

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman
Mr. Justice Dr. Shah Nawaz Memon

Spl. Sales Tax Reference Application No. 182 of 2025

M/s. Zafar Securities (Pvt.) Limited, Lahore Vs. Appellate Tribunal Sindh
Revenue (DB-I), Karachi & others

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Revenue (DB-I), Karachi & others

Date of hearing : 25.09.2026

Date of decision : 01.10.2026

Applicant : Through M/s. Hassan Ali & Jahanzeb Sukhera,
Advocates.

Respondent : Ms. Summiya Kalwar, Advocate

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — Through this common judgment we propose to decide both these Special Sales Tax Reference Applications, each maintained by the Applicant under section 63 of the Sindh Sales Tax on Services Act, 2011 (the “Act of 2011”), as against a common order dated 30.07.2025 passed by the Appellate Tribunal, Sindh Revenue Board (DB-I), Karachi in Appeal No. AT-140 of 2023 and Appeal No. AT-86 of 2024 (the “impugned order”).

I. FACTS OF THE CASE

2. The Applicant is a private limited company carrying on the business of a stockbroker. It holds a Trading Right Entitlement Certificate of the Pakistan Stock Exchange Limited and is registered with the Sindh Revenue Board under tariff heading 9819.1000 of the Second

Schedule to the Act of 2011.¹ It is also registered with the Punjab Revenue Authority. Its case is that its business is conducted from its office at the LSE Building, Lahore, for clients who are resident in the Province of the Punjab and elsewhere, and that it discharges sales tax on those services to the Punjab Revenue Authority.

3. On a scrutiny of the Applicant's audited accounts, the Assistant Commissioner (Unit-12), Sindh Revenue Board found that its brokerage and commission receipts had not been declared in its Sindh sales tax returns. By Order-in-Original No. 1143 of 2022 dated 24.05.2022, sales tax of Rs.32,522,793 was determined for the tax periods of FY 2016-17 to FY 2020-21, and by Order-in-Original No. 6207 of 2023 dated 14.12.2023, sales tax of Rs.10,743,108 was determined for FY 2021-22, together with penalty and default surcharge. The Commissioner (Appeals-II) upheld both orders, by Order-in-Appeal No. 227 of 2023 dated 31.08.2023 and by an Order-in-Appeal dated 15.02.2024 respectively, on the footing that the brokerage transactions are executed and terminated through the Karachi Automated Trading System ("KATS") at the Pakistan Stock Exchange, Karachi.
4. The learned Appellate Tribunal, by the impugned order, maintained the tax demands but set aside the penalty under section 43 and the default surcharge under section 44 of the Act of 2011.² That part of the impugned order has not been brought before us in reference, and it has attained finality.³ Special Sales Tax Reference Application No. 182 of 2025 arises out of Appeal No. AT-140 of 2023 (Order-in-Original No.

¹ Tariff heading 9819.1000 of the Second Schedule to the Act of 2011, under heading 98.19 ("Services provided or rendered by specified persons or businesses"), describes the service as "Stockbrokers, futures brokers and commodity brokers", chargeable at the rate of 13%.

² Section 43 of the Act of 2011 opens: "43. Offences and penalties.--Whoever commits any offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof. The sections referred to in column (3) are meant for illustrative purposes only and the corresponding offence described in column (1) may fall and be prosecuted under other sections of this Act as well." And Section 44(1) provides: "44. Default Surcharge.--(1) Notwithstanding the provisions of section 23, if a registered person does not pay the tax due or any part thereof, whether wilfully or otherwise, in time or in the manner specified under this Act, rules or notifications issued there under, he shall, in addition to the tax due and any penalty under section 43, pay default surcharge at the rate mentioned below:-- (a) the person liable to pay any amount of tax or charge, shall pay default surcharge at the rate of Inter-Bank Rate plus three per cent per annum of the amount of tax due; and (b) in case, the default is on account of tax fraud, the person who has committed tax fraud shall pay default surcharge at the rate of two per cent per month, of the amount of tax evaded, till such time the entire liability including the amount of default surcharge is paid."

