

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**CP D 5633 of 2024**

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No.26491/2024
2. For order on office objection No.14 & 22
3. For orders on CMA No.24983/2024
4. For hearing of CMA No.24984/2024
5. For hearing of main case

**13.12.2024**

Mr. Muhammad Ahmed Hussain, advocate for the petitioner

Petitioner challenges order dated 17.10.2024, issued under Section 45A(4) of Sales Tax Act, 1990. The same is reproduced herein below:

*“ORDER U/S.45A(4) OF THE SALES TAX ACT. 1990  
M/S. SOHAIL CORPOATION*

*Record of audit proceedings finalized u/s.11(2) of the Sales Tax Act, 1990 in the case of M/s. Sohail Corporation, NTN 2629966-6 was suo-moto called for and examined which revealed the following discrepancies, raising concerns about the legality and propriety of the order.*

*The case was selected for audit u/s.25 vide Commissioner-IR, Zone-1, RTO-1, Karachi's letter No.5327 dated 27.05.2024 on the following risk areas:*

- i) You have declared huge taxable imports of Pharmaceutical Products at the rate of 1% and 18% sales tax and consequent supplies to registered and un-registered persons. This aspect needs to be checked and verified.*
- ii) You have declared opening stock in Annex-F of sales tax return for the period July-2023 at Rs.1,487,893,312/-, whereas you have declared closing stock in Income Tax for tax year 2023 at Rs.223,654,899/- which created a difference of Rs.1,264,238,413/-.*
- iii) Non creditable input tax (relating to exempt, non-taxed supplies of goods or services etc. was declared at Rs.14,547,016/-, but no related purchase was shown.*

*A perusal of the order dated 09.07.2024 shows that the order has failed to address any of the risk areas on the basis of which the case was selected. As such the officer has failed to pass a self speaking order. No supporting documents are available on file to show that the risk areas Identified were examined. The order thus lacks legality and propriety. I therefore, Remand Back the order to the assessing officer to finalize proceedings afresh after confronting the taxpayer on all the issues raised in the Commissioner-IR selection letter, obtaining his explanation alongwith Documentary evidence and recording his specific findings.*

*Sd/-  
(SHAZIA ABID)  
COMMISSIONER-IR*

The provision of law pursuant whereof the impugned order was issued is reproduced herein below:

“Section 45A(4) of Sales Tax Act, 1990 reads as follows:

*The Commissioner may, suo moto, call for and examine the record of any proceedings under this Act or the rules made thereunder for the purpose of satisfying himself as to the legality or propriety of any decision or order passed by an officer of Inland Revenue subordinate to him, and pass such order as he may deem fit.*

Learned counsel was asked to demonstrate any incongruence of the impugned order with the governing provision of law, however, remained unable to do so. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided<sup>1</sup>, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law<sup>2</sup> that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

The petitioner’s counsel remained unable to demonstrate any manifest infirmity in the impugned order or that it could not have been rested upon the rationale relied upon.

In view hereof, this petition is found to be *prima facie* misconceived, hence, while granting the application for urgency, the petition and the listed applications are hereby dismissed in *limine*.

Judge

Judge

Amjad

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<sup>1</sup> Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

<sup>2</sup> Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.