ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference Application No. 144 of 2025

(M/s Salman Paper Products (Pvt) Ltd. Vs. Commissioner Inland Revenue Zone-I, LTO, Karachi)

Date	Order with signature of Judge

FRESH CASE.

1) For orders on CMA No. 1839/2025.
2) For orders on CMA No. 1674/2025.
3) For hearing of main case.

19.08.2025.

Mr. Aqeel Ahmed Khan, Advocate for Applicant.

In response to order passed on 12.08.2025, the Applicant's Counsel has reformulated the Questions of law in the following manner:-

i. "Whether issuance of show cause notice and passing order under Rule 7(4) of the Rules, 2006 are not sustainable in law without first making an inquiry by the Commissioner-IR of his own to verify facts relating to registered principal activity of manufacturing?

ii. Whether the Tribunal has erred in law in upholding the order dated 07-04-2025 by considering few undertakings stating payment of income tax on certain imported goods supplied as sufficient and persuasive evidence for modification under Rule 7(4) of the Rules, 2006 in absence of an inquiry?

iii. Whether in the facts and circumstances of the case the orders passed by the forums below are based on perverse findings given by mis-reading and non-reading of facts of the case and record?"

Through this Reference Application, the Applicant has impugned Judgment dated 16.06.2025 passed in Sales Tax Appeal No. 142/KB/2025 (Tax Period 2018-2019) by the Appellate Tribunal Inland Revenue, Karachi.

Learned Counsel for the Applicant submits that the impugned order has been passed by the Tribunal without considering the contention of the Applicant and the fact that certain portion of the imports were though sold in same state; however, most of the imports were used as raw material for manufacturing of finished paper and therefore, the status of the Applicant could not have been changed from manufacturer

to importer. According to him, the entire order of the Tribunal is based upon some isolated information obtained from purchasers of goods in question which cannot be applied across the board on all the sales transactions. He has further submitted that the Applicant is an Importer as well as a manufacturer and the allegations in the show cause notice were vague and without considering this aspect regarding separate activities conducted by the Applicant; hence, the impugned orders cannot be sustained.

Heard and perused the record. On perusal of the impugned order, it reflects that the Tribunal has considered the contention of the Applicant and has come to a final conclusion on facts that firstly, the Applicant by its own conduct whereby, the imported goods were supplied to various registered persons in same state and the response of the purchasers to the effect that no advance tax was required to be deducted from the Applicant being an Importer of the said goods on which advance income tax was already deducted under Section 148 of the Income Tax Ordinance, 2001, that Applicant is not a manufacturer but a commercial importer. The relevant findings of the Tribunal is contained in Paragraph No. 8, 9, 10, 11 & 12 which reads as under:-

> "8. On perusal of the case record and documents placed before us, it has been observed that the appellant was registered with effect from 03.08.2012 as manufacturer defined u/s 2(17) of the Act, 1990 as per procedure prescribed in Rule 5 of the Rules, 2006 under which registration of manufacturer was to be made on filing of prescribed form STR-I and after completion of verification in terms of sub-rule (4) of Rule 5 ibid. The AR of the appellant was right when he asserted that during the proceedings of sales tax audit initiated by the department u/s 25 of the Act, 1990, an Office Order dated 20.10.2023 was issued with certain terms of reference for the purpose verification of use of the plant and machinery installed in activity of manufacturing and a report was ordered to be submitted as on od certificates u/s 153(4) of the ITO, 2001 were also issued by 6 26.10.2023 of the appellant and to determine the principal the Commissioner-IR who has passed this impugned Order, whereby, the appellant was allowed to make supply of goods being manufactured with deduction of tax @ 5% & 1% under clause (a) of subsection (1) of Section 153 of the ITO, 2001 during the period from October-2023 to December-2024. The AR tried to exhibit before us that the goods i.e. paper and paperboard was being imported in sheets

and rolls of different large sizes by the appellant which was processed by conducting process of cutting and repacking of such goods into different sizes and also making other articles including exercise copies. Per the AR, the person conducting such process and activity falls within the definition of manufacturer in terr terms of provision of Section 2(17) of the Act, 1990.

