

**20th KTBA CASE LAW UPDATE
(October 09, 2023)**

Committee Members

Shams Ansari (Convener)

0333-2298701

shamsansari01@gmail.com

Hameer Arshad Siraj

0333-2251555

hameer.siraj@gmail.com

Shabbar Muraj

0321-8920972

shabbar.muraj@pk.ey.com

Razi Ahsan

0300-0446892

razi.lawconsultancy@gmail.com

Noman Amin Khan

0310-2271271

noman.amin@mooreshekhamufti.com

Shiraz Khan

0333-2108546

shiraz@taxmanco.com

Faiq Raza Rizvi

0302-2744737

federalcorporation@hotmail.com

Imran Ahmed Khan

0300-9273852

iakjci@yahoo.com

Ehtisham Qadir

0334-2210909

ehtisham@aqadirncompany.com

Dear Members,

A brief update on a recent judgment by the High Court of Sindh on “**SHC orders Every Service Provider to Pay 39% ST (Extra & Further Tax) on Electricity Bills**”, 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**” 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 Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

President

October 09, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

October 09, 2023

20th KTBA CASE LAW UPDATE
(October 09, 2023)

SHC ORDERS EVERY SERVICE PROVIDER TO PAY 39% ST (EXTRA & FURTHER TAX) ON ELECTRICITY BILLS

Appellate Authority: High Court of Sindh

Petitioner: SIUT and Others

Section: 3(1A) & (5) of the Sales Tax Act, 1990

Detailed judgment was issued on August 24, 2023 [Constitution Petition NO. 7493 of 2021].

Background: The SHC order for collection of 3% Extra Tax and 18% Further Tax even from those power consumers who are not liable for registration under the Federal Sales Tax Law. In a recent order dated 24-08-2023, premised on a judgment by the Supreme Court given on the same issue in an appeal against the SHC order which allowed the petitions. It was argued that individuals not liable for registration under the Federal Sales Tax Law should be exempt. This issue had previously been settled in an SHC judgment in Al Zarina case (2018 PTD 1600), where it was determined that those who are not required to get themselves registered should not pay these taxes. Since utility companies refused to grant exemptions, every aggrieved person had to file petitions with SHC for relief.

Further Tax and Extra Tax: Further Tax and Extra Tax are imposed under the Federal Sales Tax Law on persons who should have been registered but are not. Despite an unequivocal condition for 'liable to be registered' the utility companies continued collection of these two (02) taxes indiscriminately from all taxpayers regardless of whether they fell under the scope of these disputed taxes, such as service providers.

Al-Zarina Judgment by SHC: In Al-Zarina case, bangle manufacturers challenged these two taxes imposed on their utility bills in the SHC as there was no exemption under a specific government notification SRO 648. The SHC ruled that those not liable for registration due to exemption from the Sales Tax cannot not be subject to further tax and extra taxes.

SC Judgment: In the appeal against the Al Zarina case, the SC took issue with two key points:

- i. Petition couldn't be admitted by SHC before issuance of show-cause notice.
- ii. Interpretation of SRO 509 was inconsistent with the SC interpretation in a previous case.

Consequences: After the SHC has dismissed the petitions all those persons who were not liable to be registered under the Sales Tax Act, 1990, shall pay 18% Further Tax and 3% Extra Tax on their power bills. Needless to mention, this 18% and 3% are over and above the normal 18% sales tax, which gets to an abnormal total of 39 in percentile. Hence, from now onwards, every commercial connection holder shall have to pay namely:

- Every NPO, Hospital, maternity home, OPD Clinics.
- Every school, college, university, tuition center.
- Every law firm, chartered accountant firm, management accountant firm.
- Every café, restaurant, hotel, motel, caterer, and event manager.
- Every Architect Consultant, Engineer office, any other service provider.
- Every Bank, Modaraba, Mutual Fund and REIT, other financial institution.
- Every commission agent, real estate agent, mercantile agent.
- All offices of Business Chambers and business association officers.
- Every IT or software Consultant, Call center, Human outsourcing company, which is preposterous.

Solitary remedy is that they register themselves with sales tax and start e-filing NIL return.

Comments: Following points merits reconsideration by both the courts:

- i. Further Tax and Extra Tax are imposed directly by utility companies on bills; there cannot be any show-cause notice from the department.
- ii. SC critique of SRO 509 to be revisited as the SHC findings in Al Zarina case were independent of this notification.
- iii. SHC judgment contradicts its earlier ruling in Al Zarina case on the application of extra tax to those not engaged in taxable activities.

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 or project would not be binding on KTBA.

Dear Members,

A brief update on a recent judgment by the High Court of Sindh on “**SHC orders Every Service Provider to Pay 39% ST (Extra & Further Tax) on Electricity Bills**”, is being shared with you for your knowledge. The order has been attached herewith the update.

