

NOTIFICATION

Peshawar, dated the : 4th March, 2020.

No. SO(FR) FD/9-11/2020. :-In exercise of the powers conferred by section 113 of the Khyber Pakhtunkhwa Finance Act, 2013 (Act No. XXI of 2013) read with section 87 thereof, the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA SALES TAX ON SERVICES
ARREARS (RECOVERY) RULES, 2019.

CHAPTER-I
PRELIMINARY

1. **Short title and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Sales Tax on Services Arrears (Recovery) Rules, 2019.

(2) These rules shall come into force at once.

2. **Definitions.**---(1) In these rules, unless there is anything repugnant to the subject or context,-

(a) "Act" means the Khyber Pakhtunkhwa Finance Act, 2013 (Act No. XXI of 2013);

(b) "adjudication order" means and includes original adjudication order, appellate order or the judicial judgment in consequence of which or due to which being in the field, recovery of arrears can be effected;

(c) "Attachment Officer" means an officer not below the rank of Assistant Collector authorized by the Authority or the Collector to take action under these rules;

(d) "Receiver" means a person appointed by the Recovery Officer to manage, run or account for an attached business, property or assets of the defaulter;

(e) "Recovery Officer" means an officer of the Authority, nominated under rule 6 of these rules; and

(f) "Referring Officer" means the Referring Officer, not below the rank of an Assistant Collector, in whose jurisdiction the case involving recovery of arrears falls.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them under the Act.

CHAPTER-II **REFERENCE FOR RECOVERY AND ALLIED MATTERS**

3. Functions of the Referring Officer.---(1) Where any arrears have become due for recovery either in consequence of adjudication order or otherwise, the Referring Officer may instead of referring the case to the Recovery Officer himself act as Recovery Officer and proceed to recover the arrears by invoking the provisions of section 87 of the Act either in the sequential order or otherwise.

(2) Where a registered person has paid lesser amount of tax than the tax due as indicated in the return, the short-paid amount or amounts of tax shall be out rightly treated as arrears for the purpose of these rules and no adjudication shall be warranted in such cases.

4. Installments of arrears.---The Collector may, if so requested by the defaulter at any stage of the recovery proceedings, allow the payment of arrears in such instalments as the Collector may deem proper subject to such conditions or limitations as he may specify.

5. Conditions for recovery.---(1) Where the tax liability has been determined through an adjudication order, recovery action shall not be initiated during the statutory period, specified in the Act for filing appeal against such order.

(2) Recovery action shall not be taken where a Collector (Appeal), Appellate Tribunal or Court has granted stay against the recovery of arrears unless the stay has expired or has been vacated.

6. Nomination of Recovery Officer.---The Authority may nominate an officer not below the rank of Assistant Collector as Recovery Officer for the recovery of arrears in his jurisdiction and where needed, the Authority may nominate more than one Recovery Officer specifying their respective jurisdictions.

7. **Issuance of certificate.**---(1) The Referring Officer shall issue to the Recovery Officer a certificate for the recovery of arrears containing, inter alia, the following information, namely:

- (a) name, business address and registration number of the defaulter or defaulters;
- (b) CNIC number in case of sole proprietorship and partnership and CNIC numbers of all directors in case of corporate entity along with their known residential addresses;
- (c) details of the known bank accounts of the defaulter or defaulters;
- (d) details of the principal amount of tax due as arrear;
- (e) details of default surcharge, penalty and fine, if any;
- (f) particulars of the adjudication order, appellate order or orders of the Appellate Tribunal or Court;
- (g) full details of the properties, both moveable and immovable, owned by the defaulter or defaulters;
- (h) confirmation about the clear recoverability of the arrears and non-application of any stay order; and
- (i) any other relevant information needed to facilitate the Recovery Officer in his efforts to recover the arrears.

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(2) Attested copies of all relevant documents and adjudication orders in support of the information incorporated in the certificate, issued under sub-rule (1), shall be sent to the Recovery Officer.

(3) The Referring Officer shall maintain proper account of all the certificates, issued to the Recovery Officer, under sub-rule (1).

CHAPTER-III
MEASURES BY RECOVERY
OFFICER

9. **Maintenance of a register.**---(1) Every Recovery Officer shall maintain a register in appropriate form, in hard form as well as in the computer system, and enter all the details of the certificates together with particulars of the documents received from each Referring Officer.

(2) Every measure taken and results achieved by the Recovery Officer shall be properly recorded in the remarks column of the register maintained under sub-rule (1).

10. **Statutory actions.**---The Recovery Officer shall take recovery measures specified in section 87 of the Act either in sequential order or otherwise.

11. **Power to require information.**---The Recovery Officer may, by requisition in writing, require any person, organization, institution or department whether registered or not to furnish any information, documents or record required for the recovery and allied proceedings under these rules.

CHAPTER-IV
ATTACHMENT OF
PROPERTY

12. **Issuance of notice with warning.**---For the purpose of attachment of any property, the Recovery Officer shall cause a notice to be served upon the defaulter, requiring him to pay the amount specified in the notice, within fifteen (15) days from the date of its service on the defaulter, and warning him that in case of non-payment in the specified period, his property, particulars of which shall be given in the notice, shall be attached and sold by the Attachment Officer.

