

Government of Pakistan
Ministry of Law and Justice

No.F.501/2019-Law-I

Islamabad, 29th August, 2019

OFFICE MEMORANDUM

Subject: LEGAL OPINION ON APPLICATION OF S. NOS. 1 AND 3 OF PART II OF THE FIRST SCHEDULE TO THE INCOME TAX ORDINANCE, 2001 AFTER ABOLITION OF SRO 1125(I)/2011 ETC.

Reference your Office Memorandum No.1(53) S(ITC)2019 dated 09.08.2019 (hereafter: "OM").

2. In the OM it has been stated that SRO 1125(I)/2011 dated 31.12.2011 (hereafter: "SRO 1125") had prescribed zero-rate sales tax for a particular class of taxpayers, while SRO 480(I)/2007 dated 09.06.2007 (hereafter: "SRO 480") had specified the Sales Tax Special Procedure Rules, 2007 (hereafter: "2007 Rules"). Both SRO 1125 and SRO 480 stood rescinded through SRO 694(I)/2019 dated 29.06.2019 (hereafter: "SRO 694").

3. Thus, in view of the aforesaid recession there is no doubt that the sales tax concession available under SRO 1125 and SRO 480 is no longer available.

4. The answer to the queries raised in the OM warrants to be divided into two parts. The first part deals with Part II of the First Schedule to the Income Tax Ordinance, 2001 (hereafter: "the 2001 Ordinance"), which deals with imports under section 148 of the 2001 Ordinance; while the second part deals with section 235-B(1) of the 2001 Ordinance.

5. We shall first deal with Part II of the First Schedule to the 2001 Ordinance.

6. We have been instructed to the effect that Part II of the First Schedule to the 2001 Ordinance has given a certain reprieve to a **'specified class of taxpayers'** (underlined and emboldened to supply emphasis) for the purposes of import under section 148 of the 2001 Ordinance. In prescribing the said reprieve of income tax, the specified



class of taxpayers who qualify for the said concession have been described in Part II of the First Schedule to the 2001 Ordinance to be those who are covered under SRO 1125 i.e. the notification which had prescribed the zero rated sales tax.

7. Therefore, the precise query posed to us is whether the repeal of SRO 1125 automatically also takes away the income tax concession given under Part II of the First Schedule to the 2001 Ordinance, in respect of imports under section 148 of the 2001 Ordinance? The simple answer is that the concession prescribed in Part II of the First Schedule to the 2001 Ordinance has not been taken away. It is only for the purposes of a handy and convenient description of the persons who are meant to enjoy the benefit or reprieve under Part II of the First Schedule to the 2001 Ordinance have been cross referred or defined to be the 'specified class of taxpayers' who qualify for the reprieve under SRO 1125. The said reference is only for the purposes of a convenient identification of that class which is meant to enjoy the concession under Part II of First Schedule to the Income Tax Ordinance, 2001.

8. The matter seems to have been clinched by a judgment of a learned Division Bench of the Islamabad High Court in **Ehsan Ullah Qureshi v. United Bank Limited** 2015 CLD 899, wherein at p.910D it has been observed as follows:-

"Moreover, as laid down by the Hon'ble Supreme Court of Pakistan in the referred case-law where there is specific legislation by reference any amendment or repeal of the borrowed statute/provision does not affect the provisions/statute in which the same are incorporated".

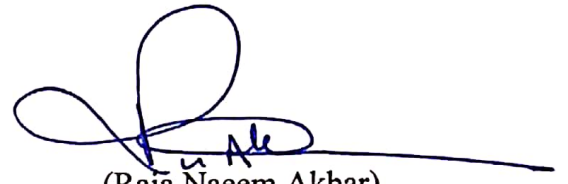
9. Therefore, the rescission of SRO 1125 does not have any bearing on the availability of the income tax concession under Part II of the First Schedule to the 2001 Ordinance relating to imports under section 148 of the 2001 Ordinance.

10. Now we shall deal with section 235-B(1) of the 2001 Ordinance, which, *inter alia*, provides for a special tax rate in respect of those steel melter and composite units, which are registered for the purposes of Chapter XI of the 2007 Rules. The 2007 Rules have been repealed vide SRO 694 on 29.06.2019, therefore, there is no occasion of registration for the purposes of the 2007 Rules after 29.06.2019. However, steel melter



and composite units which were registered for the purposes of the 2007 Rules prior to 29.06.2019 derive a vested right to claim the reprieve under section 235-B(1) of 2001 Ordinance. If there is any authority needed on the application of the doctrine of vested rights, one may look into Al-Samrez v. FOP 1986 SCMR 1917 and Al-Tech Engineers v. FOP 2017 SCMR 673. Also it is a settled proposition of law that vested rights cannot be defeated by executive orders (see CST v. Kruddsons PLD 1974 SC 180).

11. The questions posed in para 4 of the OM are answered as aforesaid.



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