

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

**Special Sales Tax Reference Application No.479 of 2022**

Date

Order with signature of Judge

**Hearing / Priority Case**

- 1) For hearing of main case
- 2) For hearing of CMA No.3407 of 2022 [Stay Application]

**27.03.2025**

Mr. Qazi Umair Ali, Advocate for Applicant  
Mr. Shamshad Ahmed, Advocate for Respondent

Mr. Shamshad Ahmed, Advocate has filed Vakalatnama on behalf of Respondent-Sindh Revenue Board, which is taken on record.

Through this Reference Application, the Applicant has impugned Order dated 21.04.2022 passed in Appeal No.AT-51/2021 by the Appellate Tribunal, Sindh Revenue Board, At Karachi, proposing the following Questions of law:-

- A. Whether the learned Appellate Tribunal erred in law and fact by failing to appreciate the facts and circumstances of the case and directing the Respondent department to recover the default surcharge under Section 44 of the Sindh Sales Tax on Services, Act, 2011 ( the “**Act**” ) and penalty amount under Section 43 of the Act in contravention of the Order in Appeal?
- B. Whether any penalty or default surcharge can be imposed on the Applicant in light of the Order in Appeal passed by the learned Commissioner (Appeals)?
- C. Whether any penalty or default surcharge can be imposed on the Applicant in the light of the finding by the Commissioner Appeals in the Order in Appeal that there is no default by the Applicant in respect of the payment of the principal amount?

2. Heard learned Counsel for the Parties and perused the record. The Appeal before the Tribunal was preferred by the Applicant as a sheer precaution inasmuch as the Commissioner (Appeals) had in fact recorded finding in favour of the Applicant, which was never

impugned by the Sindh Revenue Board (SRB). Relevant finding of the Commissioner (Appeals) as contained in Paragraphs-18 & 19 of his order reads as under: -

“18 I have carefully examined the scenario as narrated above. In the light of the decisions of the Honorable Appellate Tribunal and that of the Commissioner SRB (Appeals) as relied upon by the Appellant in his grounds of Appeal, I am of the considered opinion that there is no justification in demanding the impugned tax amount of **Rs.730,570/-** from the Appellant, which he has admittedly paid, though in the Federal Government treasury (with FBR) inadvertently, instead of SRB. Since due tax in the matter under the Act, 2011 has been paid by the Appellant in any case, enforcing the same amount on him once again, would tantamount to ‘double taxation’ which is not permitted in law. The impugned OIO is therefore, set-aside in the same terms with the direction to both the Appellant and the respondent department, to approach FBR / Federal treasury head of account ‘B-02384’ in the light of the Governing provisions of the Constitution of Pakistan 1973 [as amended by the National Parliament through the 18<sup>th</sup> Constitutional Amendment Act, 2010] read with the attending provisions of the 7<sup>th</sup> NFC award further read with the applicable provisions of the Act, 2011.

19 However, having said that as above, Appellant is directed to approach FBR in this matter on immediate basis duly taking the respondent department on board and further to get the entire process of reversion of the disputed amount to Sindh treasury, completed within 90 days of the issuance of this Order-in-Original upon which, the penalty amount of **Rs.36,528/-** [5% of defaulted tax amount vide S.No.3 of section 43 *ibid*] as well as the default surcharge under section 44 *ibid* (amount yet to be calculated) shall stand abated as a gesture of goodwill, order to close this file. However, in case the tax amount in question is not reverted back into the Sindh Treasury, within the above noted time lines, that is, within 90 days of this order, the default surcharge & penalty amounts as noted above, shall stand recoverable by the respondent department as per law / procedure.”

3. From perusal of the aforesaid observation in Paragraph-18, it reflects that the Appeal has been decided in favour of the Applicant and the Order-in-Original has been set-aside on the ground that the Applicant had deposited the amount in question to FBR inadvertently and therefore no further case could be made out against the Applicant. At the same time, the Applicant as well as SRB were directed to approach FBR / Federal Treasury for reversal of the amount into account of SRB in terms of Governing provisions of the Constitution of Pakistan 1973 [as amended by the National Parliament through the 18<sup>th</sup> Constitutional Amendment Act, 2010] read with the attending provisions of the 7<sup>th</sup> NFC award further read with the applicable provisions of the Act, 2011. We are afraid such finding of the Commissioner (Appeals) had travelled beyond his

jurisdiction inasmuch as once he has set-aside the Order-in-Original he becomes *functus officio* and has no powers to give such directions at-least to the Applicant to approach FBR and other Government authorities with further direction that if within ninety (90) days, the amount is not reverted into the account of SRB, penalty & default surcharge shall also be leviable. In fact, if at all, any such directions were to be issued, it ought to have been to SRB and not the Applicant who is in no position to comply with such directions. The Tribunal ought to have investigated this aspect of the matter but unfortunately it has escaped its attention and again burden has been placed on the Applicant to make compliance of a direction which it cannot do. Moreover, placing reliance on section 9 of the Act in question is also irrelevant once the directions contained in Para 18 were passed and when the said finding of the Commissioner (Appeals) was never challenged by SRB. It is up to SRB to seek compliance of such directions at its own in co-ordination with FBR at any relevant forum as may be available to them under the present dispensation.

4. In view of above, the proposed Questions are answered in favour of the Applicant and against the Respondent; and as a consequence, thereof, impugned Order of the Tribunal and the finding against the Applicant in the Commissioner (Appeals) Order regarding any directions are hereby set-aside. This Reference Application is **allowed**. Let copy of this order be issued to the Appellate Tribunal Sindh Revenue Board in terms of subsection (5) of Section 63 of the Sindh Sales Tax on Service Act, 2011.

**ACTING CHIEF JUSTICE**

**JUDGE**

Qurban/PA\*