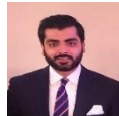
This update is in line with the efforts undertaken by our “CASE LAW UPDATE COMMITTEE” apprise our Bar members with important court decisions.

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 Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com and the following members;



Shams Ansari (Convener)
0333-2298701
shamsansari01@gmail.com



Hameer Arshad Siraj
0333-2251555
hameer.siraj@gmail.com



Shabbar Muraj
0321-8920972
shabbar.muraj@pk.ey.com



Razi Ahsan
0300-0446892
razi.lawconsultancy@gmail.com



Noman Amin Khan
0310-2271271
noman.amin@mooreshekhamufti.com



Shiraz Khan
0333-2108546
shiraz@taxmanco.com



Faiq Raza Rizvi
0302-2744737
federalcorporation@hotmail.com



Imran Ahmed Khan
0300-9273852
iakjci@yahoo.com



Ehtisham Qadir
0334-2210909
ehtisham@aqadirncompany.com

Best regards

(Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

(Shams M. Ansari)
Convener: Case Law Update Committee

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas

1.	Const. P. 7493/2021	AUS Food VS Fed. of Pakistan and Others
2.	Const. P. 1310/2022	National Textile Foundation Karachi VS Fed. of Pakistan and Others
3.	Const. P. 1448/2022	M/s Dawat-e-Hadiyah and Others VS Fed. of Pakistan and Others
4.	Const. P. 1739/2022	M/s Wagha Food VS Fed. of Pakistan and Others
5.	Const. P. 1769/2022	Western Roller Floor Mills & Ors VS Fed. of Pakistan and Others
6.	Const. P. 1915/2022	Qureshi Flour Mills & Others VS Fed. of Pakistan and Others
7.	Const. P. 2763/2022	Generation's School (Pvt) Ltd and Another VS Fed. of Pakistan and Others
8.	Const. P. 2794/2022	Gulshan Begum VS Fed. of Pakistan and Others
9.	Const. P. 3276/2022	Abdul Jabbar VS Fed. of Pakistan and Others
10.	Const. P. 3878/2022	MBJ Health Association VS Fed. of Pakistan and Others
11.	Const. P. 4440/2022	M/s A.K Industries VS Fed. of Pakistan and Others
12.	Const. P. 4639/2022	Wonderland (Pvt) Ltd VS Fed. of Pakistan and Others
13.	Const. P. 4880/2022	Jafer Imam VS Fed. of Pakistan and Others
14.	Const. P. 4989/2022	Murtaza Quad & Another VS Fed. of Pakistan and Others
15.	Const. P. 546/2022	M/s Hilton Public School VS Fed. of Pakistan and Others
16.	Const. P. 547/2022	S. Rehmat Shakil VS Fed. of Pakistan and Others
17.	Const. P. 548/2022	M/s The Royal City School System VS Fed. of Pakistan and Others
18.	Const. P. 5564/2022	Professional Educators VS Fed. of Pakistan and Others
19.	Const. P. 5565/2022	Al-Muneeb Foundation VS Fed. of Pakistan and Others
20.	Const. P. 5595/2022	M/s Alamgir Welfare Trust VS Fed. of Pakistan and Others
21.	Const. P. 5643/2022	Afzal & Co. VS Fed. of Pakistan and Others
22.	Const. P. 5660/2022	M/s Marcos Maintenance Services Pvt Ltd VS Fed. of Pakistan and Others
23.	Const. P. 5728/2022	karachi Medicos & Radiology VS Fed. of Pakistan and Others
24.	Const. P. 6002/2022	M/s Mukhtar Sons & CO. VS Fed. of Pakistan and Others

25.	Const. P. 6006/2022	Sir Syed University of Engineering VS Fed. of Pakistan and Others
26.	Const. P. 6161/2022	Private Hospital & Clinic Association VS Fed. of Pakistan and Others
27.	Const. P. 6191/2022	M/s Foundation Public School Pvt Ltd VS Fed. of Pakistan and Others
28.	Const. P. 6192/2022	M/s Head Start Pvt Ltd VS Fed. of Pakistan and Others
29.	Const. P. 6446/2022	Mariam Ali Muhammad Tabba Foundation VS Fed. of Pakistan and Others
30.	Const. P. 6639/2022	M/s Chiniot Anjuman Islamia VS Fed. of Pakistan and Others
31.	Const. P. 7069/2022	Altamash Institute of Dental Medicine & Others VS Fed. of Pakistan and Others
32.	Const. P. 7125/2022	M/S Karachi Public School VS Federation of Pakistan & Others
33.	Const. P. 7296/2022	Juanidy Shoaib Asad VS Fed. of Pakistan and Others
34.	Const. P. 7534/2022	M/s S G Allied Business Ltd VS Fed. of Pakistan and Others
35.	Const. P. 7923/2022	Dawood Foundation VS Fed. of Pakistan and Others
36.	Const. P. 7924/2022	Dawood Corp Pvt Ltd VS Fed. of Pakistan and Others
37.	Const. P. 5023/2022	Usman Memorial Foundation VS Fed. of Pakistan and Others
38.	Const. P. 7924/2022	Dawood Corporation Pvt. Ltd. VS Fed. of Pakistan and Others
39.	Const. P. 3330/2023	M/s Al-Mustafa Welfare Society VS Fed. of Pakistan and Others
40.	Const. P. 3716/2023	Usman Bashir VS Fed. of Pakistan and Others
41.	Const. P. 536/2023	Dr. Ziauddin Hospital VS Fed. of Pakistan and Others
42.	Const. P. 618/2023	Sindh Institute of Urology& Transplantation (SIUT) VS Fed. of Pakistan and Others