³ *CIR v. Pak Arab Pipeline Co.* [2014 PTD 982], where a finding of the Tribunal not made the subject of any question of law was held to have attained finality.

1143 of 2022) and Special Sales Tax Reference Application No. 183 of 2025 arises out of Appeal No. AT-86 of 2024 (Order-in-Original No. 6207 of 2023).

II. THE QUESTIONS PROPOSED

5. The Applicant has proposed ten questions in each Reference Application, which are identical in both. They overlap considerably, and two of them are repeated in the memorandum. Questions (a) to (h) and (j) all ask, in different words, whether the Applicant's services provided from its Lahore office to clients outside Sindh are taxable in Sindh by reason of the trades being executed through KATS at Karachi, while question (i) asks whether the levy amounts to impermissible double taxation contrary to the constitutional scheme. Being satisfied under section 63(3) that questions of law arise out of the order of the learned Appellate Tribunal, we reframe them into the following two questions, which fully cover the controversy:⁴

(i) Whether, on the facts found, the stockbroker services provided by the Applicant from its office at Lahore, the transactions in respect of which are executed through the Karachi Automated Trading System at the Pakistan Stock Exchange, Karachi, are "taxable services" within the meaning of section 3 of the Act of 2011 for the tax periods in question?

(ii) Whether the contention that the levy results in the taxation of the same services by two Provinces, and offends Article 141⁵ and the fundamental rights guaranteed by the Constitution, is a question that can be determined by this Court in its reference jurisdiction under section 63 of the Act of 2011?

III. SUBMISSIONS

6. Learned counsel for the Applicant submitted that the real issue is that the Applicant is resident in the Province of the Punjab and provides its

⁴ It is open to this Court, in its reference jurisdiction, to reframe or resettle the questions proposed so as to bring out the real question of law arising out of the order of the Tribunal: *CIT v. Muhammad Naseem Khan* [2013 PTD 2005]; *International Industries Ltd. v. Collector of Customs* [2011 PTD 2861].

⁵ Article 141 of the Constitution of the Islamic Republic of Pakistan, 1973 reads: "141. Subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof."

services in the Punjab to its clients, who are themselves resident in the Punjab, Khyber Pakhtunkhwa and other Provinces, and yet the Sindh Revenue Board is demanding tax on those services. He argued that the very same services are being taxed in the Punjab and, since the Applicant is resident there, it is obliged to pay the tax there. He submitted that the claim of two Provinces to tax the same services is illegal, unconstitutional and in violation of the fundamental rights guaranteed by the Constitution, and that in terms of Article 141 of the Constitution the Province of Sindh cannot tax a person who lives in the Province of the Punjab and provides services to customers who are also resident there. He prayed that the orders of all the fora below be set aside.

7. Learned counsel for the Sindh Revenue Board submitted that the services provided by the Applicant are in respect of the stock exchange, which is located in the Province of Sindh, and that the Applicant, as a stockbroker, is essentially providing services in respect of that stock exchange. She submitted that all notices were issued to the Applicant at its address in Sindh and were duly received and acknowledged, and that the Applicant's registered address with the Board is in Sindh. She further submitted that the earlier decision of this Court applies to the facts and circumstances of the case, that the factual aspects have been determined by all the fora below, and that this Court, in its reference jurisdiction, cannot reappraise factual controversies.
8. In rebuttal, learned counsel for the Applicant submitted that although the Applicant is registered at a Karachi address, that is only because registration is a mandatory requirement of the relevant law, and that the Applicant in fact works and operates in the Province of the Punjab.
9. We have heard learned counsel and, with their assistance, perused the record.