9. The pleadings of the AR had been given anxious consideration. The same set of pleas were adopted by the appellant's AR before the Commissioner Inland Revenue, Zone I, LTO, Karachi, who had rebutted/answered each any every point/issue/question raised by the appellant in his reply through their AR. The appellant, through numerous undertakings (made part of the impugned order) given to various buyers of the appellant, had categorically and very clearly admitted therein that the goods supplied by them had been imported by them on which tax under section 148 of the Income Tax Ordinance had been paid. So far so good. The real catch/core point in the said undertakings actually lie where the appellant had further affirmed its buyers that no tax deductions are required to be made under section 153(1)(a) of the Ordinance against their invoices as per ed 12-02-2002 and Circular # 5 of 2002 dated 11-04-2002, in view of the fact that the tax had already been paid at import stage. Relevant extracts of the SRO and the Circular relied upon by the AR of the appellant are reproduced below;

SRO 97(1) dated 12-02-2002

> "In exercise of powers conferred by sub-section (2) of section 14 of the Income Tax Ordinance, 1979 (XXXI) of 1979), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the Said Ordinance, namely:-
> In the aforesaid Schedule, in Part-I, for clause (9B), the following shall be substituted namely,-
>
> > "(9B) The provision of sub-section (4) of section 50 shall not apply in respect of payment received by a resident person for supply of such goods as were imported by the same person and on which tax has been paid under sub-section (5) of Section 50."

Clause 4 (ii) of Circular No. 5 of 2002

> "4. Acknowledging the merit of these representations received in the Board seeking advice as to mechanism for implementation thereof, the following broad parameter's are enunciated for the guidance of the "Payers" and the "suppliers";
> (ii) Tax on supplies will not be deducted by the payers only if goods are imported in the supplier's name and supplied in the same state and no value addition is involved. For this purpose, the supplier may give a written undertaking to the effect that the item mentioned in the invoice has been supplied without any value addition and tax under section 50(5) of the Ordinance has been paid thereon."
> "(5) Sub-section (1) shall not apply to -
> (a) a sale of goods where the sale is made by the importer of the goods and tax under section 148 in respect of such goods has been paid and the goods are sold in the same condition as they were when imported;

SRO 97(I) and clause 4(ii) of Circular 5 manifest that no tax [u/s 50(4) of erstwhile Income Tax Ordinance 1979 and pari materia section 153(1)(a)] would be collected/deducted if the imported goods are supplied in the same state as were imported provided the tax had been collected at import stage Similarly, the

provisions of section 153(5)(a) also stipulates the same treatment in the follo TRIBUNAL Wowing manner;

Section 153(5)(a)

(5) Sub-section (1) shall not apply to-

(a) sale of goods where the sale is made by the importer of the goods and tax under section 148 in respect of such goods has been paid and the goods are sold in the same condition as they were when imported".

10. The appellant enjoyed the status of manufacturing since the date of its registration up to the date of impugned order when the status has been changed to commercial importer. The said issue propped up when upon Investigations/monitoring of taxes deducted, it was observed that no tax deductions u/s 153(1)(a) had been made by the purchasers from the appellant/supplier. The purchasers were confronted on the default committed in the shape of non-deduction of taxes whereto they responded in writing and informed that the appellant had given written undertakings to them that tax had duly been deducted at import stage u/s 148 and that no withholding of tax was required to be deducted u/s 153(1)(a) in the wake of SRO 97(1) dated 12-02-2002 and Circular # 5 of 2002 dated 11-04-2002. The said SRO, Circular and section 153(5)(a) relates to non-deduction of taxes u/s 153(1)(a) [pari materia section 50(4) of the Ordinance 1979] on further supplies of exactly same state imported goods if the due taxes had already been deducted at import stage. This is different from import of raw materials for in-house consumption by manufacturers for processing and value addition in their manufacturing activities. The entities involved in the import and supply of imported goods in the same state without any further process involved are called "Commercial Importers", who enjoy the benefit of non-deduction of taxes on further supplies on the strength of aforementioned provision of law, SRO and Circular.

