

## 7<sup>th</sup> KTBA CASE LAW UPDATE (June 21, 2023)

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Dear Members,

A brief update on a recent judgment on “**Indian cases cannot be followed in presence of Pakistani case law: Default Surcharge cannot be charged without mens rea**” by Appellate Tribunal, Sindh Revenue Board is being shared with you for your knowledge.

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](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

**(Zafar Ahmed)**

President

June 21, 2023

**(M. Mehmood Bikiya)**

Hon. General Secretary

June 21, 2023

## **7<sup>th</sup> KTBA CASE LAW UPDATE (June 21, 2023)**

**INDIAN CASES CANNOT BE FOLLOWED IN PRESENCE OF PAKISTANI CASE LAW: DEFAULT SURCHARGE CANNOT BE CHARGED WITHOUT MENS REA**

**Appellate Authority: Appellate Tribunal, Sindh Revenue Board**

**Appellant: First Women Bank Limited**

**Section: 44 of the Sindh Sales Tax on Services Act, 2011**

**Detailed judgment was issued on May 31, 2023 [Appeal No. AT-175/2022].**

**Background:** Assessment order was issued for short payment of service tax along with default surcharge. During the first appeal, it should be appellant has accepted to discharge the amount of principal and penalty but asked for a waiver of the default surcharge, which was rejected by the Commissioner (Appeal). The appellant filed the second appeal before the SRB Tribunal, whereafter the default surcharge was waived off.

### **Judgment of the Tribunal:**

First Ruling of the Tribunal: The department is required to provide evidence of deliberate noncompliance or contumacious dishonesty before imposing either penalty or default surcharge. These could not be mechanically imposed without determination of willful default or a mala fide intention or mens rea on the part of the taxpayer to evade tax.

### **Second Ruling of the Tribunal :**

Since the legislative intent underlying any penal provision is to bring discipline along with creating a deterrence against defaulting tax payments and not to enrich the department in meeting their revenue collection targets, penalty and default surcharge, therefore, should not be excessively harsh or exemplary.

Additionally, the imposition of penalties and default surcharges is a discretionary matter that should be exercised judiciously, taking into account the relevant circumstances and facts of each case and not imposed merely because it is legal to do so.

**Third Ruling of the Tribunal:** The officers of SRB and Commissioner (Appeals) both imposes default surcharges without proving the taxpayer's unwarranted intention to evade taxes, which goes against the Constitution and previous court judgments. Their actions constitute misconduct and disciplinary action should be taken against them for not adhering to constitutional provisions, court rulings and tribunal orders.

**Fourth Ruling of the Court:** The SRB Commissioner (Appeals) relied upon the judgments from Indian jurisdiction ignoring the case law of Pakistan very much available on the subject. The reliance of judgments of other jurisdiction in presence of case laws of Pakistan has always been disapproved and deprecated by our Courts. SRB officers and Commissioners Appeals should avoid relying upon the judgments from Indian or any other foreign jurisdiction in the presence of the case laws of Pakistan available on the subject.

**NOTE: Members are requested to read the complete orders attached herewith.**

### **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 on **“Indian cases cannot be followed in presence of Pakistani case law: Default Surcharge cannot be charged without mens rea”** by Appellate Tribunal, Sindh Revenue Board is being shared with you for your knowledge.

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Best regards

**(Zafar Ahmed)**  
President

**(M. Mehmood Bikiya)**  
Hon. General Secretary

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