IV. THE SCOPE OF THE REFERENCE

10. Under sub-section (1) of section 63 of the Act of 2011, a reference lies to this Court on a question of law arising out of the order of the learned Appellate Tribunal, and under sub-section (5) this Court decides that

question and the order of the Tribunal stands modified accordingly. The jurisdiction so conferred is advisory and not plenary; it is confined to questions of law, the source of which must be the order of the Tribunal, and the Tribunal is the final fact-finding forum whose findings of fact are conclusive in a reference unless shown to rest on no evidence or to be perverse.⁶ In the present case the adjudicating officer, the Commissioner (Appeals-II) and the learned Tribunal have concurrently found that the Applicant's buy and sell orders are routed to, matched on, and executed through KATS, which is installed and operated at the Pakistan Stock Exchange, Karachi. That finding is not really in dispute: the Applicant's own reply before the adjudicating officer accepts that all trading of shares is routed through the KATS servers and that order matching takes place on the trading servers using a trading engine at the exchange. The Applicant's case is rather that this is an ancillary step that does not determine where its service is provided. We proceed on the facts so found, and the questions before us are confined to their legal consequence.

V. THE STATUTORY FRAMEWORK

11. Throughout the tax periods in question, that is FY 2016-17 to FY 2021-22, sub-section (1) of section 3 of the Act of 2011 read as follows, it having been substituted only later by the Sindh Sales Tax on Services (Amendment) Act, 2021 (Sindh Act VII of 2023), assented to on 08.03.2023:

“(1) A taxable service is a service listed in the Second Schedule to this Act, which is provided:--

(a) by a registered person from his registered office or place of business in Sindh;

(b) in the course of an economic activity, including in the commencement or termination of the activity.

Explanation.--This sub-section deals with services provided by registered persons, regardless of whether those services are provided to resident persons or non-resident persons.”

12. Sub-section (2) of section 3 treats as a taxable service a listed service provided to a resident person by a non-resident person in the course of

⁶ *Haji Ibrahim Ishaq Johri v. CIT* [1993 SCMR 287]; *Collector of Sales Tax v. Qadbros Engineering* [2023 SCMR 939]; *Intelligence Officer, I&I-FBR v. Abdul Karim* [2025 SCMR 969], where it was held that “the Reference jurisdiction is contoured to decide the questions of law only arising out of the orders of the last appellate jurisdiction i.e. Tribunal, which is the last fact finding forum”; and see *CIR v. Pak Arab Pipeline Co.* [2014 PTD 982] (jurisdiction advisory and not plenary).

an economic activity, and sub-section (3) provides that, “for the purposes of sub-section (2)”, where a person has a registered office or place of business in Sindh and another outside Sindh, the two shall be treated as separate legal persons.⁷ Clause (68) of section 2 defines the provision of service to include its “execution” and “termination”,⁸ and sub-section (2) of section 4 provides that anything done or undertaken during the commencement or termination of an economic activity is part of that economic activity.⁹

13. The expression “place of business in Sindh” is defined in clause (64) of section 2. Clause (a), which has remained unchanged throughout, covers a person who “owns, rents, shares or in any other manner occupies a space in Sindh from where it carries on an economic activity whether wholly or partially”. Before the Sindh Finance Act, 2017, clause (b) of that definition read:

“(b) carries on an economic activity through any other person such as an agent, associate, franchisee, branch, office, or otherwise in Sindh but not including a liaison office.”

14. By the Sindh Finance Act, 2017, which came into force on 01.07.2017,¹⁰ the words “but not including” were substituted, so that clause (b) now reads:

“(b) carries on an economic activity through any other person such as an agent, associate, franchisee, branch, office, or otherwise in Sindh or through virtual presence or a website or a web portal or through any other form of e-Commerce, by whatever name called or treated, but does not include a liaison office.”

⁷ Sub-sections (2) and (3) of section 3 of the Act of 2011 read:

“(2) A service that is not provided by a registered person shall be treated as a taxable service if the service is listed in the Second Schedule to this Act and is provided to a resident person by a non-resident person in the course of an economic activity:--

Explanation.--This sub-section deals with services provided by non-resident persons to resident persons whether or not the said resident person is an end consumer of such services.

(3) For the purposes of sub-section (2), where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons.”

