

Order Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Special Sales Tax Reference Application No.44 of 2024**

Date	Order with Signature of Judge
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Hearing of case

1. For order on office objection
2. For hearing of CMA No.1143/2024
3. For hearing of main case

**06.04.2026**

Mr. Munawar Ali Memon, Advocate for the applicant

Following questions were proposed for determination:

- i. Whether under the facts and circumstances of the case, the learned Appellate Tribunal was justified to allow the input tax claimed on building material, such as cement and cables etc which are specifically barred to claim/adjust under section 8(1)(e) & (h) of the Sales Tax Act 1990. Reliance is placed on High Court of Sindh decision in its judgment dated 24 11 2020 in CP # D 6051/2019 M/s Dewan Sugar Mills vs Federation of Pakistan?
- ii. Whether the learned Appellate Tribunal-IR has erred in law to delete the consequential penalty and default surcharge on the plea of mensrea or guilty mind by ignoring the judgment of Hon'able High court reported as 2002 PTD 381 wherein it is held that the penalty proceeding are more in nature of civil liability rather than criminal offence?"
- iii. Whether under the facts and circumstances of the case, the applicant department is liable to establish willful default and mensrea, as held by learned ATIR though legislature in its wisdom has added words "whether willful or otherwise" in section 34 of the Sales Tax Act 1990?"

Learned counsel relies upon SRO 450/(1)/2013 dated 27th May, 2013 to state that the exemption is specifically precluded in terms thereof. Notification is reproduced herein below:-

“GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE ECONOMIC AFFAIRS  
STATISTICS AND REVENUE (REVENUE DIVISION)

Islamabad, the 27th May, 2013

**NOTIFICATION**  
**(SALES TAX)**

SRO. 450/(1)/2013 In exercise of the powers conferred by clause (b) of sub-section (1) of section 8 of the Sales Tax Act, 1990, the Federal Government is pleased to direct that the following further amendment shall be made in its Notification No SRO 490(1)/2004 dated the 12th June, 2004. namely:-

In the aforesaid Notification,

- (i) in clause (c), the word "and" shall be omitted; and
- (ii) in clause (d), for the full stop at the end a semicolon and word ";

and" shall be substituted and thereafter the following shall be added, namely: -

- "(e) building materials including cement, bricks, paints, varnishes, distempers etc.;
- (f) office equipment and machines (excluding electronic fiscal cash registers), furniture, structure, fixture and furnishings excluding those directly used in taxable activity;
- (g) electrical and gas appliances pipes, fittings excluding those directly used in taxable activity;
- (h) wires, cables, ordinary electrical fittings and sanitary fittings, excluding those directly used in taxable activity; and
- (i) crockery, cutlery, utensils etc., excluding those directly used in taxable activity."

[C. No. 2(77)ST-L&P/95]

Sd/-  
Mohammad Raza Baqir  
Additional Secretary"

Learned counsel also relied upon SRO 490/(1)/2004 dated 12th June, 2004 which is reproduced herein below:-

“GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE, ECONOMIC AFFAIRS,  
STATISTICS AND REVENUE  
(REVENUE DIVISION)  
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Islamabad,  
the 12th June, 2004.

**NOTIFICATION**  
**(SALES TAX)**

**S.R.O. 490(1)/2004.-** In exercise of the powers conferred by clause (b) of sub-section (1) of section & of the Sales Tax Act, 1990, and in supersession of its Notification No. S.R.O. 578/1/98, dated the 12th June, 1998, the Federal Government is pleased to specify that the following goods, acquired otherwise than as stock in trade, by a registered person, to be the goods in respect of which input tax shall not be claimed, namely:-

- (a) vehicles falling in chapter 87 of the First Schedule to the Customs Act, 1969 (IV of 1969);

- (b) food, beverages, garments, fabrics, etcetera and consumption on entertainment; and
- (c) gifts and give-aways.

*Explanation:-* For the purpose of this Notification, the term "stock in trade" shall mean goods purchased by a registered person in the course of business for sale as such or after further processing or manufacture.

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(C. No. 1/33-STB/2004)

(Shahid Ahmad)  
Additional Secretary"

Learned counsel states that this matter is pending since 2024 and the respondent has consistently avoided adjudication. He states that pursuant to order of substituted service, notice has been effected on the respondent through publication. Learned counsel states that the impugned judgment is *prima facie* contrary to the prescribed law, therefore, it may be just and proper for the impugned judgment to be set aside and the matter to be remanded back to the learned Tribunal for adjudication afresh in accordance with law. Order accordingly.

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

Asif