11. The appellant had themselves given undertakings to its buyers that tax at import stage had been deducted and that no tax was required to be equcted on further supplies to its buyers under section 153(1)(a) of the Ordinance, which implies that same state goods were supplied as were imported, thereby themselves confirming their status as commercial importer instead of manufacturer who are supposed to employ some manufacturing activity to change the status of imported goods by making value addition into it. The plain reading of the impugned order implies that the appellant has been filing their declarations (returns & financials) in the capacity of manufacturer only, because as per current and historical declarations, if the appellant were also declaring sales in the capacity of commercial importer in addition to declaring manufacturing activity (only) and was accepted as such, there arose no need to undertake impugned proceedings against the appellant for change in the particulars of registration from manufacturer to commercial importer. With this premise, it can be safely assumed that the appellant was not disclosing true particulars of their business activity in its returns/financials submitted to the department, especially in the presence of self-issued undertakings to its buyers asking for non-deduction of relevant taxes on its supplies in the capacity of a commercial importer. No better evidence could be fetched/retrieved/unearthed than the self-admission of business activity of commercial importer by the appellant in the shape of undertakings given to suppliers. This fact has also been confirmed by the buyers of the appellant in their letters to the department (made part of impugned order) filed in response to inquiry conducted by the department for non-deduction of taxes. It means that the appellant had defrauded the department and, on the one hand, took whatever benefits were available under the law to the manufacturers importing goods for in-house consumption, whereas, on the other hand, on further supplies also availed the benefit of non-deduction of taxes under section 153(1)(a) of the Ordinance.Hence, the appellant was befooling the department/agencies by

operating as commercial porter in the garb of manufacturer to take undue/illegal advantage on both ends of the trading activity, i.e., imports and its further supplies as commercial importer and evasion of a sizeable chunk of taxes. Lie to stand upon. It was only when the appellant got caught during investigations, the plea of partial supplies as commercial importer was concocted/cooked up.

12. Then, only the pictures of the presence of a few machines (cutting) at the business place is not enough proof to establish the manufacturing activity of the appellant. Businesses who are engaged in taking huge undue and illegal advantage in the shape of continuous evasion of taxes can spend little (one time) money and arrange few machines at the business premises to wear the garb/cloak of manufacturer whereas in actual they were operating as a commercial importer. The appellant had unscrupulously acted with the doubled edged sword and swindled sacred/precious money due to the state by taking advantage at both the import and further supplies stages, which act is unpardonable. The presence of undertakings by the appellant wherein the appellant had introduced themselves as commercial importer, the confirmation of this status by the buyers of the appellant, the affidavit given by the CFO of M/s. Olympia Group (holding company of M/s Super Packages), non-deduction of taxes under section 153(1)(a) by the buyers of the appellant are enough evidences to establish that the appellant was in fact operating as a commercial importer in the cloak/guise of portraying themselves as manufacturer."

After going through the findings of the Tribunal as above, we do not see that any Question of law is arising out of the order, whereas, a final determination of facts has been reached to the effect that the goods in question have been sold in same state without any manufacturing activity. Such sales have been made by the Applicant itself to avoid deduction of any advance tax by its buyers as required under Section 153(5)(a) of the Income Tax Ordinance, which provides that where sale is made by the importer of the goods and tax under section 148 in respect of such goods has been paid and the goods are sold in the same condition as they were imported, no advance tax is to be deducted under sub-section (1) of Section 153 ibid. This determination is based on the evidence and response of buyers of the Applicant to which there is no denial except that it is not applicable to all transactions in question. We are afraid, in that case, this Court under its reference jurisdiction cannot overturn this finding of fact as per settled law, it is only a question of law arising out of the order of the Tribunal which can be adjudicated upon by this Court, whereas, all factual aspects of the case are closed by at

the level of the Appellate Tribunal[1]. The memo of appeal of the Applicant and the arguments raised support this contention that a thorough inquiry was required for factual determination of the status of the Applicant including inspection and an action under section 38 of the Sales Tax Act, 1990. In these circumstances, at best, and without prejudice to the case of the department, a rectification application may be an appropriate remedy.

Resultantly, no question of law is to be considered for our determination in our reference jurisdiction; therefore, this Reference Application is hereby ***dismissed*** in limine with pending applications.

Let copy of this order be sent to Appellate Tribunal Inland Revenue, Karachi Bench in terms of sub-Section (5) of Section 47 of the Sales Tax Act, 1990.

CHIEF JUSTICE

J U D G E

Arshad/

[1] Collector of Sales Tax v Qadbros Engineering Limited (2023 SCMR 939); Army Welfare Trust V Collector of Sales Tax (2017 SCMR 9); Pakistan Match Industries (Pvt.) Ltd. V Assistant Collector, Sales Tax and Central Excise (2019 SCMR 906); Commissioner of Inland Revenue, Lahore V Sargodha Spinning Mills (Pvt.) Ltd. (2022 SCMR 1082)