

**9th KTBA CASE LAW UPDATE
(July 19, 2023)**

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Dear Members,

A brief update on a recent judgment on **“Input On Packing Material for June 2018 and Earlier to Remain Disallowed. Amendment to Allow the Input Cannot be Applied Retrospectively”** by Supreme Court of Pakistan 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

July 19, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

July 19, 2023

**9th KTBA CASE LAW UPDATE
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**INPUT ON PACKING MATERIAL FOR JUNE 2018 AND EARLIER TO REMAIN DISALLOWED
AMENDMENT TO ALLOW THE INPUT CANNOT BE APPLIED RETROSPECTIVELY.**

Appellate Authority: Supreme Court of Pakistan

Appellant: M/s Rajby Industries Karachi

**Section: 8(b) of the Sales Tax Act, 1990; S.R.O.1125 of 2011;
S.R.O.491 of 2016 & S.R.O. 777 of 2018**

Detailed judgment was issued on June, 01 2023 [C.P. No. 4700/2021].

Background: The Supreme Court rejected the appeal filed by the petitioner who challenged that the proviso to the condition (x) in SRO 491 of 2016, which disallowed input tax on packing material did not apply to zero-rated supplies as per Section 4(a) of the STA 1990. It was argued that disallowing the adjustment of input tax on packing material not only violated the provisions of Sales Tax law but fundamental rights under the Constitution as well. While the petition was pending, the proviso to the condition (x) was withdrawn through SRO 777 dated 21.6.2018 with effective from 01.07.2018. The Petitioners filed for retrospective application of the withdrawal, but their petitions were dismissed by the Sindh High Court.

Decision of the Court:

First Ruling of the Court: Federal Government is vested with the rightful authority: Section 8(b) grants power to the Federal Government to determine the eligibility or disqualification for claiming input tax. The SRO that imposed restrictions on claiming input tax on packing material was deemed legal and within the jurisdiction of the Federal Government under Section 8 of the Sales Tax Act, 1990. A foremost objective, when it comes to rules of interpretation is to ascertain the legislature's intention. It is the duty of the Courts to gauge this intention based on the language used. The term "Non-obstante" signifies the legislative power with an overriding effect against other provisions within the same law or other laws. In the case of AMZ Spinning and Weaving Mills (2006 PTD 2821), the Sindh High Court held that under Section 8(1)(b) of the Sales Tax Act, the Federal Government is empowered to disallow the adjustment of input tax on any item. It was emphasized that Section 8(1)(b) was enacted to deny the adjustment of input tax on such items at the discretion of the Federal Government, even if they are used in the manufacturing process of taxable goods.

Second Ruling of the Court: The doctrine of ultra vires states that an authority can only exercise the powers conferred upon it by law. If an action falls within the limits, it is considered intra vires, if it exceeds, it is ultra vires. The law can be invalidated if it violates the Constitution or fundamental rights. The court generally favors upholding the validity of legislation unless it clearly violates a constitutional provision. A proviso is meant to either exempt or qualify something in the enactment. The challenge to the legitimacy of the proviso, in this case, was misconceived.

Third Ruling of the Court: Retrospectivity cannot be presumed solely based on the beneficial nature of the legislation: The withdrawal of the proviso on 21.06.2018 did not have retrospective effect, as it was specifically made effective from 01.07.2018 without any indication of retrospectivity. The withdrawal was not considered a declaratory statute aimed at rectifying defects or oversights in the original S.R.O.1125 of 2011 or S.R.O.491 of 2016, which introduced the proviso. Curative statutes are intended to rectify prior enactments, but for retrospective effect, it is crucial to examine whether they clarify ambiguities, correct existing laws or errors affecting interpretation or hinder application of the statute. While its nature is often clarificatory, the mere fact that it is beneficial does not imply retrospectivity.

Conclusion: The proviso to the condition (x) withdrawn by through SRO 777 of 2018 dated 21.6.2018 shall have prospective effect from 01.07.2018. Earlier input shall remain disallowed.

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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President

(M. Mehmood Bikiya)
Hon. General Secretary

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