

**17<sup>th</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
(SEPTEMBER 13, 2024)**

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**Dear Members,**

A brief update on a judgment by the Appellate Tribunal Inland Revenue, Islamabad on **“Insurance money is actionable Claim, not chargeable to Sales Tax”** is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at [info@karachitaxbar.com](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

**(Syed Zafar Ahmed)**  
President

**(Asim Rizwani Sheikh)**  
Hon. General Secretary

**17<sup>th</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
(September 16, 2024)**

**INSURANCE MONEY IS ACTIONABLE CLAIM, NOT CHARGEABLE TO SALES TAX**

**Appellate Authority:** ATIR, IB

**Appellants:** Warid Telecom (Pvt) Ltd

**Section:** 3(1), 2(12) of Sales Tax Act, 1990 (the Act)

Judgment Date: 05th, August 2022

**Background:**

Appeal was filed by the taxpayer before the Appellate Tribunal against the order issued by the Commissioner Inland Revenue Appeals. Taxpayer contended that receipt of insurance claim, being actionable claim, is not subject to sales tax under Section 3(1) of the Act. Tax Department raised sales tax demand based on sales proceeds against disposal of fixed assets stated in Cash Flow Statement.

**Decision:**

**First Ruling - What is an actionable claim?**

As the Sales Tax Act does not define the term 'actionable claim', it has been borrowed from Section 3 of the Transfer of Property Act, 1882. Considering the judgments of the courts, Tribunal found that there are two parts to the definition of actionable claim:

- a) A claim to unsecured debt
- b) Any interest in the movable property, which is not in the possession of the claimant.

**Second Ruling - Insurance claim is actionable claim.**

Tribunal referred the term goods defined under Section 2(12) that excludes 'actionable claim'. Tribunal also referred the definition of term 'Goods' defined in Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973. The said Article states 'Goods includes all materials, commodities and articles'. Tribunal noted that the both definitions do not include 'actionable claim'. Tribunal also placed reliance on various judgments whereby it was held that 'insurance money is actionable claim'. Considering the legal provisions and the older judgments, Tribunal ruled that the exercise of right by the insured person to receive insurance money is an activity which is transacted as an actionable claim. Hence, the receipt of insurance claim from insurance company is actionable claim.

**Third Ruling – Sales Tax is levied on Sale of Goods, except Actionable Claim (Insurance Money)**

Tribunal noted that sales tax is levied on taxable supply in terms of Section 3(1) of the Sales Tax Act, 1990. The term 'Taxable Supply' means 'Supply of Taxable Goods'. Since the term goods excludes actionable claims, it is held that the taxpayer is not obliged to pay tax on receipt of insurance money.

**CONCLUSION:**

Tax Authority usually adjudicates sales tax liability on Sales Proceeds / Written Down Value [WDV] relating to deletion / disposal of fixed assets declared either from Financial Statements or Tax Depreciation Schedule annexed to Income Tax Return. Sales Tax liability is applicable on Sales Proceeds instead of Written Down Value in terms of Section 3(1) of the Act. Such proceeds are realized against disposal of fixed assets and some cases from insurance company when fixed assets are damaged in fire or accident. Tribunal held that receipt of insurance claim (being actionable claim) from insurance company on account of disposal fixed asset is not subject to sales tax under Section 3(1) of the Act.

In this relation, Federal Board of Revenue also issued clarification vide No. C.No.2(20)STP/97 dated 18 October 2001 whereby it is clarified that no sales tax is leviable on the amount of compensation paid by the insurance company. Through the said clarification, it is further clarified that input tax paid on such destroyed assets is not adjustable. In such circumstances, input tax claimed by taxpayer is recoverable by tax authority.

**DISCLAIMER:**

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

C.No.2(20)STP/97

DATED 18<sup>TH</sup> OCTOBER, 2001

**SUBJECT:- CLARIFICATION ON APPLICABILITY OF SALES TAX ON FIRE CLAIM RECEIVED FROM INSURANCE COMPANY.**

I am directed to refer to your letter No.PO/CE/28704, dated 1<sup>st</sup> August, 2001, on the subject cited above and to say that destruction of goods by fire and subsequent compensation by an insurance company does not constitute supply as defined in section 2(33) of the Sales Tax Act, 1990, for the following reasons:

- (i) it is neither sale nor lease;
- (ii) it is not done in the normal course of furtherance of business, but is a chance calamity;
- (iii) it is not done for consideration. Payment by the insurance company is actually compensation for loss and is not payment/consideration for delivery of goods.

2. Since no supply is involved, no sales tax is leviable on the amount of compensation paid by the insurance company. However, in order to confirm that the loss was actually due to fire, a copy of FIR lodged immediately after the incidence and Survey Report of the Insurance Company's appointed Surveyor should be available on record.