13. **Attachment of property.**---(1) If the amount mentioned in the notice issued under rule 12 is not paid within the period so specified in rule 12, the Attachment Officer shall proceed to realize the amount by attachment and sale of defaulter's property:

Provided that the Authority may retain the defaulter's property so attached for a period of ninety (90) days during which the defaulter shall pay the amount mentioned in the notice together with the cost of retention.

(3) Unless necessitated by the circumstances of the case, attachment of the property shall be made after sunrise and before sunset.

14. Preparation of inventory.---After attachment of the property, the Attachment Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a signed copy of the same to the defaulter.

15. Private alienation to be void. -- (1) Where a notice has been served on a defaulter under rule 12, he shall not be competent or entitled to mortgage, charge, lease, sell or otherwise dispose of any property belonging to him except with the prior written permission of the Attachment Officer.

(2) Where any property has been attached, any private transfer or delivery of the property attached or of any debt, dividend or other moneys shall be void against all claims that are enforceable under the attachment of the said property.

16. Jointly owned property.--- Where any property to be attached under these rules is co-owned by the defaulter and other persons, the attachment shall be made by a notice to the defaulter prohibiting him from transferring his share or interest or creating any charge on it in anyway.

17. Property in custody of Court or public officer.---(1) Where any property to be attached is in the custody of any Court or public officer, the attachment shall be made by a requisition in writing to such Court or public officer, requesting that such property and any interest or return payable as of date of notice or dividend payable or becoming payable thereon, may be held subject to further instructions from the Attachment Officer.

(2) In case property to be attached is in the custody of a Court, any issue relating to title or priority arising between the Attachment Officer and any other person, other than the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

18. Service of attachment order.---A copy of the order of attachment shall be served on the defaulter in the same manner as prescribed for the service of order or a decision under section 96 of the Act.

Attachment shall be proclaimed

(2) The proclamation of attachment may be published in at least two newspapers circulated in the district where attached property is distained and cost of such publication shall be deemed to be part of the cost of the sale.

20. Exemption from attachment.---All such property as is exempted by the Code of Civil Procedure, 1908 (V of 1908) from attachment and sale for execution of a decree of a Civil Court shall be exempt from attachment and sale under these rules:

Provided that the decision of the Attachment Officer, as to which property is entitled to such exemption, shall be final.

CHAPTER-V **SALE OF MOVEABLE PROPERTY**

21. Sale of moveable property.---(1) If the amount of arrears mentioned in the notice is not paid within a period of fifteen days from the date of notice of attachment of the property, the Collector may authorize the Attachment Officer to proceed to realize the amount by sale of the defaulter's movable property through public auction.

(2) The Collector shall be competent to fix the reserve price in respect of the property of the defaulter proposed to be sold through public auction under sub-rule (1) and make an order that no bid for purchase of the property shall be accepted if it is less than the reserve price of the property:

Provided that where the property to be sold is a negotiable instrument or a share in a company, the Attachment Officer may authorize the sale of such instrument or share through a broker instead of public auction.

CHAPTER-VI **SALE OF IMMOVABLE PROPERTY**

22. Proclamation of sale.---(1) Where any immovable property is ordered to be sold, the Attachment Officer shall cause a proclamation of sale through public auction of such property.

- (2) The proclamation of sale shall state the time and venue of sale and also:
- (a) the property to be sold;
 - (b) the amount, for recovery of which sale is ordered;
 - (c) the reserve price below which the property may not be sold; and
 - (d) any other aspect which the Attachment Officer may consider material for the potential purchasers to know in order to judge the nature and value of the property proposed to be sold.

23. Mode of proclamation of sale.---(1) Every proclamation for the sale shall be made near such property in the manner prescribed under these rules and a copy of the proclamation shall be affixed on a conspicuous part of the property under sale as well as the office of the Attachment Officer.

(2) The proclamation may also be published in two local newspapers where such property is located and the cost of such publication shall be deemed to be part of the cost of the sale.

(3) Where the property is divided into several lots and unless proper notice of the sale cannot, in the opinion of the Attachment Officer, be otherwise given, it shall not be necessary to make a separate proclamation for each lot.

24. Setting aside of sale.---(1) Where the defaulter has no saleable interest in the property sold, the purchaser may apply to the Attachment Officer to set aside the sale on such ground within fifteen days of the sale.

(2) The Attachment Officer may also set aside the sale if the defaulter has deposited the amount of arrears with thirty days of the sale provided that the concerned purchaser has given a no objection in writing therefor.

25. Confirmation of sale.---(1) In case no application is made for setting aside the sale under rule 24 or where such an application has been made but not allowed, the Attachment Officer shall, if the full amount of the sale money has been paid by the purchaser, make an order confirming the sale whereupon the process of sale shall become absolute and final.