For the Petitioners:

M/s. Muhammad Tariq Masood, Syed Aijaz Hussain Shirazi, Shams Mohiuddin Ansari, Naeem Suleman, Zafar Hussain, Mian Ashfaq Ahmed, Ehsan Ghulam Malik, Shariq A. Razzak, Manzoor Arain, Riaz Moin Siddiqui, Rehmat Shakil, M. Anjum Khan, Syed Hamza Ahmed Hashmi, Atir Aqeel Ansari, Imran Iqbal Khan, Arshad Hussain Shehzad, Jahanzeb Awan, Shahan Karimi, Rashid Khan Mehar, Abdullah Azzam Naqvi, Mohsin Kadir Shahwani, Adnan Ali Khan Sherwani, Muhammad Taimur Ahmed, Ghulam Akbar Lashari, Waheed Hussain Advocates for Petitioner.

For the Respondents:

M/s. Syed Ahsan Ali Shah, Kafeel Ahmed Abbasi, Aamir Ali Shaikh, Zulfiqar Ali Mirjat, Bilal Bhatti, Zohaib for Ameer Bakhsh Metlo, Imran Ahmed Maitlo, Ali Tahir Soomro, Burhan Jagirani, Ghazi Khan Khalil, Ameer Nausherwan Adil, Abdul Hakeem Junejo, Abdul Razzak, Syed Kumail Abbas, Muhammad Shahid, Irfan Mir Halepota, Qaim Ali Memon, Advocates for Respondent.

Federation of Pakistan:

Through Mr. G. M. Bhutto, Assistant Attorney General.

Date of hearing:

24.08.2023

Date of Order:

24.08.2023.

ORDER

Muhammad Junaid Ghaffar, J: Through all these Petitions the Petitioners have impugned SRO No.1222(I)/2021 dated 17.09.2021 issued under Section 3(5) of the Sales Tax Act, 1990 (“Act”) (superseding an earlier SRO No. 509(I)/2013 dated 12.06.2013) whereby, an extra tax has been levied on the billed amount (excluding Federal taxes), in addition to the tax payable under sub-section (1) of Section 3 of the said Act, on supplies of electric power and natural gas to persons having industrial and commercial connection, but who have either not obtained Sales Tax Registration or are not on the Active Tax-payers List maintained by FBR on rates as provided in the table annexed to such SRO. The Petitioners before us are either running some Charitable Institutions; Hospitals; Schools or some kind of business. It further appears that it is not in dispute that they are having either an industrial or commercial connection of electricity or gas as the case may be. However, their case is that since they are not engaged in any taxable supplies or are otherwise, engaged in making exempt supplies, nor are required to be registered under the Act as they are not engaged in any taxable activity; hence not liable to pay any further tax or extra tax, pursuant to the impugned Notification; hence, K-Electric (for the present purposes) be restrained from charging any such extra tax through electricity bills.

2. It is a matter of admitted position, that primarily ad-interim orders in these petitions were passed following the judgment in the case reported

as ***Al-Zarina Glass Industries***¹ wherein the predecessor SRO 509(I)/2013 dated 12.06.2013 was impugned; and the controversy was decided in favor of the tax payers; however, the Appeal filed by the department against the said judgment has been allowed by the Supreme Court vide its order dated 15.09.2022 in Civil Appeal No.920 of 2018 and other connected matters (***The Chief Commissioner (IR) Region v M/s Al Zarina Glass Industries***). It further appears that pursuant to this judgment of the Supreme Court in some of the Petitions vide order dated 16.02.2023 this Court had recalled the ad-interim orders.

