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**Judgment Sheet**

IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT

Case No: I.C.A. No.79/2014

M/s Lahore Electric Supply Company Ltd. **Versus** The Federal Board of Revenue, etc.

**JUDGMENT**

Date of hearing	22.05.2014
Appellant by	M/s Shahbaz Butt and Khurram Shahbaz Butt, Advocates
Respondents by:	M/s Ch. Muhammad Zafar Iqbal assisted by Abdul Latif Tariq and Muhammad Yahya Johar, Advocates Raja Ashfaq, Deputy Commissioner, RTO-I, Zone-I, Lahore.

**Syed Mansoor Ali Shah, J:-**

**Introduction:**

Scope and interpretation of Section 11A of Sales Tax Act, 1990 (“Act”), in particular the term “tax due as indicated in his return<sup>1</sup>,” has come up for consideration before this Court.

2. This judgment will decide the instant appeal, as well as, connected appeals and writ petitions mentioned in Schedule A as all these cases revolve around the interpretation of section 11A of the Act, thus, raising similar question of law arising out of similar facts.

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<sup>1</sup> In Section 11A.

Facts:-

3. On facts, it is submitted that the appellant filed its sales tax returns for the months of July, August and September, 2013 and fully paid the amount of tax due indicated in the said returns.<sup>2</sup> In spite of the same, the appellant has been served with Notices under section 11A of the Act, dated 28.10.2013, for short paid amount of tax. The Notices have been issued on the ground that amount of sales tax to be charged by the appellant from its consumers under the Sales Tax Special Procedure Rules, 2007 has been incorrectly reflected in the sales tax return. The sales tax reflected in the electricity bills issued by the appellant to its consumers, available on its website, constitute output tax of the steel sector units and is not subject to input tax adjustment by the appellant under the above Rules. Therefore, as a result of the said deduction, the appellant has made short payment of tax due, which is liable to be recovered under Section 11A of the Act.

4. Learned counsel for the appellant argues that Section 11A of the Act is an exception to Section 11 of the Act and has a limited application. He submits that if the amount of tax due indicated in the sales tax return is not paid only then can an action be initiated under Section 11A of the Act. He further submits that in the present case, the tax due indicated in the sales tax return has admittedly been fully paid. Information collected from the electricity bills of the consumers placed on the website of the appellant company does not constitute "tax due as indicated in his return" in terms of Section 11A of the Act. It is argued that in case of any discrepancy or incorrect calculation, as pointed out by the respondent department, between the

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<sup>2</sup> in the sum of Rs 139,363,703/-, Rs 305,646,539/- and Rs 226,108,191/-.

figures reflected in the actual electricity bills placed on the website of the appellant company and the amounts indicated in the return, only proceedings for assessment of tax under Section 11 of the Act can be initiated against the appellant (subject to the provision of section 25 of the Act). Under the said provision, an opportunity is provided to the taxpayer to rebut the allegations leveled by the department followed by adjudication of the dispute after granting a hearing to the appellant. The special procedure under Section 11A dispenses with the requirement of show cause notice, only because the taxpayer is penalized for not depositing the amount of tax due after voluntarily indicating the same in the sales tax return. Learned counsel submits with utmost respect that the learned Judge in chambers erred in holding that the exercise of verification and comparison of the amount of tax due “indicated” in the sales tax return with the electricity bills available on the website of the appellant, fell within the scope of section 11A of the Act.

5. Learned counsel for respondent department raised a preliminary objection that the ICAs No.77/2014 and 78/2014 have not been filed by an authorized person. On merits, he submits that under Section 26 of the Act, the appellant is under an obligation to submit true and correct sales tax return, hence reliance for the purpose of verification and comparison has been rightly placed on the electricity bills issued by the appellant as the said bills are invoices in terms of Rule 16 of the Sales Tax Special Procedure Rules, 2007. He submits that section 11A is subject to verification of the sales tax returns and in case of any discrepancy said section can be invoked against the taxpayer. He submits that the impugned judgment propounds the correct legal position, hence the instant appeal and the connected petitions are not maintainable.

6. We have given due consideration to the arguments of the learned counsel for the parties and have gone through the record, as well as, the impugned judgment of the learned Judge in chambers.

