ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special STRA 175 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For orders on CMA No.1802/2018.
3. For hearing of main case.

02.12.2025

Mr. Faheem Ali Memon, advocate for the applicant.

1. Deferred.

2. Exemption granted subject to all just exceptions.

3. Judgment referred to in order dated 25.11.2025 reads as follows:

"**21.03.2025**

Mr. Muhammad Faheem Bhayo along with Mr. Muhammad Din Qazi, Advocate for Applicant
Barrister Ghazi Khan Khalil, Advocate for Respondent

Through this Reference Application, the Applicant has impugned Order dated 05.11.2024 passed in STA No.325/KB/2024 by the Appellate Tribunal Inland Revenue of Pakistan, Karachi Bench-IV, Karachi, proposing the following Questions of law:-

1. Whether on the facts and circumstances of the case, the learned ATIR was justified to uphold the charge of inadmissibility of input tax u/s 7 & 8 of the Sales Tax Act, 1990 on account suspension/ blacklisting of suppliers?

2. Whether on the facts and circumstances of the case, the learned ATIR was justified to deny the input tax adjustment u/s 7 of the Sales Tax Act, 1990 when the applicant had furnished relevant documents to the officer and at the time of supply the suppliers were active and operative on the web portal of FBR?

3. Whether on the facts and circumstances of the case, the learned ATIR has not erred to appreciate the fact that the officer at one hand accepted sales (output tax) of the applicant u/s 3 whereas denied input tax goods u/s 7 of the Sales Tax Act, 1990 which was the raw material for making taxable goods?

4. Whether on the facts and circumstances of the case, the learned ATIR was justified to ignore the adjudication of grounds raised before it and no findings has also been recorded on account of penalty imposed u/s 33(11)(13) of the Sales Tax Act, 1990?

2. Insofar as, proposed Question No.1 is 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. As to other issue raised in this matter, regarding denial of input tax claim in terms of Section 8(1)(ca) of the Sales Tax Act, 1990, which provides that it cannot be claimed for goods or services in respect of which the sales tax has not been deposited in the Government treasury by the respective supplier, it will suffice to observe that again no such exercise has been carried out by the Department and it is not reflected in the order in original that such fact was determined against the supplier that they have not deposited the tax. That could only have been done when any such independent proceedings were initiated and finally culminated against the supplier. Again, there is no mention of any such proceedings in the order. This issue has already been dealt with and decided by this Court in *Total Parco Pakistan*[2] and it has been held as follows;

8. Here Section 8 and its non-obstante clause have to be read along with s.8A. It is in respect of joint and several liability of registered persons in a supply chain where tax is unpaid and provides that where a registered person receiving a taxable supply (petitioners herein) from another registered person (Supplier) is in the knowledge or has reasonable grounds to suspect that some, or all of the tax payable in respect of that supply or any previous or subsequent supply of the goods supplied would go unpaid, of which the burden to prove shall lie on the department such person as well as the person making the taxable supply shall be jointly and severally liable for payment of such unpaid amount of tax. It is of utmost importance to appreciate that Section 8(1) (ca) and Section 8A, both were introduced in the Act at the same time through Finance Act 2006 and when both these provisions are read in juxtaposition, it appears that they have nexus with each other and neither can be read in isolation; nor it would be appropriate to apply them in isolation to each other. The intent and purpose appears to be the same. Both relate to the same transaction of disallowing an input tax adjustment on goods or services on which tax remains due or unpaid. It is not in dispute that

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[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,

[2] Total Parco Pakistan versus Pakistan & another limited (PTCL 2021 CL 576),

the petitioners have paid such tax to the supplier. In that case first it has to be determined and for which the onus is on the department that the petitioners are at fault or have remain negligent with conscious knowledge. The Petitioners stance appears to be weighty that before disallowing any input tax under Section 8(1)(ca) first an exercise has to be carried out under Section 8A ibid and for that the burden lies on the Department to first establish that where a registered person receiving a taxable supply from another registered person is in knowledge or has reasonable grounds to suspect that such amount of tax which he is paying to the supplier and of which he is claiming input tax adjustment would go unpaid. One needs to see the legislative intent as it is the knowledge or reasonable grounds to suspect that this tax would not be deposited; with a further qualification that for this the burden lies on the Department. Until this has been discharged, invoking s.8(1)(ca) would be premature. So in all fairness first an exercise under Section 8A has to be carried out and after it is concluded by discharging the burden to this effect, only then Section 8(1)(ca) could be invoked and the input tax adjustment can be disallowed. If this is not done in this manner, then the provision of Section 8A would be redundant and redundancy cannot be attributed to the legislature.

