

**PRESENTATION BY MUHAMMDAD NAEEM SHAH IN THE
SEMINAR ON FINANCE ACT 2010, HELD ON 22ND JULY, 2010,
AT LAHORE TAX BAR ASSOCIATION.**

- **Mr. Justice Khawaja Muhammad Sharif, Chief Justice, Lahore High Court, Lahore.**
- **Mr. Justice Ijaz ul Ahsan, Honourable Judge of Lahore High Court**
- **Mr. Zia Ullah Kayani, Chairman, Customs Tribunal of Pakistan**
- **Mr. Zia Haider Rizvi, Patron, Lahore Tax Bar Association**
- **Mr. Mustafa Ashraf, Chief Commissioner, Regional Tax Office, Lahore**
- **Mr. Ajmal Khan, President, Lahore Tax Bar Association**
- **Learned Office Bearers of Lahore Tax Bar Association**
- **Rana Munir Hussain, SVP, Pakistan Tax Bar Association**
- **Learned Members of Lahore Tax Bar Association**
- **Learned Presidents and Members of different Tax Bars of Pakistan**

1. It is a matter of great pleasure that today we have with us his Lordship Mr. Justice Khawaja Muhammad Sharif, Chief Justice Lahore High Court, who does not require any introduction for the members of Lahore Tax Bar Association and we all know him since long, as a senior most Judge of Lahore High Court. It is matter of great satisfaction that as Chief Justice, his Lordship has enhanced the integrity and improved the performance of Lahore High Court, promote the rule of law and supremacy of the Constitution.
2. It is also a matter of great pleasure that we have with us Mr. Justice Ijaz ul Ahsan and Mr. Zia Ullah Kayani, Chairman, Customs Tribunal of Pakistan. We greet both the honourable Guests of Honour in this Seminar of Lahore Tax Bar Association. We appreciate the efforts which they are undertaking to strengthen the administration of justice.

3. We must appreciate the efforts of Mr. Ajmal Khan, President and his team, which they are doing to promote the objects of the Bar and to make Lahore Tax Bar Association an effective and a stronger Bar.
4. Sir, I have been assigned the task to speak on Amendments made through the Finance Act 2010 in the Sales Tax Act 1990 and Federal Excise Act 2005 and to present an up-to-date and an overall view on the Taxation System of Pakistan.
5. On going through the Finance Act 2010, we observe that very few amendments have been made in the Sales Tax Act, as VAT would replace the existing Sales Tax Act w.e.f. 1st October, 2010.
6. Sir, amendments made through a Finance Act are always applicable from 1st July of the next year, but through an amendment made in the Sales Tax Act, 1990 as well as FED Act, 2005, the amendments are to take effect from 5th June, 2010. This amendment has been made to cover up the period of laps of Finance (amendment) Ord. 2009, since this ordinance was not passed by the National Assembly within due time, therefore it expired on 5th June 2010, but I am of the opinion that inspite of this amendment the laps period is not covered and orders passed and actions taken by the Tax Authorities during this period have no sanctity of law.
7. Through an amendment made in Section 3 of Sales Tax Act 1990 and Section 1 of the FED Act 2005, rates of Sales Tax and FED has been increased from 16% to 17%.
8. Certain amendments have been made through the Finance (amendment) Ord. 2009 in the Sales Tax Act 1990 and FED Act 2005 to harmonize these taxes under the Jurisdiction of Inland

Revenue. As we are aware that Income Tax, Sales Tax and FED Departments have been integrated and these three Departments have been named as Inland Revenue Services (IRS). With the introduction of Inland Revenue Services the nomenclature of tax authorities have been changed to Officer Inland Revenue instead of Officer of Income Tax, Sales Tax or Federal Excise.

9. Section 24 of the Sales Tax Act and Section 17 of the FED Act have been amended whereby the period of retention of records and documents have been increased from five years to six years. The records shall also be retained till the final decision in any proceedings for assessment, appeal, revision, reference, petition and any proceeding before the ADRC, either it takes 25 years to finalize a case.
10. Though an amendment made in section 25 of the Sales Tax Act now only the Commissioner can require records, documents and other information being maintained by a person instead of any other officer of Inland Revenue. In case such records are maintained electronically, these can only be accessed by an officer of Inland Revenue authorized by the Commissioner.

Audit can now be conducted by an officer of Inland Revenue authorized by the Commissioner.