Preliminary Objection

7. It is submitted that ICAs No. 77/2014 and 78/2014 have not been filed by an authorized person, hence they are not maintainable. Reference has been made to the Authority Letter (undated) issued by the Manager (Corporate Accounts), GEPCO Ltd, Gujranwala which authorizes one Mr. Muhammad Masood, Deputy Manager (Banking & Tax) to sign a “writ petition” on behalf of GEPCO. On the basis of the said Letter, it is argued that the concerned person has not been specifically authorized to file the abovementioned appeals. Learned Counsel for the appellant has placed on record a booklet comprising 42<sup>nd</sup> Board Resolution of GEPCO dated 22-6-2006 wherein the Chief Executive Officer (“CEO”) of GEPCO has been authorized to institute and defend cases in courts and to engage counsel and give powers of attorney on behalf of GEPCO. The CEO has been further authorized to delegate this power to any other officer of the company. Vide Letter dated 25-10-2010 the CEO has further delegated the said power to two officers, including the officer who signed the said appeals. The Board Resolution and Letter of Delegation is part of the booklet submitted by the learned counsel for GEPCO, which has been placed on the record as **Mark “A”**. From the above we find that officer concerned has been duly authorized to institute the appeals. The preliminary objection is, therefore, overruled. As an abundant caution, we have gone through the authorization in all the connected matters and have found them in order.

On Merits

8. Sales Tax is premised on a self-assessment paradigm, where the tax due is self-assessed by a taxpayer and deposited alongwith the monthly sales tax return. Supervision and monitoring of the self-assessment regime is through the process of audit provided under sections 25 of the Act. Once the taxpayer is selected through audit and the department is of the view that the taxpayer has an outstanding tax liability, the case undergoes assessment of tax through the process of adjudication under section 11 of the Act. Therefore, the self-assessed amount of tax due by the taxpayer in its sales tax return can only be altered through fresh assessment of tax under the section 11 of the Act, subject to the process of selection of a taxpayer through audit. Section 11 provides for assessment of tax where a taxpayer fails to file a return, or pays an amount which is less than the amount of tax due or has made short payment or has claimed input tax credit or refund which is not admissible. The section further provides that where by reason of collusion or deliberate act any tax has not been levied or has been short levied or has been erroneously refunded, or by reason of inadvertence, error or misconstruction any tax has not been levied or short levied or has been erroneously refunded, the Officer of Inland Revenue passes an assessment order along with penalty and default surcharge. Section 11 is the only provision under the Act which provides for assessment of tax through adjudication in case the self-assessed tax of the taxpayer, according to the department is unpaid or short paid for the above reasons. Post assessment if the taxpayer fails to pay the tax assessed, recovery can be initiated against the taxpayer under section 48 of the Act.

9. Section 11A on the other hand is neither a dispute settlement provision nor a provision that deals with assessment of tax but is infact a special recovery provision akin to Section 48. It proceeds on the assumption that the self-assessed tax due indicated in the sales tax return by the taxpayer is correct and final. Therefore, in case of failure to pay or make short payment of the same, recovery of the differential amount is initiated without further ado and the requirement of due process through issuance of a show cause notice is dispensed with. Section 11A states as under:

**“11A. Short paid amounts recoverable without notice.—**Notwithstanding any of the provisions of this Act, **where a registered person pays the amount of tax less than the tax due as indicated in his return,** the short paid amount of tax along with default surcharge shall be recovered from such person by stopping removal of any goods from his business premises and through attachment of his business bank accounts, **without giving him a show cause notice** and without prejudice to any other action prescribed under section 48 of this Act or the rules made thereunder.” (emphasis supplied)

The amount of tax due has to be indicated in the *return*, which is defined under Section 2 (29) to mean any *return* required to be furnished under Chapter-V of the Act. Under Section 26 every registered person is required to furnish a true and correct return in the prescribed form. Rule 14 of the Sales Tax Rules, 2006 (“Rules”) specifies that *return* has to be in form STR-7 alongwith all its annexures. The format of the relevant portion of the *return* under the law is as follows:-

**Government of Pakistan**  
**Sales Tax & Federal Excise Return**



"STR-7  
[See rule 14(1)]

<b>Registry</b>	NTN	Name	Tax Period (MMYY)	Normal <input checked="" type="checkbox"/>	Amended <input type="checkbox"/>	Submission Date
	CNIC in case of Individual	COY/AOP/IND	Business Nature			Tax Office