9. A learned Division Bench of Lahore High Court in the case of D. G. Khan Cement (supra)[3] has dealt with the same challenge, wherein, the constitutionality of Section 8(1)(ca) of the Act was challenged as being offensive to the fundamental rights of the Petitioners. After going through various case law and interpretation of reasonable restrictions and sub-constitutional provisions, it was held that to impose the liability of one over the other is opposed to basic fundamentals of law and offends due process, logic and rationality; that it axes an innocent person for the wrong of the other; that it does not advance any public interest or passes the test of proportionality; that "collusion" and "tax fraud" cannot be read into section 8(1)(ca) as it is not the intention of the legislature; that pursuant to section 8-A of the Act the department has to establish that the taxpayer had 'knowledge' and then proceed against the taxpayer; that section 8A cannot be read into a show cause notice issued in terms of section 8(1)(ca). After having come to this finding the learned Judge then declared this provision as unconstitutional and accordingly struck down the same.

10. It also needs to be appreciated that when the petitioner and or a buyer purchases goods, an invoice is issued for the amount of goods so purchased along with the amount of sales tax, and when the petitioner and or the purchaser makes payment of the same, it is being done to a person who has been duly authorized to receive it by FBR as a registered person. He is not a stranger or an unauthorized person for that purpose. If he had not been an authorized tax registered person, in that case he could not issue any sales tax invoice, resultantly, no one would pay him the amount of sales tax of which no sales tax invoice is being issued. It is a receipt of tax issued by the supplier on behalf of the State, as he has been permitted to do so. It becomes the input tax claim or the property of the purchaser, once he has complied with the relevant conditions and restrictions prescribed under the Act or any Rules thereunder while making payment of the same. In the instant matter there are two requirements which the petitioner has to fulfill i.e. the supplier should be available as an active tax payer on the list so issued by FBR; and secondly, while making payment the condition / restriction, if any, of section 73 of the Act has to be complied with. It is not the case of the Respondents that petitioners before us have not fulfilled these two basic conditions. Therefore, by asking the petitioners to do what they are not required to do, in the present facts and circumstances amounts to doing an impossible task. They have complied with the requirement stipulated for them at the time of purchase of the goods; and subsequently, if the supplier does not deposit the tax collected

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[3] Speaking through Mansoor Ali Shah, J, as his lordship then was

from them, without recourse to the provision of section 8A ibid, they cannot be denied the benefit of input tax in question. In our considered view both these provisions are to be read together and in juxtaposition. Section 8(1)(ca) has to be read down in a manner so as to save the provision and at the same time it remains enforceable; however, in a harmonious manner along with Section 8A ibid.

11. There is another aspect of the matter which also requires consideration. In terms of s.7 the input tax is though admissible subject to s.8; but also at the same time provides that input tax can be claimed (subject to whatever limitations may be), on tax paid or payable. Here, as the case appears, when goods were purchased, the tax was though paid to the supplier, but was not paid to the Government and remained payable by the supplier. The question then arises that once the input tax claim has been made admissible on both i.e. the tax already paid as well as payable; then whether by virtue of s. 8(1)(ca), can it be denied or disallowed any further, if it remains unpaid by the supplier. At the crucial time when input was claimed as permissive, it was admissible also on tax payable; then seemingly it cannot be disallowed through s.8(1)(ca). If that was the intention then, Respondents ought to have devised some other mechanism, like the one existent in the withholding regime. The petitioners could have been asked to either withhold such tax from payment to the supplier; or in the alternative, bear the burden of its disallowance in terms of s.8(1)(ca).

12. …..

13. …..

14. Therefore, we are of the considered view that instead of declaring the impugned provision of s.8(1)(ca) of the Act as being ultra vires or unconstitutional; we would rather save it and read it down, in the manner, that it cannot be invoked or applied independently in isolation and has to be read with Section 8A; and can only be invoked against the petitioners, once an exercise has been carried out and a conclusive finding has been arrived at against them pursuant to section 8A of the Act.

15. Accordingly, all listed Petitions are allowed to the above extent, and all impugned notices / actions of the Respondents stand modified accordingly.

4. Accordingly, in view of above finding against which though an Appeal is pending before the Supreme Court; but remains a binding precedent, such denial of input tax claim cannot be justified. Therefore, the proposed Questions are answered in favour of the Applicant and against the Respondent; and 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.

Learned counsel states that the same is squarely binding on this court. In mutatis mutandis application thereof, the questions are decided against the applicant department and the reference application is dismissed.

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 47(5) of the Sales Tax Act, 1990.

Judge

Judge

Khuhro/PS