3. Today, some of Petitioners Counsel have made their best efforts to argue that notwithstanding the judgment of the Supreme Court in ***The Chief Commissioner (IR) Region v M/s Al Zarina Glass Industries*** (supra) they still have an arguable case on various other grounds. However, we do not see any reason to entertain any such further grounds as primarily their case was dependent on and filed on the basis of Judgment of this Court in ***Al Zarina Glass Industries*** (Supra) which now stands set aside by the Supreme Court. For this there appears to be no justification to entertain such grounds as the Apex Court has now finally decided the issue. The question before this Court in ***Al Zarina Glass Industries*** (Supra) was in respect of SRO 509(I)/2013 which stands superseded through impugned SRO 1221(I)/2021; however, the issue was identical i.e. as to the validity of levy of extra tax on persons who are not liable to be registered. The only difference appears to be in the rate of tax being notified depending upon the Billed amount of Electricity. The relevant findings of Supreme Court in its order dated 15.09.2022 is as under: -

“4. **Civil Appeals No.920 to 927 of 2018**. In these Appeals, in addition to the above issue, the vires of SRO No.509(I) of 2013 dated 12.06.2013 was challenged before the High Court even before any show cause notice was issued to the Respondents. The High Court ultimately came to the conclusion that the SRO in question was not applicable to the Respondents who enjoyed exemption. This question has also been dealt with by this Court in a judgment reported as **Zak Re-Rolling Mills (Pvt) Ltd. v. Appellate Tribunal Inland Revenue (2020 SCMR 131)** in which the scope and interpretation of Section 3(1A) of the Sales Tax Act, 1990 has been elaborated. As such, we find that the judgments of the Sindh High Court which have been impugned before us through these appeals do not proceed on the correct principles of law as interpreted by this Court and consequently suffer from an error insofar as they have proceeded to strike down an SRO without taking note of the interpretation of the said SRO given by various pronouncements by this Court. Further, we are of the view that by pre-empting even the issuing of a show cause notice, the Respondents had short-circuited the system which had deprived the department of its right to interpret the SRO and apply the same to all parties which were found to be liable to pay tax in question.”

¹ Al-Zarina Glass Industries Vs. Federation of Pakistan and 3 others (2018 PTD 1600),

4. In view of the above finding we do not see any further room to entertain and respond to any additional or further arguments of the Petitioners Counsel. At this juncture, some of the Counsel have also argued that subsequently, in the case of **Hajvairy Steel**² the Supreme Court has arrived at a somewhat contrary view, and therefore, the judgment in the case of **The Chief Commissioner (IR) Region v M/s Al Zarina Glass Industries** (Supra) would not be applicable.

5. To that, firstly, we may observe that this cannot be their case as in most of the Petitions they have annexed copy of the judgment passed by this Court in the case of **Al Zarina Glass Industries** supra, whereas, the ad-interim orders so obtained are also based on such judgment of this Court. Secondly, though the Supreme Court in the case of **The Chief Commissioner (IR) Region v M/s Al Zarina Glass Industries** (supra) while setting aside the Judgment of this Court has made reference to the case of **ZAK Re-Rolling Mills**³ which has been distinguished in **Hajvairy Steel** by the Supreme Court subsequently; however, there is no dispute that the facts; issue as well as the SRO under consideration in the case of **Hajvairy Steel** (Supra) were not akin to the present Petitioners case. Here their argument is that since they are not liable to be registered; or are engaged in making exempt supplies; hence, no extra tax can be levied on them through electricity bills, whereas, in **Hajvairy Steel** the issue before the Supreme Court was in respect of overriding effect of Rule 58H of the Sales Tax Special Procedure Rules, 2007 notified under Section 71 of the Act, having a non-obstante clause prevailing over the general charging section of the Act, including Section 3(1A) *ibid*. In that background it was held by the Supreme Court that payment of tax under the Special Procedure Rules was the final liability of such persons and no extra tax is to be paid by them under Section 3(1A) of the Act. Therefore, on facts, the ratio of **Hajvairy Steel's** case appears to be distinguishable; hence of no avail.

6. Lastly, it is pertinent to note that this extra tax under Section 3(5) of the Act has been levied on supply of electric power and natural gas. It is in addition to the tax levied under section 3(1) of the Act. It is not on the activity or business of the Petitioners from which any exemption can be claimed on the ground that they are not engaged in any taxable activity. It is just like a tax on the consumer who avails any service or buys any

² Commissioner Inland Revenue v Hajvairy Steel Industries (Pvt.) Limited (2023 SCMR 681)

³ ZAK Re-Rolling Mills Vs. Appellate Tribunal Inland Revenue (2020 SCMR 131)

goods and has to pay such tax. At times, the said tax is neither refundable nor adjustable; but this in and of itself is not a ground to declare it as illegal.

7. In view of hereinabove facts and circumstances of these cases, since the issue stands decided against the Petitioners by the Supreme Court, we are left with no choice; but to dismiss all these Petitions with pending applications. Ordered accordingly.

J U D G E

J U D G E

Arshad/