Sr.	Description	Gross Value	Taxable Value	Sales Tax
<b>Sales Tax Credits</b>				
1	Domestic Purchases from Registered Persons (excluding fixed assets) Annex-A & I			
2	Domestic Purchases from Un-registered Persons Annex-A & I			
3	Imports excluding fixed assets (includes value addition tax on commercial imports) Annex-B			
4	Capital Goods / Fixed Assets (Domestic Purchases & Imports) Annex-A, I & B			
5	Input for the month = (1 + 3 + 4)			-
6	Credit carried forward from previous tax period(s)			
7	Non-creditable inputs (relating to exempt, non-taxed supplies of goods or services etc.)			
8	Accumulated Credit = (5 + 6 - 7)			-
<b>Sales Tax Debits</b>				
9	Total Goods or Services supplied locally (Including Reduced Rate Sales) Annex-C & I			
10	Goods or Services supplied locally (at Reduced Rates) Annex-C & I			
11	Exports Annex-D			
12	Extra Tax under Chapter XIII of ST Special Procedure Rules, 2007 Annex-C			
13	Electricity supplied to steel sector KWH Annex-C & I			
13a	Sales Tax portion of Sr. 13 collected at normal rate (adjustable against input)			
13b	Remaining Sales Tax portion of Sr. 13 (non-adjustable against input) = (13 - 13a)			
14	Gas supplied to CNG sector (normal rate + 9% of value) Annex-C & I			
14a	Sales Tax portion of Sr. 14 collected at normal rate (adjustable against input)			
14b	Remaining Sales Tax portion of Sr. 14 (non-adjustable against input) = (14 - 14a)			
15	Output Tax = (9 + 12 + 13a + 14a)			-
16	Sales Tax deducted by withholding agent(s) Annex-C & I			
17	Accumulated Debit = (15 - 16)			-
18	Retail Turnover - for the Quarter		Turnover	
19	Re-rollable scrap sold by ship breakers M Tons Annex-C & I			
20	Re-meltable scrap sold by ship breakers M Tons			
21	Sales Tax payable by steel sector under special procedure whose liability was not discharged through electricity bills or self-generation			
22	Sales Tax withheld as withholding agent Annex-A & I			
23	Sales Tax Arrears including Principal, Default Surcharge & Penalty Annex-G			
<b>Payable / Refundable</b>				
24	Whether excluded from Section 8B(1) under SRO 647(1)/2007 Yes Select reason in case of "Yes" Oil marketing company & petroleum refinery			
25	Admissible Credit [if 24 = Yes then 8; if 24 = No, then (least of (8-4) or "90% of 15") + (if (8-4) < "90% of 15" then 4; otherwise zero)]			
26	Excess Unadjusted Credit [if 24 = Yes and 25 > 17 then (25 - 17); otherwise zero; if 24 = No then (8 - 25)]			
27	Credit Carried forward on account of Value Addition Tax Annex-F			
28	Carry Forward Available for the purpose of refund = (26 - 27)			
29	Refund Claimed (Provide Stock Statement as Annex-H now, or file it later as per rules)			
30	Credit to be carried forward [if 28 > 29, then ((28 - 29) + 27); otherwise 27]			
31	Federal Excise Duty (FED) Drawback Annex-E			
32	Sales Tax Payable [if 17 > 25 then (17 - 25); otherwise zero] + [13b + 14b + 18 + 19 + 21 + 22 + 23]			
33	Federal Excise Duty (FED) Payable Annex-E			
34	Petroleum Levy (PL) Payable			
35	Total amount to be paid = (32 + 33 + 34)			
36	Tax paid on normal/previous return (applicable in case of amended return)			
37	Balance Tax Payable/ (Refundable) = (35 - 36)			
38	Select bank account for receipt of refund			
<b>Declaration</b>				
I, _____, holder of CNIC No. _____ in my capacity as authorized person do solemnly declare that to the best of my knowledge and belief the information given in this return is / are correct and complete in all respects in accordance with the provisions of applicable law. Date: _____ Submitted electronically by using User-Id, Password and PIN as electronic signature				
<b>Head wise Payable</b>				
	Head of Account	Amount	<b>Province Wise Breakup of Sales Tax/FED in ST Mode on Services (Annex-P)</b>	
	B02341 - Sales Tax on Goods		<b>Province/Area</b>	<b>Account Head</b>
	B02366 - Sales Tax on Services		Balochistan	BXXXXX
	B02367 - FED in VAT Mode		Khyber Pakhtunkhwa	BXXXXX
	B02485 - FED Excluding Natural Gas		Punjab	B02382
	B02501 - FED on Natural Gas		Sindh	B02384
	C03901 - Petroleum Levy		Capital Territory & Others	BXXXXX
	Total Amount Payable	-	<b>Total</b>	
Total Amount Paid (in figures)			in words _____	
<b>CPR Nos.</b> CPR-1, CPR-2, CPR-3, ...				

