

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Special Sales Tax Reference Application No. 155 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	1. For order on office objection No. 19. 2. For order on CMA No. 1736/25. (Exemption) 3. For hearing of main case. 4. For order on CMA No. 1737/25 (stay)

**24.11.2025**

Mr. Muhammad Salman Dosani, advocate along with Mr. Hassan Meerza, advocate for applicant.

The operative part of the impugned judgment reads as follows:-

- “7. We have heard both parties and perused record of the case. On the Issue of Transfer of Plant and Machinery, we concur with the findings of the learned Commissioner (Appeals), wherein it was held that the Appellant failed to establish the sale of plant and machinery as a transfer of business as a going concern. The claim of zero-rating under the Sales Tax Act, 1990, was disallowed due to the absence of a valid and timely furnished sale agreement. The purported agreement submitted at the appellate stage, along with the Board Resolution, was neither considered sufficient nor credible to justify the exemption claimed. The burden to prove such exemption squarely lies on the taxpayer, which in the instant case remained unfulfilled.
8. Regarding Disallowance of Input Tax Adjustment, we find no infirmity in the decision of the Commissioner (Appeals) in remanding the issue of input tax adjustment amounting to Rs.856,456/- for de novo consideration. The Appellant failed to substantiate the business nexus of the claimed input with taxable supplies. The Tribunal holds that the statutory right to input tax is conditional upon compliance with Section 7 of the Sales Tax Act, 1990, and relevant rules, which was not demonstrated by the Appellant to the satisfaction of the forum below.
9. As far as the Refund of Sales Tax on Packing Material is concerned, we find that the Appellant's contention regarding non-receipt of refund relating to packing material amounting to Rs.3,417,136/- lacks evidentiary support. Therefore, we uphold the remand ordered by the learned Commissioner (Appeals) for re-examination of the refund status. It is incumbent upon the taxpayer to provide system-generated confirmation or corresponding official evidence which was not produced. Accordingly, no illegality has been found in the remand order.
10. On Valuation of Fixed Assets, we do not find merit in the Appellant's challenge to the reassessed value of fixed assets. The contention that the value of Rs.81,129,842/- is contrary to earlier adjudications lacks binding force, and no finality was established by a higher judicial forum. Thus, the assessing authority's actions, in absence of conclusive rebuttal, are not without lawful jurisdiction.
11. On imposition of Penalty and Default Surcharge, we are of the view that the imposition of penalty and default surcharge cannot be annulled merely on the assertion that there was no mens rea. In the present matter, procedural lapses and non-compliance justify the imposition of financial consequences under the relevant statutory provisions. We are fortified from the judgment of Hon'ble Supreme Court in Commissioner Inland Revenue vs Byco Petroleum Pakistan Limited (CPLA No. 1221-K to 1257-K, judgment dated 05-07-2024), whereby their held that:

"Default surcharge under section 34 of the Sales Tax Act, 1990, falls under strict civil liability and does not require proof of mens rea or wilful default."

Similarly, the Hon'ble Islamabad High Court in Uch Power Pvt Ltd. vs. Federation of Pakistan (2017 PTD 2377) observed:

"Under section 34 of the Sales Tax Act, 1990, if a registered person does not pay tax due or part thereof, whether willful or otherwise, in the time and manner specified under this Act, he shall, in addition to the tax due, pay default surcharge. The phrase 'whether willful or otherwise' indicates that default surcharge is not confined to wilful default but extends to any failure to comply."

12. In light of the above findings, the appeal filed by M/s. Sana Industries Limited is partially dismissed. The issues remanded by the learned Commissioner (Appeals) stand upheld, and no interference is warranted in the findings against the taxpayer in respect of the transfer of plant and machinery, input tax adjustment and valuation of fixed assets. The penalties and default surcharge area also held to be lawful. No case for further relief is made out.

13. The appeal is accordingly disposed of in above manner."

Per learned counsel, the grievance is confined to the paragraph-7 of the impugned judgment reproduced above. He states that the evidence has not been properly appreciated.

We have considered the impugned paragraph and it does not demonstrate any *prima facie* infirmity therein. The reasoning is clear and no exception to the same could be demonstrated. Be that as it may, the last fact-finding forum in the statutory hierarchy is a learned Tribunal and no *de novo* appreciation of evidence is merited in the reference jurisdiction. Despite repeated opportunities, no question of law could be articulated before this court to warrant interference in reference jurisdiction. Accordingly, the reference is dismissed in *limine*.

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 subsection 5 of Sales Tax Act, 1990.

Judge

Judge