

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Sales Tax Reference Application ("SSTRA") No. 102 of 2024

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Mohammad Abdur Rahman**

**Applicant** : Muhammad Sharif  
[proprietor of M/s. MSN Enterprises]  
Through Mr. Shams Mohiuddin Ansari,  
Advocate.

**Respondent** : The Commissioner Inland Revenue  
Zone-III, Regional Tax Office, RTO-I,  
Karachi.

**Date of hearing** : **06.08.2024.**

**Date of Judgment** : **06.08.2024.**

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Special Sales Tax Reference Application the Applicant has impugned Order dated 30.05.2024 passed by the Commissioner (Appeals-VI) Inland Revenue, Karachi proposing the following questions of law:

- 1. Whether, in the facts and circumstances of the case, and in the absence of any presumptive clause, the learned Commissioner Inland Revenue (Appeals) was justified to confirm the difference in sales, between the income tax return and sales tax return, as taxable supplies, and liable to tax under the Sales Tax Act, 1990?*
- 2. Whether, in the facts and circumstances of the case, and in the absence of any presumptive clause, the learned Commissioner Inland Revenue (Appeals) was justified to confirm credit entries, appearing in the bank account, as taxable supplies, and liable to tax under the Sales Tax Act, 1990?*
- 3. Whether, in the facts and circumstances of the case, and in the absence of material evidence, the learned Commissioner Inland Revenue (Appeals) was justified to confirm, the sales made to end-user, as liable to further tax under section 3(1A), default surcharge under section 34 and penalty under section 33 of the Sales Tax Act, 1990?*

2. It appears that the applicant was selected for audit under section 25 of the Sales Tax Act, 1990 for the period starting from July 2021 to June 2022 and upon disclosing certain discrepancies

a Show Cause Notice dated 04.9.2023 was issued under section 11 of the Sales Tax Act, 1990. Applicant was confronted with four issues in respect of discrepancies in respect of the (i) net amount of revenue in the income tax return and the total amount of sales disclosed in the sales tax returns; (ii) late filing of certain sales tax returns for the period of December 2021 and March 2022; (iii) third party verification from the bank account, as there were certain credit entries in the bank statement, which were not reconciled with the amount of sales in the sales tax returns; and (iv) that certain goods were supplied to persons who were inactive and suspended in the active taxpayer list, hence no input could have been claimed in respect of the said supplies.

3. Applicant responded to the Show Cause Notice in the following manner: -

*"Dated: 13/09/2023  
MUHAMMAD SHAHID IRFAN  
Inland Revenue Officer,  
Regional Tax Office-1,  
KARACHI*

*Subject: Notice under section 11(1) & (2) of the Sales Tax Act, 1990 for the Tax Year 2022.*

*Reference: MSN Enterprises.*

*Dear Sir,*

*That your honour had issued notice bearing No. 2022-23/125, dt: 04/09/2023 regarding show cause notice tax year 2022.*

*It is to inform you that MSN Enterprises Sales tax & difference details are attached.*

- 1. An amount of Rs. 8768302 wrongly entered by accountant which was not sales.*
- 2. Dec 2021 Gov. Allowed extension due to change of software. And March 2022 default.*
- 3. Amount credit in bank Rs.62,387,446/- during the year is not a sale because last year sale recovered.*
- 4. HBL NTN No. 2892458-4 is not filer but end user not allowed further tax.*

*It is therefore requested that your honor would be pleased to place above information on record and not to take any panel action in this matter.*

*Thanking you.*

*Muahmmamd Mumtaz Ahmed.  
ITP/KTBA"*

4. From perusal of the aforesaid response given by the applicant, it appears that no proper justification was forthcoming, nor any supporting documents were provided to the adjudicating authority to rebut the allegations leveled through Show Cause Notice. When confronted, applicant's counsel could not satisfactorily respond as to any justification given by the applicant, but instead tried to take shelter under a reported judgment in the case of ***Al-Hilal Motors Stores***<sup>1</sup>. However, before any judgment could be relied upon or a point or question of law can be considered, a taxpayer must discharge its initial burden in responding to the allegations leveled in the Show Cause Notice. This admittedly was never done and instead an evasive reply was furnished without any proper documents and material.

5. Insofar as reliance on the case of ***Al-Hilal Motors (Supra)*** is concerned, the same is not of any help as the said judgment has been set aside by the Supreme Court vide order dated 2.2.2006 in Civil Appeal No.788 & 789 of 2005. As to the discrepancies between sales tax returns and the income tax returns reply given was that the amount was wrongly entered by the accountant. However, if that was so, then apparently the Applicant was required to amend its income tax return as well. It is a matter of record that no such exercise or attempt was made. As to the delay in filing of the returns, Applicant in its reply had stated that time was extended by FBR but failed to produce any letter of FBR. In respect of the 3<sup>rd</sup> issue as to the amount credited in the bank account, again no supporting documents were provided, and an unclear and ambiguous response was given that "*it is not a sale because last year sale recovered*". Lastly in respect of sales to suspended or non-filers, again no proper response was given. In such circumstances, when the initial burden of responding the

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<sup>1</sup> Al-Hilal Motors Stores v. Collector, Sales Tax and Central Excise (East) and another [2004 PTD 868]

Show Cause Notice has not been discharged, it does not appear that any question of law is arising out of the proceedings in hand.

6. In view of hereinabove facts and circumstances of the case, apparently no case for indulgence is made out, whereas no substantial error appears in the order passed by the forums below. This Reference Application is hereby dismissed in limine along with pending application(s). Office is directed to send copy of this order to Appellate Tribunal, Karachi, in terms of Section 47(5) of the Sales Tax Act, 1990 read with Section 133(8) of the Income Tax Ordinance, 2001.

**J U D G E**

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Farhan