

**12<sup>th</sup> KTBA CASE LAW UPDATE  
(August 25, 2023)**

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**Dear Members,**

A brief update on a recent judgment on “**Sub-sections 11(1) and 11(6) of the Sales Tax Act, 1990 both are meant for registered person. There is no inconsistency in between. Principle of Non-Obstante clause cannot be applied**” by Lahore High Court 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

August 25, 2023

**(M. Mehmood Bikiya)**

Hon. General Secretary

August 25, 2023

**12<sup>th</sup> KTBA CASE LAW UPDATE**  
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**SUB-SECTIONS 11(1) AND 11(6) OF THE SALES TAX ACT, 1990 BOTH ARE MEANT FOR REGISTERED PERSON. THERE IS NO INCONSISTENCY IN BETWEEN. PRINCIPLE OF NON-OBSTANTE CLAUSE CANNOT BE APPLIED.**

**Appellate Authority: Lahore High Court**

**Appellant: Abdullah Sugar Mills Ltd.**

**Sections 11(1), 11(6), 14, 26 of the Sales Tax Act, 1990, and Rule 157 (5) of Sales Tax Rules, 2006**

**Judgment was issued on June 21, 2023 [W.P. No. 42272/2023].**

**Background:** The Lahore High Court (the Court) dismissed the writ petition, in limine, through which notice issued under sub-section (1) of section 11 of the Sales Tax Act, 1990 (the Act) was challenged by the taxpayer who being a registered person failed to file the sales tax return (the return) required under section 26 of the Act for certain tax periods. It was contended that notice under sub-Section 11(1) of the Act cannot be issued as the said provision can only be invoked in respect of unregistered persons who are liable to be registered under section 14 of the Act. It was further contended that the provision of Section 11(6) applies to this case as the said provision can very much be invoked in case of a registered person who has failed to file the return. The Court rejected the arguments and held that there is no apparent inconsistency between sub-sections (1) and (6) of section 11 of the Act. The Court observed that contentions were not adequate to assail the showcase notice.

**Decision of the Court:**

**First Ruling of the Court:** Provision of Section 11(1) can only be invoked against registered persons. Bare perusal of the text of sub-section (1) of the section 11 suggests that it deals with two situations wherein the officer Inland Revenue has been empowered to make assessment of tax, including imposition of penalty and default surcharge under sections 33 and 34 (respectively) of the Act. The first situation remains where the registered person fails to file the return for a tax period within the stipulated time. Second, where the registered person has made short payment of sales tax. The Court reiterated that sub-section (1) can only be invoked in respect of a person who is required to file the return i.e. a registered person and therefore, no weight was found in the contention of petitioner that the said provision only applies to an unregistered person who is liable to be registered under section 14 of the Act.

**Second Ruling of the Court:** Provision of Section 11(6) provides for determination of minimum tax liability of a registered person who has failed to file the return. Sales Tax Liability determined under Section 11(6) shall be considered as a minimum tax liability and not the final tax liability as the said determination does not absolve the registered person in case of any further liability. The said determination is required be made under Rule 157 of Sales Tax Rules, 2006, which prescribes the procedure for determination.

**Third Ruling of the Court:** The principle underlying non-obstante clause can only be invoked in case there is an irreconcilable conflict with the other provision The Court was of the view that sub-sections (1) and (6) of section 11 are consistent with each other as both are invoked in respect of registered persons. It rejected the argument that the case falls within the purview of sub-section (6) qua non-obstante nature of the said provision. The Court held that argument of the petitioner is invalid in absence of material inconsistency between provisions of sub-section (1) and (6) of section 11 and therefore, notice issued under sub-section (1) cannot be assailed. Reliance was placed on the judgement of Supreme Court of Pakistan in case law reported as 2013 SCMR 85; wherein, law regarding construction of a non-obstante clause was enunciated and it was held that principle underlying the non-obstante clause should prevail only where lies any inconsistency between the non obstante clause and another provision.

**Conclusion:**

The Court rejected the plea of the petitioner that notice issued under section (1) of section 11 of the Act cannot be issued to a registered person and dismissed the writ petition being devoid of any merit.

**NOTE: Members are requested to read the complete order 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,**

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Best regards

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