(2) No sale confirmation order, under sub-rule (1), shall be made unless notice has been given to the person considered by the Attachment Officer likely to be affected by such order.

(3) Decision of the Attachment Officer as to the objections, if any, filed by any person to whom notice under sub-rule (2) has been issued, shall be final.

26. Sale Certificate.---Where sale of any immovable property has become absolute and final under these rules, the Attachment Officer shall grant a certificate specifying the exact property sold and the name of the person, who at the time of sale, is declared to be the purchaser and such certificate shall also state the date on which the sale became absolute and final.

27. **Purchaser's title.**---(1) Where any property is sold in terms of these rules and the sale has become absolute and final, there shall vest in the purchaser, with effect from the date of sale, the right, title and interest of the defaulter vested in him at the time of the sale.

(2) The purchaser shall have a right to take possession of the immovable property sold to him under these rules and in case of any difficulty in taking such possession, the Attachment Officer shall render necessary assistance to the successful purchaser to ensure that the purchaser obtains possession and for this purpose, he may invoke the provisions of section 110 of the Act.

28. **Irregularity not to vitiate sale.**---(1) No procedural irregularity in conducting the sale of any property under these rules shall vitiate the sale or otherwise effect the validity of the sale.

(2) Any person sustaining substantial injury by reason of such irregularity at the hand of any person other than the Attachment Officer including his colleagues or subordinates assisting him in the exercise of his powers or performing duties or functions under these rules, may sue in a competent Court against such person for compensation, or if such other person is the purchaser, for the recovery of specific property and for compensation in default of such recovery.

29. **Investigation by Collector.**---Where any claim is preferred or any objection is made against the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Collector shall proceed to investigate the claim or objection and decide the matter as deemed proper.


30. **Inspection by Collector.**---The Collector may periodically or at any time, call for and inspect the records and registers maintained by the Referring Officer, the Recovery Officer and the Attachment Officer so as to satisfy himself about their propriety and updation status and record thereon his observations or directions to the concerned officers in the manner as deemed appropriate.

31. **Prohibition against bidding or purchase by officers.**---No officer or other person having any official duty to perform in connection with any sale of property under these rules shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

32. **Prohibition against sale on holidays.**---No sale under these rules shall take place on Sundays or on other general or local holidays declared or recognized by the Government in or for the areas where sale is to take place.

CHAPTER-VII MISCELLANEOUS

33. **Disposal of the sale proceeds.**---(1) The sale proceeds of the property of the defaulter shall be utilized in the following manner, namely:

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- (a) the cost of sale shall be paid in the first instance;
 - (b) the balance shall be utilized for satisfaction of the tax due mentioned in the notice issued under rule 12 together with the cost of detention of the property;
 - (c) the balance, if any, shall be utilized for recovery of any other Government dues or taxes payable by the defaulter under any other relevant law for the time being in force; and
 - (d) the balance, if any, shall be paid to the defaulter.

34. **Validity of actions etc.**---All actions and measures taken in good faith by the Referring Officer, the Recovery Officer and the Attachment Officer towards the recovery of arrears under these rules shall be deemed to be covered under these rules.

35. **Procedure on death of defaulter.**---Where a defaulter dies at any time after the certificate has been issued under rule 8, proceedings under these rules may be continued against the legal representatives of the defaulter as if were the defaulters for the purposes of these rules.

36. **Carried over arrears.**---Recovery of the arrears pending for recovery on the day of coming into force of these rules, shall be recovered under these rules.

37. **Emergency situations.**---Where during the course of proceeding under these rules, the Recovery Officer faces such situation of emergency nature as cannot be tackled under any of the provisions of these rules, he may in his professional prudence take such decisions or actions as he may consider appropriate to amicably tackle or overcome such emergency situation.

38. **Final report to Referring Officer.**---Within one week of the realization of the arrears in any case or cases referred by the Referring Officer under these rules, the Recovery Officer shall send a proper action-completion-report along with copies of the relevant documents, if any, to the Referring Officer under intimation to the Collector and the Recovery Officer shall inform about it to the Collector for its onward submission to the Authority.

**Secretary to
Government of Khyber Pakhtunkhwa
Finance Department**


Dated: 4th March, 2020

Endst: No .SO(FR) FD/9-11/2020.

Copy is forwarded of the above for information & necessary action to the: -

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. Inspector General of Police Khyber Pakhtunkhwa.
4. The Secretary to Governor, Khyber Pakhtunkhwa.
5. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Deputy Commissioners in Khyber Pakhtunkhwa.
9. All District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Manager, Government Printing Press, Peshawar.

Yours Faithfully,


(Fazal Hussain)

Dy: Secretary (Regulation-I)

Endst: No .SO(FR) FD/9-11 /2020.

Copy is forwarded of the above for information to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretaries to Government of Punjab, Sindh & Balochistan, Finance Department.
3. All Autonomous / Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
4. Director General, Khyber Pakhtunkhwa, Revenue Authority.
5. All Districts Accounts Offices in Khyber Pakhtunkhwa.


(Tariq Mehmood Khattak)
Section Officer (FR)