

Tax on supply of SIM cards: LHC delivers judgement

Declaring serial No 1 of the Ninth Schedule of Sales Tax Act 1990 (relating to SIM card) as ultra vires on Monday, the Lahore High Court held that the petitioners are not liable to charge, collect and pay sales tax on the supply of SIM cards to its customers.

The court allowed the petition of Pak Telecom filed through Sardar Ahmad Jamal Sukhera challenging the constitutionality of sub-section 3B of section 3 of the Act 1990 related to sales tax to be collected and charged at the time of supply of SIM card. The court however refused to declare sub-section 3B of section 3 of the Act 1990 as unconstitutional.

The court observed that the pivotal clause 13(h)-(i) of the Cellular Services Agreement says that all SIM cards supplied to customers shall remain the property of Pak Telecom and this agreement and its stipulations are not denied by the respondents. And it seems that the agreement is a standard document which has been approved by Pakistan Telecommunication Authority (PTA). The court observed that for all intents and purposes the SIM card does not become the property of the customer and therefore no sale takes place between Pak Telecom and the customer.

The court therefore held that a SIM card cannot be charged separately to sales tax if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers. The petitioner's counsel, Ahmad Jamal, contended that in fact no supply of SIM takes place within the meaning of the term "supply" as defined in the Act, 1990 and, therefore, no liability arises in respect of payment of sales tax against Pak Telecom and the company is not under obligation to charge and collect sales tax on the supply of SIM.

The counsel asserted that since all SIMs supplied to the customers remain the property of Pak Telecom, no question of a supply in fact arises. The counsel prayed the court to declare the provisions of Act 1990 as ultra vires.

The counsel for the respondents Ahmad Cheema challenged the arguments raised by the petitioners' counsel and said the petition is not maintainable. He said the burden was an indirect tax which was passed on to consumers. He said the Constitution empowers the Parliament to impose taxes and Entry 49 of the fourth

schedule permits the Federation to levy tax on the sale and purchase of the goods. He said there was nothing in the Constitution that restricts the Parliament to legislate as the tax was to be levied and the manner of its collection. The court held that if the SIM card was a separate object of sale it would be open to the Sales Tax Authorities to levy sales tax thereon.

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