

**IN THE HIGH COURT OF SINDH, KARACHI**  
**SPL. S.T.R.A. No. 1133 / 2015**

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Date Order with signature of Judge

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**Present: Mr. Justice Muhammad Junaid Ghaffar**  
**Mr. Justice Muhammad Abdul Rehman**

**Applicant:** National Transmission & Despatch Company Limited, Through Mr. Anas Makhdoom, Advocate.

**Respondents:** Commissioner (Appeals) Sindh Revenue Board, Karachi & Another, Through M/s. Ghulam Hyder Shaikh & Fahad Hussain Arejo, Advocates.

**Date of hearing:** 05.09.2024.  
**Date of Order:** 05.09.2024.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application, the Applicant has impugned order dated 06.07.2015 passed in Appeal No. AT/122 of 2015 by the Appellate Tribunal, Sindh Revenue Board, Karachi proposing the various questions of law; however, on 11.09.2015 notice was ordered on the following Questions of Law:-

- “(g) Whether the Tribunal has failed to appreciate that the Applicant is not liable to the charge of sales tax on services under the Constitution being a company wholly owned by the Federal Government.
- (i) Whether the Tribunal erred in not noting that at the relevant time services provided by advertising agents were not chargeable to tax under the 2011 Act and hence there was not tax due?
- (m) Whether the Tribunal erred in concluding that the Show Cause Notice was validly issued under both Section 23 and Section 47 of the 2011 Act?
- (n) Whether the Tribunal erred in construing Section 23 of the 2011 Act as being applicable to the facts and circumstances of the case in particular not taking account that the ‘information’ forming the basis of the Show Cause Notice was not ‘acquired during the audit, inquiry, inspection or otherwise’ in terms of Section 23 of the 2011 Act?
- (p) Whether the Tribunal has treated withholding liability and levy of tax under the Act as one and the same?

- (q) Whether the Tribunal has correctly interpreted Section 17 of the 2011 Act in particular in treating Section 17 as a charging provision of the 2011 Act and applying Section 17 of the 2011 Act to withholding liability?
- (s) Whether when admittedly the amount claimed under an invoice is not paid, no amount is actually withholding / deducted and hence no liability to deposit under withholding rules is created?"

2. Today, at the very outset, learned Counsel for the Applicant submits that the controversy as raised in this matter including answer to Questions No. (i) and (p) has already been resolved inasmuch as the same has been decided by a Division Bench of this Court in the case reported as ***Fatima Fertilizer Company Limited v. Commissioner-II, Sindh Revenue Board (2021 P T D 484)***. He has specifically referred to the rephrased questions of law in the said Judgment and the relevant Paragraphs No. 5, 6, 7 and 8 which reads as under:-

"5. We have heard the respective learned counsel and have also considered the law to which our surveillance was solicited. The learned Tribunal has anchored its findings on the premise that since the applicant qualifies as a person liable to tax, hence, the apportionment of tax liability thereupon was warranted per the law. Therefore, the primary question before us is whether the learned Tribunal rightly determined the applicant as a person liable to pay tax for the relevant period under deliberation. In view hereof it is considered appropriate, with respect, to abridge and slightly reformulate<sup>14</sup> the questions of law in order to efficaciously adjudicate the lis before us; therefore, we do hereby reformulate and frame the following questions of law to be determined herein:

- (a) Whether the applicant as a withholding agent was a person liable to tax in respect of the period under deliberation?
- (b) Whether the subsequently added provision of section 13(3) of the Act could be construed to have retrospective effect in the present facts and circumstances?
- (c)
- (d) Whether the imposition of default surcharge was warranted in the present facts and circumstances?

Person liable to tax

6. Section 9<sup>15</sup> of the Sindh Sales Tax on Services Act 2011 ("Act") contains the statutory definition of a person liable to tax. It is manifest from the provision that the liability is generally imposed upon the registered person providing the service or the person receiving the service. Section 13(3)<sup>16</sup> was inserted in the Act vide the Finance Act 2019 to impose liability upon a withholding agent. The applicant's case quite simply is that prior to the coming into effect of the Finance Act 2019, a withholding agent was not a person liable to tax within meaning of the Act.

7. The learned Tribunal appears to have erred in relying upon the generic meaning of the term person, as contained in section 2(63)<sup>17</sup> of the Act, in order to maintain liability upon the applicant. It is our deliberated

view that the generic definition could not be applied to impose liability upon a person who otherwise did not qualify as a person liable to tax, within meaning of the Act itself, for the periods prior to when such a liability was imposed.

8. The initial imposition of liability upon the applicant was per section 47(1A)<sup>18</sup> of the Act; however, the learned Tribunal has already disregarded the application of the said provision and instead maintained liability per section 47 (1)<sup>19</sup> of the Act. The period for issuance of the show-cause notice read five years<sup>20</sup> at the relevant time; however, the verbiage of section 47 of the Act clearly states that the obligation is placed upon a person liable to pay any tax. There is no cavil to the proposition that the liability upon a withholding agent to pay tax was not imposed until the Finance Act 2019; hence, any apportionment thereof prior thereto appears to be devoid of a statutory sanction.  
Prospective application of fiscal statutes.”

3. From perusal of the aforesaid findings and the issues involved in this matter that whether the Applicant can be a person liable to tax in respect of the period under consideration as a withholding agent when Section 13(3) of the Sindh Sales Tax on Services Act, 2011 was incorporated or introduced in 2019 it clearly reflects that the same already stands decided by this Court. When confronted, learned Counsel appearing for SRB has tried to argue that the matter is now pending before Hon'ble Supreme Court, whereas, in the cited case the Applicant had deposited the tax with FBR, but in the instant matter no tax has been deposited. However, we are not inclined to agree with his submissions since we have not been assisted with any order so passed by the Hon'ble Supreme Court as to granting leave or any other directions, whereas, in essence, identical question has been decided by a learned Division Bench of this Court which is a binding precedent for us. It has been held that prior to the year 2019, the person receiving service was not liable to pay any tax as withholding agent and therefore, the Questions (i) and (p) as above are answered accordingly in favour of the Applicant and against the Respondent. Consequently, this Reference Application is allowed and the impugned order stands set aside. Let a copy of this order be sent to the Appellate Tribunal in terms of Section 63(5) of the Sind Sales Tax on Services Act, 2011.

**J U D G E**

Arshad/

**J U D G E**