IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Agha Faisal
Mr. Justice Muhammad Osman Ali Hadi

Spl. Federal Excise Reference Application No. 39 of 2022

Philip Morris (Pakistan) Limited VS Commissioner Inland Revenue and another

Spl. Federal Excise Reference Application No. 40 of 2022

Philip Morris (Pakistan) Limited VS Commissioner Inland Revenue and another

Date of hearing	:	25.11.2025
Date of decision	:	25.11.2025
Applicant in both References	:	Through Mr. Ijaz Ahmed, Advocate.
Respondents	:	Commissioner Inland Revenue & another.

ORDER

MUHAMMAD OSMAN ALI HADI J.- These Reference Applications have been filed under section 34A of the Federal Excise Act 2005 (**"FEA"**) and section 47 of the Sales Tax Act 1990 (**"STA"**), by the Applicant against the Order dated 28.09.2021 (**"Impugned Order"**)[1], passed by the learned Appellate Tribunal Inland Revenue. The Applicant proposed the following questions of law[2]:-

i. Whether, in the facts and circumstances of the case, the Appellate Tribunal was justified to allow the department to conduct fresh proceeding when the entire exercise was based on raids conducted without jurisdiction and in violation of the legal requirements?

ii. Whether, in the facts and circumstances of the case, any proceedings based on contravention reports prepared without jurisdiction can be sustained?

[1] Available at page 29 of the File
[2] For reference purposes, the File of FERA No. 39 of 2022 has been used

iii. Whether, in the facts and circumstances of the case, the Appellate Tribunal has exercised its jurisdiction in accordance with law in remanding the matter to the Respondents?

2. On 10.11.2025, the Applicant was put on notice as to satisfy the Court on the maintainability of these Reference Applications, since the questions proposed by the Applicant appear to contend factual controversies and do not (at least *prima facie*) show any legal infirmity with the Impugned Order.

3. Today, these matters have been taken up before us. Learned Counsel for the Applicant has referred to the Impugned Order, and in particular referred to Paragraph 12[3], whereby, he submits that the Impugned Order has erred in their findings. He contends the matter arises out of assessment orders passed against the Petitioner, which stem from illegal raids and seizures of goods (belonging to the Applicant).

4. He submitted that the original raids and seizures of goods were conducted by unauthorized personnel of the Inland Revenue, and were without approval of the proper competent authority, as is mandated under Rules 62, 63 & 64 of the Federal Excise Rules. Learned Counsel has further contended that since the alleged raids and seizures were themselves unlawful, the Applicant cannot be assessed or accountable to the Respondents, for what was collected therefrom.

5. Learned Counsel next referred to the concluding paragraphs no. 21 & 22 of the Impugned Order,[4] and stated that the Appellate Tribunal had erroneously referred the matter back to the Deputy Commissioner Inland Revenue (**"DCIR"**), whereas the Tribunal ought to have allowed the Applicant's Appeal and dismissed the findings below. The learned Counsel submitted that if the entire premise of the raids and seizures was illegal, then the Tribunal was bound to pass an appropriate order in consonance thereof,

[3] At page-45
[4] At page-55

rather than remand back the matter for adjudication afresh. In support of his contentions, Counsel has relied on caselaw reported as **1991 PTD 463, 1988 PTD 1014, 2015 PTD 1345 & 2021 PTD 764**.

6. We have heard the learned Counsel for the Applicants, and have gone through the Impugned Order, as well as the record on File.

7. On a perusal of the Impugned Order, it appears the learned Tribunal has highlighted several factual discrepancies, due to which the matter was remanded back, for adjudication afresh. The Tribunal's detailed reasonings for their conclusions are based between paragraph nos. 10 – 22 of the Impugned Order.

8. It remains unclear as to what provision of law or statutory right was claimed to have been violated, due to which the Applicant has invoked the Referential Jurisdiction of this Court. The Impugned Order set-aside the order-in-appeal (**"OIA"**) passed by the CIR (Appeals) and order-in-original (**"OIO"**) passed by the DCIR, which were both against the Applicant.[5] Since the orders below were set-aside, it follows that the Applicant's appeals can be deemed to have been decided favourably, as the earlier impugned assessments orders [passed against the Applicant in the OIA & OIO] were quashed by the Tribunal. Therefore, the rationale behind the instant Reference Applications befuddles us.

9. Nevertheless, and irrespective of the above observations, the scope of a Referential Jurisdiction in fiscal matters has long been settled, and is strictly limited to dealing only with <u>legal</u> flaws committed by the Tribunal.[6] In the case of *Collector of Sales Tax & Excise v M/s Qadbros Engineering (Pvt)*

[5] OIO is at pages 59 – 105 of the File. OIA is at pages 115 – 201 of the File
[6] And not any factual discrepancies

Ltd.[7] the August Supreme Court, whilst clarifying the scope of 'Referential Jurisdiction', *inter alia*, held:

