

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special STRA 351 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.26.
2. For orders on CMA No.1368/2020.
3. For hearing of main case.

30.03.2026

Mr. Mukesh Kumar Khatri, advocate for the applicant.

This reference application is pending since 2020 without any progress. Diary demonstrates that on various occasions in last five years has applicant made no effort for the matter listed or heard. On two occasions when the matter was listed for hearing in court applicant's legal counsel sought adjournments.

Today the crux of the arguments that evidence was not appreciated by the respective fora in their proper perspective hence the concurrent judgments of the Commissioner Inland Revenue and the Appellate Tribunal against the applicant department. CIR (Appeals) did not place any embargo upon the applicant while rendering its judgment as may be seen in the concluding paragraph, which reads as follows:

“However, the annulment of the ONO on legal ground would not debar the revenue subject to limitation, to do the needful denovo after meeting the legal requirement, strictly in accordance with law, reliance in this regard is placed on case law reported as 108 Tax 67.

This appeal is disposed off in the manner and to the extent as indicated above.”

Upon being confronted as to whether the applicant took the recourse identified, learned counsel responded in the negative.

Learned Appellate Tribunal has considered the contentions and have duly deliberated the same in impugned judgment as may be seen below:

“8. We heard both the representatives of the appellant and respondent. The AR of the respondent supported the impugned order passed by the CIR(A) mainly on the ground that at the time when the purchases were made from the parties were active who were later on blacklisted with effect from the date of their registration as regular tax payers. The learned DR mainly contended that the language of section 21(3) is unambiguous and clearly provide for the disallowance of input tax, however he conceded that at the time when the purchases were made, the record does not show that such parties were blacklisted.

9. Keeping in view of the orders passed by this Tribunal as also referred to by the learned CIR(A) we are not inclined to accept the contention of the learned D.R, as the tax payers who

have issued invoices were active tax payer who were collecting tax on behalf of the F.B.R, therefore during the period when a tax payers was not declared as blacklisted all of his acts as an agent are binding and the purchaser of the goods cannot be penalized. The vested interest once created cannot be extinguished, which is protected under clause No.4 of the General Clauses Act.

10. The obligation arising from acts done by a withholding agent under the Sales Tax Act Special Procedure (Withholding) Rules 2007 when acted for and on behalf of the state such Acts are enforceable in the same manner and have the same legal consequences, as if such an act is done by the Principal in person. We therefore uphold the order of the learned CIR(A), on this issue.

11. As regard to the 2nd issue, i.e annulment of disallowances of input tax claimed at Rs.2.8,11 Million, were are not inclined to agree with the contention of the learned DR that the tax payer has not produced evidence in compliance to the provision of Section 73 of the Sales Tax Act, 1990 before the Assessing officer hence the CIR (A) was not justified to accept the evidence produced before him showing the compliances to Section 73 of Sales Tax Act, 1990.

12. We are afraid that imposing a restriction on CIR(A), not to accept the evidence, if not considered by the assessing officer is not tenable, when the assessing officer has accepted the production of record and in the same para discarded the same, and if the same evidence is produced before the CIR(A) which he considered verifiable and annulled the disallowance does not cause prejudice to the department.

13. In view of the above, we do not find any reason to interfere with the order passed by the learned CIR(A) accordingly we uphold the same and dismiss the appeal filed by the department.

14. The appeal is disposed of in the manner as indicated above.”

Learned counsel for the applicant has not made any effort to distinguish or displaced the findings or that conclusion could not have been rested there upon. In any event, the Appellate Tribunal is the last fact finding forum in the statutory hierarchy and no denovo appreciation of evidence is merited in reference jurisdiction. In view hereof, we observe no question of law has been articulated before us to address in reference jurisdiction, and the proceedings are prima facie, frivolous in nature, therefore, the same is dismissed in limine with cost of Rs.100,000/- to be deposited by the applicant in Sindh High Court Clinic within a week.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 47(5) of the Sales Tax Act, 1990.

Judge

Judge