3. It should be clear that the sales tax paid on the goods destroyed in fire is not refundable or adjustable. If the amount of sales tax involved has already been adjusted in the monthly return, it should be repaid to/recovered by the Government, as by virtue of sections 7 and 8 of the Sales Tax Act, 1990, adjustment is only allowed where the inputs are used in the making of taxable supplies.

*[Issued by the CBR, Islamabad under the signature of Dr. Ashfaq Ahmed Tunio, Secretary (ST-L&P) addressed to M/s APTMA, Karachi. Copy endorsed to all the Collectors of Sales Tax.]*

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**APPELLATE TRIBUNAL INLAND REVENUE, DIVISIONAL  
BENCH, ISLAMABAD**

STA No. 482/IB/2021, (Tax Periods Jan. 2014 to Dec. 2015), date of order: 05.08.2022, date of hearing:  
05.08.2022

**PETITIONER(S): M/S WARID TELECOM (PVT) LTD. 1-A, IBC  
BUILDING, F-8 MARKAZ, ISLAMABAD.**

**Versus**

**RESPONDENT(S): COMMISSIONER INLAND REVENUE LTO,  
ISLAMABAD.**

Appellant by: Mr. Zaka Ud Din, ACA

Respondent by: Mr. Imran Shah, DR

**ORDER**

**M. M. AKRAM (Judicial Member):** - The titled sales tax appeal has been filed by the appellant/registered person against the Sales Tax Order in Appeal No.03/2021 dated 29.10.2021 passed by the Learned Commissioner Inland Revenue (Appeals-I), Islamabad for the tax periods January 2014 to December 2015 on the grounds as set forth in the memo of appeal.

2. Briefly facts culled out from the record are that as per the audit observation of DGRRA, the appellant made a Sale of Fixed Assets aggregating Rs.965,365,000/- [T.Y 2016 Rs.502,761,000, T.Y 2015 Rs.462,604,000] as per cash flow statement filed for the tax years 2015 and 2016. According to section 3(1) of the Sales Tax Act, 1990 (“the Act”) read with the decision of the Supreme Court of Pakistan dated 5th March 2007, (PTCL 2007 CL 565) sales tax amounting to Rs.164,112,050/-(17% of Rs.965,365,000) was recoverable from the appellant registered person on account of the disposal of fixed assets. On the aforesaid basis, a show-cause notice dated 10.06.2019 was issued to the appellant and culminated by passing the Order-in-Original No.05/102/2019 dated 21.10.2019. Feeling aggrieved by the assessment of the adjudicating authority, the appellant preferred an appeal before the Commissioner IR (Appeals-I), Islamabad wherein it was contended that the adjudged demand of sales tax against the disposal of fixed assets also includes supplies that are exempt from sales tax. A further certain amount of sales tax has already been deposited vide sales tax returns against proceeds from the disposal of fixed assets. Considering the submissions and record, the appellate authority, therefore, had remanded the case to the assessing officer vide order-in-appeal No.19/2019 dated 26.12.2019 with the following directions: -

“ ..... the case is remanded back with the direction to obtain the relevant evidence from the appellant and on the basis of facts so ascertained action be taken as per law.”

In consequence of and to give effect to the directions given by the appellate authority, the assessing officer issued the notices to the appellant and after considering the submissions of the appellant, relying upon the judgment of the Hon'ble Supreme Court reported as PTCL 1997 565 on the issue, passed a speaking order creating thereby a tax demand of Rs.139,061,976/- besides penalty and default surcharge vide order dated 12.06.2021. Felt aggrieved, the appellant registered person filed an appeal before the learned Commission Inland Revenue (Appeals-I), Islamabad who decided the appeal of the registered person vide Sales Tax Order in Appeal No.03/2021 dated 29.10.2021. Being aggrieved, the appellant registered person has now come up before this forum and assailed the impugned order on a number of grounds. The said appeal was earlier decided by this tribunal vide order dated 04.03.2022 on the sole ground that the appeal does not lie against the order passed under section 11B of the Act and accordingly, the appeal of the appellant was dismissed being not maintainable. Against the said order, the appellant preferred the reference application before the High Court bearing STR No.12 of 2022 whereby the order passed by this tribunal was set aside vide order dated 09.05.2022 with the direction to decide the appeal of the appellant on its merit.

3. In consequence of the direction of the Hon'ble Islamabad High Court, the titled appeal came up for hearing on 05.08.2022. Learned AR has mainly contended that imposing sales tax on an insurance claim is not in accordance with law as an insurance claim does not fall within the ambit of taxable supplies, therefore, sales tax cannot be imposed on consideration received against

such claim. Almost all these grounds are duly incorporated in the impugned appellate order. On the other hand, the learned DR opposed the appeal on the ground that the learned Commissioner (Appeals) has passed a speaking order and there is no illegality or lacuna in his order.

