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Manufacturing industry bound to make supplies to only registered buyers

ISLAMABAD: The entire manufacturing industry of Pakistan is now bound to make supplies to only registered buyers/distributors/dealers from January 2020 to avail input tax adjustment in their monthly sales tax returns in February 2020.

Sources said that many manufacturers operating within the sectors of ghee/cooking oil, sugar, fertilizers and others are engaged in supplies to their unregistered buyers. After promulgation of the Tax Laws (Second Amendment) Ordinance 2019, Federal Board of Revenue (FBR) would not allow input tax adjustment to those manufacturers who would sell Rs 10 million goods on monthly basis to unregistered buyers.

Under the Ordinance, the big distributors who made purchases from Rs 10 million on monthly basis to Rs 100 million on annual basis, the manufacturers would not be granted input adjustments if they would sell their products to unregistered persons.

The amendments to the sales tax law revealed that section 73 has been amended to provide that a registered manufacturer shall make all taxable supplies to a registered person excluding supplies not exceeding a value of Rs 100 million in a financial year and Rs 10 million in a month. Therefore, manufacturers are worried to make supplies either to only registered distributors or force such dealers to get registered with the sales tax department for continuation of such supplies.

Dr Ikramul Haq, an international tax expert, told Business Recorder that the Article 18 of the Constitution gives protection to the businesses in the country. The Article 18 (Freedom of trade, business or profession) of the Constitution says, “Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

”Provided that nothing in this Article shall prevent:- (a) the regulation of any trade or profession by a licensing system; or (b) the regulation of trade, commerce or industry in the interest of free competition therein; or (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.”

Dr Ikramul Haq explained that Tax Laws (Second Amendment) Ordinance 2019 is hampering the basic rights of manufacturers for doing their legitimate business in the country. The input tax credit has been disallowed to the manufactures making sales to unregistered buyers as per prescribed threshold in the Ordinance. The Constitution does not differentiate between supplies to registered or unregistered buyers. The FBR cannot harm the fundamental right of business of manufacturers.

Secondly, without giving any grace period, how the government can suddenly promulgate an Ordinance and force manufacturers to start making supplies to only registered dealers/buyers. The manufacturers cannot immediately enforce the decision without any timeframe to implement procedural mechanism for implementation.

Renowned global tax expert said how the FBR can put burden of compulsory registration of buyers on the manufacturers. This is an ‘anti-business decision’, enforced through the Tax Laws (Second Amendment) Ordinance 2019. The manufactures cannot force their dealers to get themselves registered compulsorily with the sales tax department. The registration of the dealers/buyers is the main reasonability of the FBR and not the manufacturers, Dr Ikramul Haq added.

According to the explanation of the said amendment by a chartered accountant firm, the Tax Laws (Second Amendment) Ordinance, 2019 has introduced a new sub-section 4 to restrict the extent of claim of input tax by the registered manufacturers. The limits have been imposed on registered manufacturers who cannot claim credit adjustment or deduction of input tax attributable to such excess supplies made to unregistered persons, exceeding the value of one Rs 100 million in a financial year, and Rs 10 million in a month.

The commentary of Tola Associates revealed that as per section 73 of the Sales Tax Act, payment for a transaction exceeding value of Rs 50,000 other than utility bills must be made through banking channel within the prescribed time to allow for an input tax credit, zero rating, etc. Now through the Ordinance, a new subsection 4 has been inserted, wherein additional requirements in case of supplies made by a registered manufacturer (hereafter “RM”) have been added. Now if taxable supplies to a single person (buyer) by RM, exceeds Rs 10 million in a month, or Rs 100 million in a financial year, the buyer should be a sales tax registered person otherwise RM will not be entitled to an input tax credit adjustment attributable to such supplies.