⁸ Section 2(68) of the Act of 2011: “(68) “provision of service” or “providing of service” includes the rendering, supply, initiation, origination, reception, consumption, termination or execution of service, whether in whole or part, including e-services where the context so requires;”

⁹ Section 4(1) and (2) of the Act of 2011: “4. Economic activity.--(1) An economic activity means any activity carried on by a person that involves or is intended to involve the provision of services to another person and includes-- (a) an activity carried on in the form of a business, including a profession, calling, trade or undertaking of any kind, whether or not the activity is undertaken for profit; (b) an activity of supply or provision of movable or immovable property by way of lease, rent, license or other similar arrangement; and (c) a one-off adventure or concern in the nature of a trade.

(2) Anything done or undertaken during the commencement or termination of an economic activity is part of the economic activity.”

¹⁰ The Sindh Finance Act, 2017 (Sindh Act No. XXIV of 2017) provides that it “shall come into force on and from 1st day of July, 2017”.

VI. THE EARLIER DECISION OF THIS COURT

15. Both sides placed reliance on the decision of a Division Bench of this Court dated 04.09.2025 in Special Sales Tax Reference Application No. 68 of 2016 and connected matters, *Summit Capital*,¹¹ the Applicant in its statement of the case and the Board at the bar. That case concerned stockbrokers providing services from their Lahore offices to clients in the Punjab, with the transactions being executed through the KATS portal at Karachi, for tax periods preceding the Sindh Finance Act, 2017. The Division Bench held, first, that the KATS portal is not a “person”¹² through whom an economic activity is carried on within clause (b) of section 2(64) as it then stood, and observed that the amendment made by the Sindh Finance Act, 2017 was itself a tacit acceptance by the Provincial Assembly that, before that amendment, the virtual access of a portal in Sindh did not come within the expression “place of business in Sindh”. Secondly, it held that clauses (a) and (b) of section 3(1) are to be read conjunctively, so that a service not provided from the registered office or place of business in Sindh is not a taxable service under that sub-section. Thirdly, it held that although the deeming provision in section 3(3) treats the office outside Sindh as a separate legal person for the purposes of section 3(2), the services were not provided to persons resident in Sindh¹³ and so were not taxable under that sub-section either.
16. That decision, rendered by a Bench of equal strength, binds us, and we respectfully follow it.¹⁴ The question before us is how it applies to the tax periods now in dispute, which straddle the amendment of 01.07.2017.

¹¹ *Summit Capital v. AC (Unit-IV)*, SRB [2025 PTD 1733], paras 20 to 22.

¹² Section 2(63) of the Act of 2011: “(63) “person” means-- (a) an individual; (b) a company, an agency or an association of persons incorporated, formed, organized or established in Pakistan or elsewhere; (c) the Federal Government; (d) a Provincial Government; (e) a Local Authority or Local Government in Pakistan; or (f) a foreign Government, a political sub-division of a foreign Government, or a public international organization;”

¹³ Section 2(73) of the Act of 2011: “(73) “resident” means-- (a) an individual who, in a financial year, has-- (i) a place of business, whether whole or part thereof, in Sindh in any mode, style or manner; or (ii) his permanent address, as listed in the individual’s national identity card, in Sindh; or (iii) a permanent representative to act on his behalf or to provide service on his behalf in Sindh; (b) an association of persons or a company which, in a financial year, has-- (i) its registered office is in Sindh; or (ii) its place of business, whether whole or part thereof, in Sindh in any mode, style or manner; or (iii) a permanent representative to act on its behalf or to provide service on its behalf in Sindh; or (iv) the control or management of the association of persons or the company, whether whole or part thereof, situated in Sindh at any time during the financial year;”

¹⁴ *Multiline Associates v. Ardesbir Cowasjee* [PLD 1995 SC 423].

VII. DISCUSSION

(a) Tax periods before 01.07.2017

17. To the extent that the demand under Order-in-Original No. 1143 of 2022 relates to tax periods before 01.07.2017, the case is squarely covered by *Summit Capital*. On the pre-amendment definition, the Applicant's Lahore office did not carry on its economic activity through a "place of business in Sindh" merely because the trades were executed through KATS, and the services, provided to clients resident outside Sindh, were not taxable under section 3(2) read with section 3(3) either. The learned Tribunal records that the demand covers FY 2016-17, and the table in the Order-in-Original shows a component of Rs.8,312,958 against "Tax Year 2017", although the narrative of that order refers to the period July 2017 to June 2021. Which tax periods fall before 01.07.2017, and the amount attributable to them, is a matter of computation that the learned Tribunal will work out while giving effect to this judgment.