4. We have considered the rival submissions carefully and have gone through the relevant material on record. Admittedly, the original assessment order was passed on 21.10.2019 under section 11 of the Act. Aggrieved with this order, the appellant registered person preferred the appeal before the first appellate authority who vide Order-in-Appeal No.19/2019 dated 26.12.2019 remanded the case back to the assessing officer with the following directions: -

“ ..... the case is remanded back with the direction to obtain the relevant evidence from the appellant and on the basis of facts so ascertained action be taken as per law.”

Although, in terms of subsection (3) of section 45B of the Act, the Commissioner Inland Revenue (Appeals) has no power to remand the case for de novo consideration yet admittedly both the parties have not filed the appeal before this Tribunal against the aforesaid appellate order. Therefore, the order passed by the first appellate authority has attained finality. Consequently, to give effect to the direction given by the learned CIR(A), the assessing officer passed the appeal effect order dated 12.06.2021 which

was the subject matter of appeal before the learned CIR(A) and now before this tribunal along with the impugned appellate order. After considering the grounds of appeal and the arguments advanced by the parties, the following question emerges from the record for determination: -

Whether the insurance money received by the appellant from the insurance company comes within the ambit of the definition of the expression “Actionable Claims”?

If the answer to the above question is in the affirmative then: -

Whether the insurance money received by the appellant from the insurance company is liable for sales tax under the Sales Tax Act, 1990?

Sales Tax Act, 1990 excludes Actionable Claims as part of “Goods” defined in Section 2(12) of the Act. Since the Act does not define the expression “Actionable Claims” separately under the Act, the definition for an actionable claim is taken as the one defined in section 3 of the Transfer of Property Act, 1882. As per English Law, an Actionable Claim is called a “Chose in Action” or a “Thing in Action”. This means a claim or a debt for which one can take an action. In other words, there exists a claim and one can approach the court for the enforcement of such a claim. Therefore, the person holding actionable claims can seek the



Court's assistance in order to recover that claim. The word "Chose in Action" or "Thing in Action" is different from "Chose in Possession" which means a thing that is in physical possession of a person. Under the Actionable Claim, the holder of such claims has the following rights:

- i. Right to the properties in his possession.
- ii. Right of action on the properties without possession.

Under the Sales Tax Act, 1990 what are Actionable Claims and examples of Actionable Claims?

What are Actionable Claims?

As stated above, the Act does not define Actionable Claims. However, the same has been defined in Section 3 of the Transfer of Property Act, 1882. As per the Transfer of Property Act, Actionable Claim means:

- i. a claim to any debt other than a debt secured by mortgage of immovable property or hypothecation or pledge of movable property or

ii. Claim to any beneficial interest in the movable property not in the possession, either actual or constructive, of the claimant.

Further, such actionable claims are recognized by the Civil Courts as affording grounds for relief. This is irrespective of the fact whether such debt or beneficial interest is existent, accruing, conditional, or contingent. In a nutshell, there are two parts to the definition of actionable claims: -

i. A claim to unsecured debt or

ii. Any interest in the movable property which is not in the possession of the claimant.

Actionable Claims are applicable only for goods and not for services.

### Examples of Actionable Claims

As per our understanding, considering the definition of Actionable Claims as per section 3 of the Transfer of Property Act, 1882 the following could be examples of Actionable Claims: -

Right to claim arrears of rent.

Money payable under a contract for price or advance.

Right to claim the benefit of a contract.

Insurance claims except for marine insurance.

Lottery ticket.

Right to credit in a provident fund.

Dividends on shares, debentures, negotiable instruments such as bills of exchange, etc.

Share in partnership property.

A right under a license.

Rights shares or option to purchase shares.

Bank guarantee.

In the case titled *Sunrise Associates Vs Govt of NCT of Delhi and others*, (2006) 5 SCC 603, it was observed that insurance money is an actionable claim. The following was laid down in paragraph 40 of the said judgment: -

“40. An actionable claim would include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability (see *Union of India V. Sarada Mills Ltd*, SCC at p.880, (1972) 2 SCC 877). A claim for arrears of rent has also been held to be an actionable claim (*State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, SCR at p.910 (1952) SCR 889). A right to the credit in a provident fund account has also been held to an actionable claim (*Official Trustee, Bengal v.*

L.Chippendale, AIR 1944 Cal 335; Bhupati Mohan Das V. Phanindra Chandra Chakravarty and Anr., AIR 1935 Cal 756. In our opinion, a sale of a lottery ticket also amounts to the transfer of an actionable claim.”

