

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference Application No.44 of 2025

Date

Order with signature of Judge

Hearing/ Priority case

- 1) For orders on office objection
- 2) For hearing of main case
- 3) For hearing of CMA No.793 of 2025 [Stay Application]

25.04.2025

M/s. Ahmed Masood, Altaf Khuwaja & S. Naveed Wasti,
Advocates for Applicant

Mr. Irfan Mir Halepota, Advocate for Respondent

Through this Reference Application, the Applicant has impugned Order dated 13.02.2025 passed under Section 45B of the Sales Tax Act, 1990 by the Commissioner (Appeals) proposing the following Questions of law:-

- “1) Whether in the facts and circumstances of the case, Respondent No.1 failed to consider the fact that at the time of purchases, the Applicant made all the purchases from an Active and Operative sales tax registered person?
- 2) Whether in the facts and circumstances of the case, Respondent No.1 erred by confirming the order passed by Respondent No.2 and the said order was in disagreement with the judgments passed by the Honourable High Court in the case of ***Commissioner Inland Revenue vs. Fateh Textiles [2020 PTD 203]***, and the Honourable Supreme Court in the case of ***The commissioner Inland Revenue vs. M/s Eagle Cables (Pvt.) Ltd., Lahore [C.P.L.A 2400-L/2022]***?
- 3) Whether in the facts and circumstances of the case, Respondent No.1 erred by non-reading / misreading the evidence explaining the purchases made in compliance of Section 73 of the Sales Tax Act, 1990?
- 4) Whether in the facts and circumstances of the case, Respondent No.3 erred in law by issuing pre suspension notice under Section 21(2) of the Sales Tax Act, 1990 and the same is in violation of the criteria laid down for recovery of tax under recovery rules of the Sales Tax Act, 1990?
- 5) Whether in the facts and circumstances of the case, Respondent No.3 taking coercive / recovery measures against the Applicant which are barred for a certain time period under Section 48 of the Sales Tax Act, 1990?

2. Insofar as, proposed Questions No.1 & 2 are concerned, the same now stands answered by the Hon'ble Supreme Court of Pakistan in the case of ***Eagle Cables (Pvt.) Ltd.***¹, whereby, it has been held that the claim of input tax cannot be denied when at the relevant time, the supplier was not suspended or blacklisted, notwithstanding the fact that subsequently such supplier was suspended or blacklisted. The relevant finding of the Hon'ble Supreme Court reads as under:-

“5. An examination of the records lends credence to the position taken by the respondent. The petitioner has failed to provide any concrete evidence indicating that invoices were issued to the respondent during any period of suspension or blacklisting. It is therefore admitted on all hands that at the time the purchases were made, the supplier involved were neither blacklisted nor inactive. Furthermore, the payments for these purchases were processed through a legitimate banking channel, adhering to the procedures delineated in section 73 of the Act. It is now well established in legal precedents that if a transaction is conducted while the suppliers are active and duly registered, any invoices issued are not automatically invalidated by a subsequent blacklisting or suspension of those suppliers. Therefore, it follows that the denial of refunds cannot be justified solely based on the later blacklisting of a supplier. In light of this context, according to sub-section (3) of Section 21, all purchasers, including the respondent, who procured goods before the suppliers' registration was suspended or they were blacklisted, and who complied with the conditions outlined in section 73 of the Act, were entitled to claim an adjustment of input tax.”

3. Accordingly, in view of above judgment of the Hon'ble Supreme Court, the input tax claim cannot be denied and therefore proposed Questions No.1 & 2 are answered in favor of the Applicant and against the Respondent and in view of this, proposed Questions No.3, 4 & 5 need not to be answered. Consequently, thereof, the orders passed by the forums below are hereby **set-aside**. This Reference Application is **allowed**. Let a copy of this order be sent to the Appellate Tribunal Inland Revenue of Pakistan, Karachi Bench in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*

¹ Vide its Order dated 16.01.2025 passed in C.P.L.A No.2400-L/2022 (The Commissioner Inland Revenue Lahore versus M/s. Eagle Cables (Pvt) Ltd., Lahore,