11. The Finance Act, 2010 have merged the audit and adjudication functions and the authorized officer of Inland Revenue shall carryout audit and also pass an order u/s 11 or 36 of the Sales Tax Act, 1990 based on the audit and explanations provided by the registered person, accordingly section 45 (relating to Power of Adjudication) has been deleted.

12. New Sections 37C to 37H have been inserted in the Sales Tax Act, 1990 whereby, Federal Government may appoint as many special judges to take cognizance of any offence punishable under the Sales Tax Act.
 - a) Upon a report in writing made by an officer of Inland Revenue; or
 - b) Upon receiving a complaint or information of facts constituting such offence made or communicated by any person; or
 - c) Upon his own knowledge acquired during any proceeding before him.

The Special Judge shall proceed with the trial of the accused.

13. The provisions of the Code of Criminal Procedure, 1898, shall apply to the proceedings of the court of a Special Judge and such shall be deemed to be a court of Sessions for the purposes of the said Code and the provisions of Chapter XXIIA of the Code, so far as applicable and with the necessary modifications, shall apply to the trial of cases by the Special Judge under the Sales Tax Act.
14. Sir, it is beyond any doubt that we have any sympathy with a taxpayer, who is a tax evader.
15. But we have lot of reservation upon this newly inserted provision because we understand that this provision will be misapplied and if applied like other provisions of law, it will create hardship for the taxpayers. Tax system in our country is full of drawbacks, our tax system is unaware of the sanctity of articles of the Constitution, Fundamental rights, principles settled by the Courts and to obey the rule of law. In Daily routine, we observe, forge service of Notices, issuance of false and frivolous notices, actions taken without jurisdiction, actions on the basis of deliberate

misapplication of law and abuse of authority. Our Taxation Officer is aware only of his powers given under the tax laws but he keeps himself ignorant about his duties, conditions and obligations fixed by law and before taking an action. This is the reason that 90% actions are taken without jurisdiction and in violation of the Constitution and against the true spirit of Tax Laws. Constitution which is the Supreme Law of Land and all the laws derives their power from this supreme law, our Taxation Officer considered it a most negligible book.

16. These are the reasons that inspite of having a good prima facie case on facts and substance, the FBR loses its most of the cases on the point of law.
17. Rule of Law is a legal maxim according to which no one is immune to law, but in our tax system powers are commonly exercised in a discretionary manner.
18. Sir, the Secretary General of United Nations defined the rule of law as under:-

I Quote **“.....A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.....”** I Unquote.

19. Sir, the World Justice Project used to be a part of American Bar Association in the promotion of rule of law set out four principles:-
- i. The government and its officials and agents are accountable under the law;
 - ii. The laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property;
 - iii. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient;
 - iv. Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.
20. But, Sir, unfortunately rule of law is alien to our tax system and I understand that without obedience to the rule of law we cannot achieve any target.
21. Sir, a World Bank report launched in September 2009 says:-
- I quote **“.....Pakistan’s Taxation System has failed to safeguard the common interests of taxpayers, policy makers, and tax administrators and boosting tax collection is necessary to overcome macroeconomic weaknesses and sustain development.”** I Unquote.
22. From the platform of Lahore Tax Bar Association we always strive for and raise our voice for promotion of rule of law and protection of the rights of the taxpayers, we desire that Officers at all levels must exercise the powers conferred on them reasonably, in good

faith, for the purpose for which the powers were conferred and without exceeding the limit of such powers.

23. Sir, I understand that until our tax system is not practically subordinated by Constitution and obey the rule of law, we cannot achieve our goals and cannot make our tax system free of drawbacks. We cannot safeguard the interest of taxpayers and tax administrators.
24. Sir, you are aware of the fact that Value Added Tax has been proposed to be implemented w.e.f. 1st October, 2010. We have lot of reservations on implementation of Value Added Tax in place of Sales Tax Act 1990, because we understand that when the basic food items, medicine, education, medical, health care and all other sorts of services shall be brought into tax net besides the items already under the tax net it shall open the flood gates of inflation.
25. We understand that tax to GDP ratio, which is about 10%, is very low in Pakistan as compared to the developed countries, but the life of a common man is equally important, as tax to GDP ratio and tax collection is. Specially, under the circumstances when the common man in Pakistan has already been crushed due to continuous increase in rates of electricity, fuel and basic commodities. The implementation of VAT shall prove itself another phase of crushing to the general public.
26. With these submissions, I thank you all, for giving me a patient hearing

Dated: **22/07/2010:**