Similarly, in the judgment titled Union of India Vs Sri Sarada Mills Ltd, (1973 AIR 281 SC) it has been observed that a beneficial interest in the moveable property will include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or a decretal debt or a right to recover the insurance money or the right to claim the benefit of a contract not coupled with any liability. The relevant extract of the judgment is reproduced below: -

“Section 130 of the Transfer of Property Act however speaks of transfer of actionable claim. Actionable claims under Indian Law include claims recognized by the Court either as to unsecured debts or as to beneficial interests in moveable property not in possession. A debt is an obligation to pay a liquidated or certain sum of money. A beneficial interest in the moveable property will include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or a decretal debt or a right to recover the insurance money or the right to claim the benefit of a contract not coupled with any liability.”

In another judgment titled LIC of India Vs. Insure Policy Plus Services Pvt. Ltd., [2016 (2) SCC 507 it has been held that

exercise of the right by the policyholder to receive insurance money (surrender value) is a transaction in an actionable claim.

## CONCLUSION

Keeping in view of the definition of the expression “Actionable Claims” as discussed above and the law laid down by the judgments cited supra, the exercise of the right to receive insurance money by the insured is an activity which is a transaction in the actionable claim and is outside the scope of the definition of goods given in section 2(12) of the Act. Thus, the answer to the primary question is in the affirmative.

5. As discussed above, the right to receive insurance money by the insured is an activity which is a transaction that comes within the definition of “Actionable Claims” and is outside the scope of the definition of the expression “Goods” contemplated in subsection (12) of section 2 of the Sales Tax Act, 1990. For convenience, the definition of the word “Goods” defined in section 2(12) is reproduced below: -

“2(12) “goods” include every kind of movable property other than actionable claims, money, stocks, shares, and securities;”  
(Emphasis supplied)

The Constitution of the Islamic Republic of Pakistan, 1973 Article 260 also defines the expression “goods” to include all materials, commodities, and articles. The definition in the Constitution excludes actionable claims since it only refers to materials, commodities, and articles. Thus, the definition of “goods” under the Sales Tax Act, 1990 and the Constitution specifically excludes the actionable claim, therefore, the levy of sales tax and collection thereof on the insurance money received by the appellant from the insurance company does not come within the charging provision of section 3 of the Sales tax Act, 1990 read with Entry 49 of Part 1 of the Federal Legislative List to the Constitution. Thus, the liability of sales tax arises only “on the occasion of a sale of goods”. The Sales Tax Act, 1990 refers to it as “supply’ or “taxable supply” and defines those terms but whatever the words used, the sense remains the same. Legal texts cannot alter the fundamental nature of the tax. And this has to chime with Entry No.49 in the Federal Legislative List which is the provenance of the power to impose a sales tax. The statutory enterprise of the Sales Tax Act, 1990 must conform to the legislative field delineated by entry No.49 and cannot travel beyond that field. Entry No.49 reads as under:

“49. Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services.”

The term ‘sale’ has not been defined in the Act, 1990 and by section 3, sales tax is charged on taxable supplies made by a

registered person in the course or furtherance of a taxable activity or goods imported into Pakistan. These activities are, however, included in the broad concept of “sale and purchase of goods imported, produced, manufactured or consumed”, and it is presumed that they are valid and within the constitutional limitation. The definitions of ‘supply’ and ‘taxable supply’ are the points around which, in large measure, the concept of taxation under the Sales Tax Act, 1990 revolves. ‘Supply’ has been defined as: -

“Supply” means a sale or other transfer of the right to dispose of goods as owner, including such sale or transfer under a hire purchase agreement, and also includes: –

(a) putting to private, business or non-business use of goods produced or manufactured in the course of taxable activity for purposes other than those of making a taxable supply;

(b) auction or disposal of goods to satisfy a debt owed by a person;

(c) possession of taxable goods held immediately before a person ceases to be a registered person; and

(d) in case of manufacture of goods belonging to another person, the transfer or delivery of such goods to the owner or to a person nominated by him:

Provided that the Federal Government may, by notification in the official Gazette, specify such other transactions which shall or shall not constitute supply.

And “taxable supply” is as follows: -

“Taxable supply” means a supply of taxable goods made by an importer, manufacturer, wholesaler (including dealer), distributor or retailer other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero percent under section 4.”

It can be seen that sales tax has been imposed on “taxable supplies” and a taxable supply, in turn, means a ‘supply’ of taxable goods made by an importer, manufacturer, wholesaler (including dealer) distributor or retailer. Thus, the crucial concept is that of ‘supply’ to which legislature continues to revert.

## CONCLUSION



For what has been discussed above, the actionable claim has been specifically excluded from the definition of the expression “goods” therefore, the appellant is not obliged to pay the tax on insurance money. Thus, the answer to the second question is in negative in favour of the appellant and against the department.

6. The appeal of the appellant is accepted and the orders passed by the lower authorities are modified to the extent of the subject matter in the instant appeal.

7. This order consists of (10) pages and each page bear my signature.