DOMESTIC SALES INVOICES (DSI)															Annex-C				
NTN: 9999999-9 ***** Name of the Registered Person *****										Tax Period: MM-YYY									
Sr.	Particulars of Buyer			Sale Origin Province of Supplier	Document			Sale Type	Rate	Quantity	UoM	Value of Sales Excluding Sales Tax	Sales Tax/ FED in ST Mode	Extra Tax	ST Withheld at Source	Exemption, Zero & Reduce Rated Reference SRO No. / Schedule No.	Item S. No.		
	MTN	CNIC	Name		Type	Typ*	Number											Date	HS Code
1																			
2																			
3																			
4																			
5																			
6																			
7																			
8																			
9																			
10																			
11																			
12																			
13																			
14																			
15																			
<b>Total Sales</b>																			

Typ=> Type of Document SI = Sales Invoice, STWH= Withholding Sales Tax

Note :

- 1) The Sale Origin Province of Supplier and HS Code will be mandatory for sale types "Services", "Services (FED in ST Mode)" & "Services at Reduced Rate" only.
- 2) If an invoice contains items pertaining to multiple rates or multiple types; then multiple rows with same Invoice Type, Invoice No./HS Code & Date will be written by the taxpayer in this Annexure by providing Sale Type, Rate, Value, Sales Tax and Tax Withheld separately
- 3) If an invoice contains items pertaining to Goods and Services both, then write two separate rows giving details separately where possible as explained in (2) above
- 4) The Quantity and Uom will be required for sale types "Special Procedure Goods", "Services (FED in ST Mode)", "Electricity at Specific Rate", "Re-rollable Scrap" & "Call Phone Activation", the possible values for UoM will be "MT", "Bill of Lading", "KWH" & "SET"
- 5) If the rate of sale will be Exempt, Zero & Reduce Rated then the registered person will also provide/select the relevant SRO / Shedule Number and applicable Sr. Number.



Annex-C is one of the annexures of the *return* which provides a summary of domestic sale invoices. The *return* and its annexures and the domestic sale invoices are two different set of documents. In the present case the domestic sales invoices are the electricity bills (ref: Rule 16 of the Sales Tax Special Procedures Rules, 2007) issued by the appellant. Therefore, the amount of tax due indicated in the return cannot be equated with the amount of output tax reflected in the domestic sales invoices (i.e., electricity bills of the consumer). Additionally, once the self-assessed tax due is considered to be correct and final under Section 11A of the Act, natural corollary is that all the information in the return including the annexures which leads to the self-assessed amount of tax due, is also correct and final.

11. In the present case, the amount of tax due indicated in the return is being disputed by the department, therefore, in such an eventuality, statutory assessment is required under section 11 of the Act and section 11A has no application to the case of the appellant.

12. We are afraid, the view expressed in the impugned judgment that verification of electricity bills, placed on the website of the appellant, is permissible and reliance can be placed on any other extraneous information other than the amount of tax due indicated in the sales tax return under section 11A, is not the correct legal position. For section 11A to come into operation, only the amount of tax due indicated by the taxpayer in the sales tax return is to be considered. We may add for the sake of completeness that even though the taxpayer is under a legal obligation to file a true and correct return, any alleged violation of the same can only be resolved through adjudicatory process provided under section 11 of the Act

subject to the selection of the case of the taxpayer under the Act and not through the mechanism of section 11A which is purely a recovery provision.

13. Under section 11A the amount of tax due *indicated* by the taxpayer in the sales tax return is considered to be correct and final. It is then used as a benchmark to see whether the taxpayer has deposited the said amount of tax due along with the sales tax return. In case of failure to deposit the indicated amount of tax due or in case of short payment, recovery proceedings can be initiated against the taxpayer under section 11A.

14. Even otherwise, Section 11A has practically lost its efficacy after the new e-filing system has been enforced. The new system does not entertain any electronic return if the amount of tax deposited by the taxpayer is less than the amount of tax due indicated in the return. Reference is made to Rule 18 of the Sales Tax Rules, 2006.

15. For the above reasons instant appeal, as well as, connected appeals and writ petitions are allowed and impugned Notices dated 28.10.2013 issued under section 11A of the Act and subsequent recovery thereunder are declared illegal and without lawful authority and are, therefore, set aside.

**(Atir Mahmood)**  
Judge

**(Syed Mansoor Ali Shah)**  
Judge

*M.Tahir\**

**APPROVED FOR REPORTING**

**SCHEDULE-A**

<b><u>Sr. No.</u></b>	<b><u>Writ Petition No.</u></b>
1.	I.C.A. No.77/2014
2.	I.C.A. No.78/2014
3.	W.P. No.2396/2014
4.	W.P. No.2568/2014
5.	W.P. No.12143/2014

**(Atir Mahmood)**  
Judge

**(Syed Mansoor Ali Shah)**  
Judge

*M.Tahir\**



