

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Sales Tax Reference Application 323 of 2011

Date	Order with signature of Judge(s)
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1. For hearing of main case
2. For hearing of CMA No.1300 of 2011

25.05.2023

Mr. Munawar Ali Memon, advocate for the applicant
Mr. Muhammad Adeel Awan, advocate for respondent No.1.

The learned Appellate Tribunal Inland Revenue Karachi rendered an order dated 24.12.2020 in STA 647/H-09 of 2009 (“Impugned Order”) whereby the order of the Collector Appeals dated 06.03.2007 was upheld and the appeal there before was dismissed. It is considered illustrative to reproduce the operative constituent of the Impugned Order herein below:

“8. On hearing the representatives of parties and perusal of the record I have observed that there are factual as well as legal flaws touching the non-maintainability of the appeal filed by the department against an elaborate speaking impugned order passed by the learned Collector (Appeals) without committing any gross irregularity, illegality or infirmity. Moreover, the appeal in hands signed by an incompetent officer of the department is not maintainable U/s 46 of the Sales Tax Act, 1990. Section 46 of Sales Tax Act, 1990 empowers an officer of Sales Tax Act not below the rank of Additional Collector may prefer an appeal to the Appellate Tribunal, being aggrieved by any order passed by the Collector of Sales Tax (Appeals) U/s 45(b). The citations relied by Mr. Faheem are fully applicable in the circumstances of the present case. The Division Bench of Hon’ble High Court in the case of Collector of Customs Karachi V/s M/s Tahir Fabrics, Lahore while placing reliance on a Supreme Court detailed judgment reported in 2006 SCMR 129 (a) has been pleased to dismiss the appeal as non-maintainable, wherein the title of appeals showing Collector of Customs as appellant in memo of appeal was signed and verified by Assistant Collector. It has been further held that “where signature of Collector was not affixed on memo of appeal within period of limitation provided under law then its subsequent signing would not cure illegality and appeal would become barred by time and if appeal signed and verified by the Assistant Collector would not be competent in law.”

9. Suffice to say that the elaborate order passed by the Collector (Appeals) does not warrant any interference by this Tribunal. Moreso, the present appeal filed by an incompetent person is not maintainable.

10. Resultantly, the appeal is dismissed with no order as to cost.”

This reference has been pending since 2011 and the only argument articulated by the applicant’s counsel was that the appeal had to be decided on merit instead of being dismissed on a *mere technicality*. The respondent’s counsel articulated that the appeal before the learned Tribunal was *admittedly* incompetently filed and even the present reference suffers from the same incurable infirmity.

The applicant’s learned counsel made no endeavor to distinguish the authority relied upon in the Impugned Order and on the contrary admitted that even the curative measures, employed in the judgment under consideration in a futile attempt to cure the patent infirmity, were never employed by the applicant.

The mandate of section 46¹ of the Sales Tax Act 1990 is crystal clear and requires that an appeal be filed by an officer of Inland Revenue not below the rank of additional commissioner. Applicant's counsel has unequivocally admitted that the appeal in consideration was filed by an officer below the rank of an additional commissioner. Learned counsel also did not assist with any law² that would permit delegation of such powers in violation of the statute itself.

Applicants' counsel also failed to assist as to why the present reference was not preferred by an authorized officer of Inland Revenue not below the rank of additional commissioner, per section 47³ of the Sales Tax Act 1990, more so since it has been held by a Division Bench of this Court in *Nestle*⁴ that short recovery of sales tax could not be recovered by the Customs department post clearance.

In view of the binding authority cited supra, we find no exception in the Impugned Order, hence, no case has been set forth to merit any interference therewith. Therefore, this reference application is hereby 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 Inland Revenue, as required per section 47(5) of the Sales Tax Act, 1990.

Judge

Judge

¹ 46. Appeals to Appellate Tribunal. (1) Any person including an officer of Inland Revenue (not below the rank of an Additional Commissioner], aggrieved by any order passed...

² Despite several queries.

³ 47. Reference to the High Court. (1) Within ninety days of the communication of the order of the Appellate Tribunal under sub-section of section 46, the aggrieved person or any officer of Inland Revenue not below the rank of an Additional Commissioner, authorized by the Commissioner may prefer an application in the prescribed form along with a statement of the case to the High Court, stating any question of law arising out of such order.

⁴ *Nestle Pakistan Limited vs. Federation of Pakistan* reported as 2023 PTD 527.