

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Spl. Sales Tax Ref. Application No.1151 of 2023

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.3982/2023 (Urgent).
2. For order on CMA No.3984/2023 (Stay).
3. For order on CMA No.2734/2023 (Exemption).
4. For hearing of main case.

Dated; 21st September 2023

Mr. Hamza Waheed alongwith Mr. Sami-ur-Rehman
Khan, Advocate for Applicant.

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1. Urgency granted.

3. Exemption granted subject to all just exceptions.

2&4. Through instant Reference Application the applicant has proposed three questions, however, after having read out the impugned order passed by the Appellate Tribunal Inland Revenue of Pakistan, Karachi learned counsel for the applicant does not press Question No.(a), as prima facie it does not arise from the impugned order, however, submits that following Questions No.(b) & (c), which according to learned counsel, are the questions of law arising from the impugned order passed by the learned Appellate Tribunal Inland Revenue of Pakistan, which reads as follows: -

(b) Whether the learned ATIR was justified in upholding the imposition of default surcharge under Section 34 of the Act on the Applicant?

(c) Whether the learned ATIR was justified in upholding the imposition of penalty under Section 33 of the Act on the Applicant?

After having read out the impugned order passed by the learned Appellate Tribunal Inland Revenue of Pakistan in this regard,

learned counsel for the applicant submits that learned Appellate Tribunal has failed to appreciate that without pointing out any willful default and mens rea on the part of the registered taxpayer person, imposition of surcharge and penalty is not justified. According to learned counsel for the applicant, in the instant case out of more than 5000 invoices with the subject tax period, in 112 invoices to be claimed of adjustment was infact due to inadvertent mistake, when show-cause notice was issued to the applicant, the said amount was paid immediately and inspite of such fact that default surcharge and penalty has been imposed on the applicant, which is contrary to law and the decision of this Court in the case of *China Power Hub Generation Company (Pvt.) Ltd. v. Pakistan and others* passed in C.P. No.D-3532 of 2020 as well as the judgment of this Court in the case of *Commissioner IR, Zone-IV, LTU v. M/s. BYCO Petroleum Pakistan Ltd.* passed in SSTR No.191 of 2018, wherein, it has been held that unless there is willful default and mens rea on the part of the taxpayer the imposition of default surcharge and penalty is not justified.

Let notice of instant reference application be issued to the respondents as well as to the D.A.G., to be served through first three modes, for **19.10.2023**. In the meanwhile, respondents may not enforce the recovery of the disputed amount of default surcharge and penalty, till next date of hearing.

J U D G E

J U D G E

Farhan/PS