> *"13. So far as the jurisdiction of the High Court under section 47 of the 1990 Act is concerned, we have noticed that prior to the amendment made through Finance Act 2005, (assented on 29.6.2005), a right of appeal was provided which was later amended to a remedy of filing* Reference. *In both the scenario, the jurisdiction of High Court was and is strictly confined to answering questions of law which is evident from plain reading of original and amended section 47 of the Sales Tax Act 1990 and obviously, the source of question must be the order of the Tribunal. The elementary characteristic of this jurisdiction is that it has been conferred to deal only with questions of law and not questions of fact. When we talk of a question of law, it connotes a tangible and substantial question of law on the rights and obligations of the parties founded on the decision of the Tribunal. In the case of Army Welfare Trust (Nizampur Cement Project), Rawalpindi and another v. Collector of Sales Tax (Now Commissioner Inland Revenue), Peshawar (2017 SCMR 9), this Court held that an appeal, like a reference, could only be filed "in respect of any question of law arising out of an order" of the Appellate Tribunal. Subsection (5) of section 47 of the 1990 Act provides that the High Court "shall decide the question of law raised thereby [in the appeal/reference] and shall deliver judgment thereon". The jurisdiction of the High Court under the 1990 Act was and is, restricted to matters involving only questions of law. It was further held that an appeal or reference to the High Court against a judgment of the Appellate Tribunal under the Act could only be filed on a question of law. While in the case of Pakistan Match Industries (Pvt.) Ltd. and others Vs Assistant Collector, Sales Tax and Central Excise Mardan and others (2019 SCMR 906), it was held that all factual aspects of the case are closed by and at the level of the Appellate Tribunal. It is only questions of law that can travel to the High Court. Factual points cannot be allowed to be opened or reagitated, unless there has been a material misreading or non-reading of the evidence, which is itself a question of law that can be taken to the High Court. Last but not least, again in the case of Commissioner of Inland Revenue, Lahore v. Messrs Sargodha Spinning Mills (Pvt.) Ltd. Faisalabad and others (2022 SCMR 1082), it was held that the Tribunal is the final forum for determination of facts in tax matters. The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court*

[7] 2023 SCMR 939

cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures."

10. In the case of *C.M. Pak Ltd.*[8] the Apex Court held:

"7. The argument that when petitioner denied from the very inception of the proceeding its status as a franchisee levy of duty thereon was misconceived is also without force when the record, as contended by the learned counsel for the respondent, proves to the contrary. Even if it be as it was contended by the learned counsel for the petitioner, it being a question of fact could not have been raised in a reference before the High Court which always invariably lies only on a question of law. In this view of the matter, we don't think impugned judgment suffers from any infirmity much less legal or jurisdictional so as to justify interference therewith." (emphasis supplied)

11. Furthermore, the Impugned Order, in its conclusion, has held that due to certain discrepancies in facts, the matter was required to be sent back for adjudication afresh, after providing an independent and conscious mind to the facts of the case. For the purposes of clarity, the concluding part of the Impugned Order reads as follows:-

"21. Be that as it may, the case in hand is not the simple one and there is more to it than what meets the eyes. Although, there is non-observance of dictates of law/rules and there is violation of due process but justice (both to the state and the citizens) cannot be sacrificed at the altar of technicalities. There are many facts /aspects of the case which need proper and fair appraisal by the department. In this regard guidance can he had from the principle laid down by the Honorable Supreme Court of Pakistan in 2002 PTD-1 (SC-PAK) wherein in respect of fiscal statues, it was held that;

"It may be noted that according to settled principle of law that a fiscal statute has to be construed in it's true perspective and in respect of payment of income tax, if it is found due against a party, then statute cannot be interpreted liberally in order to make out a case in favour of an assessee who failed to pay the tax."

22. In view of the foregoing observations it would be in the fitness of things if orders of both the authorities are vacated with directions that DCIR to pass fresh orders strictly in accordance with the law. Needless to state that the officer would apply his independent conscious mind to the facts of the case to IN reach at a fair and lawful conclusion."

[8] 2013 SCMR 749

12. In summary, the Appellate Tribunal, being the last fact-finding forum, has held that the facts of the matter were not carefully or meticulously examined as it should have been, and there remained a doubt in the initial adjudicating process. Therefore, the matter was remanded to be adjudicated afresh. We fail to see any legal error in with this finding, nor have any apt questions of law in this regard been placed before us, for our consideration.

13. Even the case laws relied upon by the Applicant also do not support to their stance. In the case of *Muhd. Hasan Nadeem*,[9] the matter pertained to the constitutional jurisdiction and fundamental rights, which are not issues before us.[10] In the case of *Messrs Shahab Industries*,[11] the learned Division Bench of this Court themselves held the Tribunal maintains power to refer the matter back after setting aside the order [below], if further fact-finding is necessary. A relevant excerpt reads: *"There can be no civil[12] with the proposition that in a case where the Tribunal after setting aside the assessment order finds that certain facts required further elucidation or that some essential facts required for framing of assessment are not on the record of the case, it could certainly remand the case to Income Tax Officer for determining such facts and for passing of a fresh assessment order it will as a matter of course remand the case to Income tax Officer for passing of afresh assessment order."*

14. In the case of *Messrs Siddiq Traders*,[13] another learned Division Bench of this Court *inter alia* observed: *"Moreover, in the case of remand, no question of law arises particularly when the impugned orders have been set aside, whereas, after setting aside of the impugned orders, no adverse order remains in field, therefore, a party cannot be treated as an aggrieved party nor there remains anything to be decided by this court in terms of section 196 of Customs Act, 1969."*

15. The above caselaw was referred by the Applicant themselves, which clearly elucidates two points: i) that the Tribunal holds the power to refer the matter back for adjudication afresh; and ii) when an order has been set-aside and remanded for determination anew, no adverse order remains in field, therefore a Reference is not maintainable.

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[9] 2021 PTD 764
[10] Nor can they be in a 'Reference Jurisdiction'
[11] 1991 PTD 463
[12] Read *cavil*
[13] 2015 PTD 134

16. Both these points highlighted *ibid.* work against the maintainability of the instant References. The Tribunal has followed those exact standards cited in the caselaw *supra.* (as well as in numerous other binding judgements). Conversely, the Applicant has failed to establish any relevant question of law requiring adjudication, nor have they demonstrated any legal lacuna in the Impugned Order.

17. In conclusion thereof, these References are hereby dismissed *in limine.*

18. A copy of this Decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 34A (2) of the Federal Excise Act, 2005. Office to also place copy of this Judgement in the connected file.

Judge

Judge

Ayaz p.s