

Commissioners reluctant to issue Exemption Certificate

ISLAMABAD: Following delay in issuance of income tax explanatory circular 2020, the Commissioners Inland Revenue are reluctant to issue Exemption Certificate under section 153 of the Income Tax Ordinance, 2001 to those industrial undertakings which are importing raw material on which 2 percent advance income tax is collected and covers all the tax liability under the Ordinance.

Tax experts told Business Recorder here on Monday that due to lack of issuance of circular explaining amendments the Commissioners of the Inland Revenue in the field formations are not issuing exemption certificate under section 153 of the income tax the Ordinance, 2001.

The background facts are that through Finance Act, 2020 clause (72B) of Part IV of Sixth Schedule has been deleted through which powers were earlier delegated to the Commissioner Inland Revenue for issuance of exemption certificate for import of raw material by the industrial undertaking for their own use subject to certain conditions like advance payment of tax. This provision has been withdrawn due to the reason that rates of collection of advance income tax on imports of raw material have been reduced from 5.5% to 2% with no exemption certificate.

Earlier, exemption certificates both under section 148 for import of raw material and under section 153 on the supply of manufactured goods were issued after ensuring advance tax payment either through section 147 or through deduction / collection at source. Since, now there would be no exemption certificate for import of raw material and the tax collected by the customs authorities at the rate of 2% on import of raw material would not only cover advance tax liability under section 147 during the year but also minimum tax liability under section 113, alternate corporate tax liability under section 113C and normal tax liability under First Schedule on filing of return of total income. Rather still there will be refunds as 2% tax on raw material would be more than value addition through finished attracting tax at the rate of 1.5% of turnover.

When contacted, Shahid Jami, Tax Lawyer explained that earlier exemption certificates under section 153 were issued in pursuance of powers under section 153(4) of 2001 Ordinance read with clause (xvii) of SRO 586(i)/1991 which envisaged advance tax payment under section 53 of the 1979 Ordinance corresponding to section 147 of the 2001 Ordinance. This SRO issued under the repealed ordinance was saved under section 238(12) of the Income Tax Ordinance, 2001. However, with the repeal of 1979 Ordinance no amendment in the aforesaid SRO can be made and that is why any amendment made in the 2001 Ordinance contrary to the SRO would override SRO being subordinate delegated legislation. Through Finance Act, 2020 clause (46AA) has been inserted in Part IV of Second Schedule to the Income Tax Ordinance, 2001 whereby all the applicable provisions of the SRO have been incorporated in this clause meaning thereby that the SRO has become redundant. But the field formations due to their

peculiar and restrictive mindset are still referring to the provisions of the SRO and demanding advance tax payment under section 147 for issuance of exemption certificate which does not find support from section 153(4). Whereas as per facts and figures over the years the collection under section 148 on import of raw material at the rate of 2% would take care of all types of tax liabilities under the Ordinance including advance tax under section 147.

He urged the FBR to immediately issue its annual Circular explaining the amendment made in the Income Tax Ordinance, 2001 through Finance Act, 2020 so that the erroneous understanding of the Commissioners are corrected or otherwise issue a separate clarification on the issue as the issue is of urgent nature as any tax deduction/collection at source due to delay in issuance of exemption certificate would lead to accumulation and creation of extra refund when the industry is already hard-pressed due to slow down of economy and non-issuance of income refunds of earlier years, Shahid Jami added.