

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**S.S.T.R.A. Nos. 149 & 150 of 2024**

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection No.25.
2. For order on CMA No.3445/2024 (Exemption).
3. For hearing of main case.
4. For order on CMA No.3446/2024 (Stay).

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**Dated; 2<sup>nd</sup> October 2024**

Mr. Imran Iqbal Khan along with M/s. Arif Ali Manthar  
and Ajazuddin Qureshi, Advocate for Applicant.

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Pursuant to order passed on 01.10.2024 learned counsel for the Applicant has placed on record rephrased questions of law in both these Reference Applications, which are taken on record. The said questions of law read as under: -

**SSTRA No.149 of 2024:**

- (a) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law by not passing a well versed speaking order on each fact and grounds raised by the Applicant in memo of Appeal STA No.10/KB/20232?*
- (b) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law to confirm the impugned order without passing an independent finding on facts and without considering the directions issued by CIR (A) in his remand order-in-appeal dated 05.07.2018?*
- (c) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law to disallow the input tax credit under Section 8(1)(a), (f), (g), (h) & (i) of the Sales Tax Act, 1990 on "cement, steel, fertilizer, paint, wires and cables etc"?*
- (d) *Whether under the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue has erred in law to upheld the penalty and default surcharge imposed under Section 33(5) and 34 of the Sales Tax Act, 1990 respectively on the Applicant?*

**SSTRA No.150 of 2024:**

- (a) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law by not passing a well versed speaking order on each fact and grounds raised by the Applicant in memo of Appeal STA No.11/KB/2023?*
- (b) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law to confirm the impugned order without passing an independent finding on facts and without considering the directions issued by CIR (A) in his remand order-in-appeal dated 24.01.2019?*
- (c) *Whether under the facts and circumstances of the case the learned Tribunal has erred in law to disallow the input tax credit under Section 8(1)(a), (f), (g), (h) & (i) of the Sales Tax Act, 1990 on "cement, steel, fertilizer, paint, wires and cables etc"?*
- (d) *Whether under the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue has erred in law to ignore the law and fact that he impugned show cause notice issued in respect of tax year 07/2016 to 11/2017 is hit by law of res-judicata as adjudicated in earlier show cause notice dated 28.12.2017?*
- (e) *Whether under the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue has erred in law to upheld the penalty and default surcharge imposed under Section 33(5) and 34 of the Sales Tax Act, 1990 respectively on the Applicant?*

Heard learned counsel for the Applicant and perused the record. The Applicant has impugned a common order dated 01.08.2024 passed in STA Nos.10/KB/2023 & 11/KB/2023 by the Appellate Tribunal, Inland Revenue of Pakistan, at Karachi, whereby, three different Appeals have been decided. The present Reference Applications are in respect of Appeal Nos. STA Nos.10/KB/2023 & 11/KB/2023. Though various questions have been proposed on behalf of the Applicant as above; however, for the present purposes, out of the above proposed questions, only Question No.(c) in both the Reference Applications is relevant. The said question revolves around the

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correct interpretation of section 8(1)(h), of the Sales Tax Act, 1990, which reads as under:

*(h) goods used in, or permanently attached to, immovable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods;*

From perusal of the aforesaid provision, it reflects that input tax cannot be claimed on purchase of various goods, including goods used in, or permanently attached to, immovable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods. Learned counsel for the Applicant has tried to argue that the exception provided in the above provision entitles the Applicant to claim input tax as goods in question were meant for direct use in the production and manufacture of taxable goods. However, we are not inclined to agree with such argument because a clear exclusion has been provided in respect of certain category of the goods i.e. cement, steel, fertilizer, paints, wires and cables, which are nothing, but goods used in respect of construction of immovable property by the industry, including the Applicant. In our considered view, the exclusion is not on these goods as misunderstood by the Applicant; rather it is on sale or re-sale of these goods. Secondly, the exclusion is available if these goods are for direct use in the production or manufacture of taxable goods. This means that if a registered person is engaged in

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sale or resale of these products; then naturally, such person will be entitled to claim adjustment of input tax paid on purchase of these goods. Secondly, if these goods are required as a raw material for a particular type of business of a registered person; and if it is established that they have been directly used in the production or manufacture of taxable goods, then the said registered person can claim input tax so paid. Here in the instant matter this is not the case of the Applicant. Admittedly, the goods in question have been utilized for construction or for the purpose other than in direct manufacture or production of the taxable goods. The Applicant is a sugar mill and the goods in question are not a raw material for it. The Tribunal has also repelled the contention of the Applicant to this effect, and we are fully in agreement with such observations.

Insofar as the remaining questions of law including the question that no proper reasoned order has been passed by the Tribunal; that certain directions of the Commissioner (Appeals) while remanding the matter in the first round have not been appreciated are concerned, in view of our above findings on merits and the main legal issue, we do not deem it appropriate to deal with them and record an answer, as on merits no case is made out.

In view of the above, Question No.(c) in both these Reference Applications is answered ***in negative*** against the Applicant and in favour of the Respondents. Consequently, both these Reference Applications are dismissed in *limine* with pending applications.

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Let copy of this order be sent to the Appellate Tribunal Inland Revenue, Karachi Bench in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990. Office is further directed to place copy of this order in the connected Reference Application.

**JUDGE**

**JUDGE**

\*Farhan/PS\*

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