

8th KTBA CASE LAW UPDATE (June 22, 2023)

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Dear Members,

A brief update on a recent judgment on “**Extra Sales Tax is a Valid Piece of Legislation; SRO 896/2013 of October 04, 2013 does not suffer from Excessive Delegation of Legislative Authority**” by Sindh 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 & ktba01@gmail.com

(Zafar Ahmed)

President

June 22, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

June 22, 2023

8th KTBA CASE LAW UPDATE (June 22, 2023)

EXTRA SALES TAX IS A VALID PIECE OF LEGISLATION; SRO 896/2013 OF OCTOBER 04, 2013 DOES NOT SUFFER FROM EXCESSIVE DELEGATION OF LEGISLATIVE AUTHORITY

Appellate Authority: Sindh High Court

Appellant: MAL Pakistan

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

Detailed judgment was issued on May 15, 2023 [C.P. No. D-1089/2016].

Background: The petitioners challenged the vires of Section 3(5) of the Act along with SRO 896 of 2013 issued on October 4th, 2013 whereby the rate of extra tax was increased from 0.75% to 2% by introducing Rule 58S and by amending Rule 58T of the Sales Tax Special Procedure Rules, 2007. The premise of the challenge was built upon the legal argument that levying a tax is an essentially a function of the legislature; hence, cannot be delegated. The petition was not accepted and accordingly was dismissed.

Decision of the Court:

First Ruling of the Court: If the legislature delegates its power to make laws, it would be invalid. However, delegating the authority to exercise discretion on matters already determined by the legislature is not considered a delegation of its legislative power.

Second Ruling of the Court:

The generally accepted view is that a provision of law cannot be considered delegated legislation if it is based on a policy outlined within the provision itself and requires only implementation by the person accused of unauthorized legislation. Not every delegated legislation can be declared invalid for excessive delegation of legislative function since there are sufficient guiding principles for creating delegated legislation. A Parliament cannot be expected to address all matters, so it delegates certain non-essential matters to the executive branch. The legislature has this power to delegate its functions because it cannot legislate on all issues.

Third Ruling of the Court: The legislature has control and functional powers over the delegatee. In this case the legislature had already introduced a levy at a rate of 17% through the provision in question. However, only the effective date and the current percentage (2% up to a maximum of 17%) have been notified for everyone involved. The inclusion of Rules 58S and 58T in SRO 480(I)/2007 does not introduce a new levy in the first place. It merely establishes the procedure for collecting, adjusting, and paying this additional tax by registered individuals.

Fourth Ruling of the Court: The Sales Tax Act has delegated certain functions that are primarily procedural in nature. These functions include determining the effective date, handling input adjustment, and making payments in lieu of such adjustments. Therefore, this delegation does not involve excessive delegation or the delegation of any legislative function by any stretch of imagination.

Fifth Ruling of the Court: Rule (5) of Rule 58T in the SRO states that specified goods on which extra sales tax has been paid are exempt from paying sales tax on subsequent supplies, including those made by a retailer. This provision was not an additional tax but rather a way to facilitate trade by collecting the tax that would be paid later on supplies or at the retail stage. The petitioners and other taxpayers are also bound by their own actions and the benefits they received from this provision. It was not a direct tax on the petitioners themselves but on the end consumers, and it was meant to be included as part of the cost of goods and the value of the supply for the purpose of paying sales tax under the Act.

Conclusion: The provisions of section 3(5) of the Sales Tax Act, 1990, and SRO 896(I)/2013 dated 04-10-2013 have been determined to be valid and properly enacted or issued. Therefore, these provisions are not considered to be beyond the legal authority or ultra vires.

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.

KTBA *Karachi Tax Bar Association*

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Best regards

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President

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