

'Anomalies' in 2nd Tax Laws Amendment Ord 2019, KTBA sends letter to FBR

KARACHI: A registered manufacturer cannot make sales worth more than Rs10 million to even Federal Board of Revenue (FBR) as if it does, input tax will be disallowed, following the serious glitches in 2nd Tax Laws Amendment Ordinance, 2019.

These anomalies have been highlighted in a letter sent to the chairman FBR by Karachi Tax Bar Association (KTBA), which has sought clarification from the board on 2nd Tax Laws Amendment Ordinance, 2019 in order to dispel confusion.

It said that the sub-section 4 has been added to section 73, whereby sales to an unregistered person by a registered manufacture cannot be made for more than Rupees 10 million in a month and Rupees 100 million in a year, failing which the supplier shall not be entitled to claim credit adjustment or deduction of input tax as attributable to such excess supplies to unregistered person.

Considering the implication of the phrase of “unregistered person” [i.e. singular term] used in drafting of the law, instead of the phrase “unregistered persons [plural term], it implies that the restriction is applicable on sales to a single unregistered person instead of cumulative sales to all unregistered person(s).

It said that the law is intended to cover all unregistered persons, without any discrimination, certain serious ramification would follow because of the fact that manufacturers won't be able to make sale to various government/other authorities, armed forces hospitals, universities, charities & EPZ entities, which by law, are not required to be registered at all, in the first place.

For example, if FBR itself has to procure three motor vehicles worth Rs3.5 million each from a manufacturer, the local manufacturer would not be able to execute such sales to FBR as its input tax will be disallowed, the letter said.

It would not be out of context to mention here that above entities, institutions and authorities are not liable to pay further tax as well, while purchasing from registered manufactures. It is, therefore, important to define the category of unregistered person who should not suffer due to any adverse implication of the law.

Therefore, the clarification must be issued in this respect on urgent note in order to ensure that intent of law was not suffered by any legal infirmity due to any unintended or inadvertent drafting.

Moreover, it said that it should also be clarified as to whether all unregistered person would be affected or only those unregistered person who actually were required to be registered in sale tax.

It said that the section 181D was introduced by Finance Act, 2019 wherein it was stated that “every person engaged in any business, profession or vocation shall be required to obtain and display a business license as prescribed by the Board.”

Through the Tax Laws (Second Amendment) Ordinance, 2019, various penalties have been prescribed for person who has not obtained business license, while the procedure to obtain business license has not been prescribed as yet.

It is, therefore, not possible to get a business license either for any person or for any tax commissioner to issue one. It may be recalled here that an unnumbered and undated draft SRO was issued by the FBR in the month of July 2019, whereby Draft rules 83A to 83E were proposed to be inserted in the Income Tax Rules, 2002 for the purpose, which however, to our knowledge, has not been finalised as yet.

Moreover, in the draft rule 83C(4) of the above referred SRO, it was stated that “Where a person’s name is appearing in the active taxpayers’ list (ATL), he shall be treated to have filed application and the system generated business license shall be emailed to his email address registered in IRIS.”

Accordingly, it would not be erroneous to carry an understanding that persons appearing in Active taxpayers list (ATL) are not required to apply for issuance of business license separately. It would, therefore, be all befitting that in order to avoid any dispute in future, the rules on the subject are finalised with the same spirit.