to a case like the present one.

13. Learned Senior counsel then contended that while considering the question whether the Consortium formed an Association of Persons, the Authority has to first consider that question and not the question whether the contract is indivisible and on finding that it is, approach the question on that basis. He submitted that because of that wrong approach what the Authority has done in its Ruling in AAR 962 of 2010 is to put the cart before the horse. With respect to the learned counsel, I am not able to agree. To understand whether the members of the Consortium formed an Association of Persons, one has to see first what actually they are involved in and its nature. That can be discerned only on understanding the terms of the contract and its effect. Without first understanding the effect of the contract, the nature of the activity undertaken, and the obligations incurred thereunder, the nature of the relationship between the parties cannot be understood. The question whether the members of the Consortium form as Association of Persons cannot be decided without understanding the obligations undertaken by them under the contract. That alone will lead to a proper adjudication of the question of the nature of the association among the members of the Consortium.

14. Learned counsel then argued that the obligations undertaken by the Consortium jointly and directly under the contract is not relevant in considering the question whether the members of the Consortium form an Association of Persons. He submitted that what was relevant was only their relationship inter se and their obligations to one another and their rights against one another. Their joint and several liability to the tenderer or the joint obligation to perform an erection contract are not relevant. It is not possible to agree with the submission. The coming together of the members of the Consortium is based on the tender floated for a particular work. The coming together is to meet the obligations to the tenderer arising out of that tender notification. On winning the bid, the contract entered into is for the purpose of performing that obligation. Thus, the tender is the *rai-son d'etre* and the contract with the tenderer is the foundation for the combination of the members coming together to perform the obligation thereunder. After committing themselves to perform the contract in terms of the contract with the tenderer, however the members of the Consortium divide the performance of the obligation, that would not affect the nature and content of the obligation undertaken by them jointly. Their arranging the inter se relationship while performing that joint and common obligation, cannot alter the status they acquire as Consortium members in performing a joint obligation undertaken by the Consortium. Even in the Consortium agreement, the joint and several liability to the tenderer is reiterated. I am therefore satisfied that the members dividing the obligation among themselves

after the bid is knocked down in favour of the Consortium cannot alter the status they acquire while entering into a contract with a common purpose and incurring a joint liability thereby.

15. The main question posed for Ruling arises out of a transaction. The income arises out of that transaction. That transaction is the one the applicant and the others have entered into with BMRC. Both the decisions of the Supreme Court, *CIT vs. Motors and General Stores (P) Ltd.* [66 ITR 692] and *CIT vs. Gillanders Arbuthnot and Co.* [87 ITR 407] relied on in the written submissions filed on 23.5.2012, indicate that what has to be considered is the transaction which is the source of the receipt. The source of the receipt in this case, according to me, is the contract with BMRC and not the contract inter se or the understanding among the members of the Consortium. The receipt in rupees and Euros arise out of that transaction. I have, therefore, no hesitation in coming to the conclusion that what is relevant in this context is to consider the legal rights and obligations arising out of and undertaken under that transaction to determine the status of the Consortium as a person.

16. It was argued that the inter se relationship among the members of the Consortium and the splitting up of obligations by them among themselves and the undertaking of separate responsibilities for performance, receipt of income and for profit or loss, should tilt the scale against the Consortium members being considered as an Association of Persons. We are looking at a tender for a project. The members of the Consortium, may be with their independent expertise, come together with a common object of winning the contract and performing the obligations under the contract for the bid amount offered by the Consortium and accepted by the tenderer. The effect of their coming together with a common object to earn an income by performing the common obligations incurred, cannot be got rid of by the members trying to separate the work among themselves or getting the tenderer to make separate payments. In fact, a public company like BMRC cannot depart from the tender it has floated or vary the scope of the work tendered or the manner of performance by its subsequent conduct. In this case, the applicant acts as the leader of the Consortium to deal with BMRC and the identity of the Consortium acquired under the contract, cannot get and does not get effaced by anything done after acceptance of the tender.

17. It is argued that a Consortium is nothing but a commercial arrangement of convenience between the parties and that it is a combination of people or resources desiring or attempting to execute a particular venture or project to the satisfaction of the customer and has the prior acceptance of the customer for such a formation. I find that this in no way affects the coming together with a common object with a common obligation vis-à-vis the customer with a view to earn an income or profit by a performance of the obligations jointly undertaken.

18. It is contended that there would be problems in taxation if the Consortium is considered as a AOP and hence this Authority must be slow to come to such a conclusion. It cannot be said that the Consortium which is an AOP does not have a common income, arising out of a transaction with ONGC in this case. That income can be assessed in the hands of the AOP as provided for in the Act.

19. Thus, on the facts of this case and on the basis of the transaction involved, I conclude that the applicant along with the other members of the Consortium formed an Association of Persons liable to be taxed in India as such.

20. In the light of the above discussion, it has to be ruled on question no.1 that the contract the Consortium of which the applicant is a member, has entered into with BMRC cannot be split up to treat a part of it as confined to offshore supply of equipment not capable of being taxed in India, and that the income from it has to be taxed as a whole and on question no. 2 that in the nature of the transaction, the income received by the Consortium Members in terms of the contract, is taxable in India under the Income-tax Act and under the Double Taxation Avoidance Convention relied on.