

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference Application No.126 to 138 of 2016

Date

Order with signature of Judge

Hearing of case

- 1) For orders on office objections
- 2) For hearing of main case

16.04.2025

Barrister Syed Ahsan Ali Shah, Advocate for Applicant
in all Reference Applications

Mr. Asif Al Sheikhani, Advocate for Respondent

Through these Reference Applications, the Applicant has impugned Order dated 07.06.2016 passed in STA No.72/KB of 2016 and other connected matters by the Appellate Tribunal Inland Revenue Karachi, proposing the following question of law:-

“Whether in the given circumstances and in the light of judgment of Honorable Lahore High Court reported vide W.P. No.16407 of 2016 wherein the Honorable court has held that the non-withholding of Sales Tax and its subsequent non-payment is recoverable under section 11 of the Sales Tax Act, 1990, the Honourable Appellate Tribunal Inland Revenue was justified to hold that the registered person could not be proceeded against under section 11 ibid?

2. Heard learned Counsel for the Parties and perused the record. It appears that the Tribunal while deciding the Appeal in favour of the Respondent has relied upon certain earlier orders of the Tribunal reported as ***112 Tax 139 and the unreported decision in STA No.1151/LB/2014 dated 11.09.2015 M/s. Mughal Engg Works (Pvt.) Ltd Vs CIR WHT RTO, Lahore.*** It further appears that in somewhat similar facts and circumstances, the department had earlier filed Special STRAs No.365 & 366 of 2019 and vide Order dated 28.10.2019, the matter has been decided against the Applicant department and in favour of the Respondent. On perusal of the said order, it

reflects that insofar as order of the Tribunal in that case is concerned, it was verbatim same as the impugned order in question. The learned Division Bench of this Court while dismissing the aforesaid Reference Applications **in limine** has been pleased to hold as under:-

"3. From perusal of hereinabove finding, as recorded by the Appellate Tribunal, while placing reliance on the decision of a Divisional Bench of Appellate Tribunal Lahore in the case of M/s. United Industries Ltd. Faisalabad in STA No.130/LB/2013, it appears that default surcharge imposed by the Deputy Commissioner Inland Revenue through Order in Original Nos. 21/2012-13 & 22/2012-13 dated 30.06.2013, has no legal basis, whereas, reference to SRO No.660(1)/2007 dated 30.06.2007 is also misconceived for the reason that there is no consequence or penal provision provided in case of any default towards withholding sales tax on payments made by the taxpayer. Similarly, the provision of Section 33A or Section 11 of the Sales Tax Act, 1990, as referred in the Order-in-Original are also not attracted in the instant case(s). However, the relevant provision, which could have been attracted in the instant cases, is Section 11(4A), which provides that "where any person, required to withhold sales tax under the provisions of this Act or the rules made thereunder, fails to withhold the tax or withholds the same but fails to deposit the same in the prescribed manner, an officer of Inland Revenue shall after a notice to such person to show cause, determine the amount in default in this regard, can be calculated by the concerned officer Inland Revenue after notice to the taxpayer." Admittedly, in the instant case(s), the taxpayer was never confronted with any Show Cause Notice in terms of Section 11(4A), nor such provision of the Sales Tax Act, 1990 has been invoked in the instant case(s). Moreover, sub-section (4A) of Section 11 of the Sales Tax was introduced through Finance Act, 2016, whereas, the tax period in both the References pertains to the period from January to December 2010, and January to December 2011 respectively, therefore, it could not, otherwise, be applied retrospectively to the disadvantage of a taxpayer, for the reason that such provisions are penal in nature. Reliance in this regard can be placed upon reported judgments in the case of Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others (1992 SCMR 1652) and Messrs Polyrone Ltd. v. Government of Pakistan and other (PLD 1999 Karachi 238).

3. In view of above facts and circumstances of the case, we do not find any factual error or legal infirmity in the impugned order passed by the Appellate Tribunal Inland Revenue in the instant Reference Application(s), which otherwise is based upon an earlier decision of the Divisional Bench of Appellate Tribunal Lahore in the case of United Industries Ltd. Faisalabad, in STA No.130/LU/2013 on the subject controversy and also supported by judgment of the Hon'ble Supreme Court as well as by Divisional Bench of this Court as referred to hereinabove. Accordingly, instant Reference Applications being devoid of any merits are hereby dismissed in limine and the proposed common questions are answered in "AFFIRMATIVE" against the applicant and in favour of the respondent.

3. Since, the question that default, if any, in withholding of Sales Tax as required under the Special Procedure

(Withholding) of Sales Tax Rules, 2007, (applicable at the relevant time) cannot be recovered under Section 11(2) of the Sales Tax Act, 1990 has already been decided against the department; therefore, the above proposed question is answered against the Applicant and in favor of the Respondent. Notwithstanding this, though Section 11 *ibid* has been amended by insertion of sub-section (4A); however, this was inserted vide Finance Act, 2016 and is not applicable to the case in hand which pertains to a period prior such insertion. As a consequence, thereof, all these Reference Applications are ***dismissed.***

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

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*