(b) Tax periods from 01.07.2017 onwards

18. The position is different for the tax periods from 01.07.2017. The amended clause (b) of section 2(64) no longer confines a place of business in Sindh to the carrying on of an economic activity through another person or through physical premises; it extends to a person who carries on an economic activity "through virtual presence or a website or a web portal or through any other form of e-Commerce, by whatever name called or treated". That is the very change which the Division Bench in *Summit Capital* identified as bringing the virtual access of a portal in Sindh within the definition.
19. A stockbroker is defined in clause (90) of section 2 as a person engaged in the business of effecting transactions in securities for the account of others.¹⁵ On the facts found, the transactions that the Applicant effects for its clients are effected through KATS at Karachi: the orders are routed to it, matched on it and executed through it. The execution of the transaction is not incidental to the Applicant's service;

¹⁵ Section 2(90) of the Act of 2011: "(90) 'stockbroker', by whatever name called, means any person engaged in the business of effecting transactions in securities for the account of others, and includes a person carrying on any of the activities of securities broker, securities advisor and securities manager as defined in section 2 of the Securities Act, 2015 (Act No. III of 2015);"

it is the substance of what a stockbroker undertakes to do, and section 2(68) and section 4(2) make the execution and termination of the service part of its provision and of the economic activity. The Applicant therefore carries on its economic activity, at least in part, through an electronic trading system situated in Sindh, and so has a “place of business in Sindh” within the amended definition.

20. It was argued that KATS is merely the exchange’s infrastructure, passively accessed by the Applicant from Lahore, and that the transfer of shares through it is an ancillary step that follows the service rather than forming part of it. The definition, however, does not require that the website, portal or other e-Commerce medium be owned or operated by the person concerned; it looks to the medium “through” which the economic activity is carried on, and the words “by whatever name called or treated” make it immaterial whether KATS is described as a portal, a trading system or a server. Nor, on the facts found, is the execution of the trade ancillary: it is the very transaction the Applicant undertakes to effect for its client. The Applicant being a registered person,¹⁶ and its service being provided from a place of business in Sindh in the course of an economic activity, both limbs of section 3(1), read conjunctively as *Summit Capital* requires, are satisfied for these tax periods.
21. Two further contentions may be dealt with shortly. First, the residence of the Applicant’s clients in the Punjab or elsewhere does not take the case out of section 3(1), since the Explanation to that sub-section makes it applicable regardless of whether the services are provided to resident or non-resident persons. Secondly, the deeming provision in section 3(3), which treats the offices in and outside Sindh as separate legal persons, is expressly confined to the purposes of section 3(2), as the Division Bench also noted, and does not limit the scope of section 3(1). For the same reason, we do not rest our conclusion on the Applicant’s registered address in Karachi or on the service of notices there; *Summit Capital* makes clear that a registered office in Sindh

¹⁶ Section 2(71) of the Act of 2011: “(71) “registered person” means a person who is registered or is liable to be registered under this Act or any other person or class of persons notified by the Board in the official Gazette: Provided that a person liable to be registered but not registered under this Act shall not be entitled to any benefit available to a registered person under any of the provisions of this Act or the rules made thereunder;”

does not by itself make a service taxable unless the service is provided from it, and the Applicant's liability for these periods arises from the amended definition and not from its address.

(c) Double taxation, Article 141 and fundamental rights

22. The remaining contention is that the Province of Sindh cannot tax a person living and working in the Punjab and serving clients there, that the same services are taxed by the Punjab under the Punjab Sales Tax on Services Act, 2012, and that the levy offends Article 141 and the fundamental rights guaranteed by the Constitution. We are conscious of the Applicant's grievance. The learned Tribunal, however, is a creature of the Act of 2011 and is bound to apply it as it stands; it could not, and did not, examine whether any provision of the Act exceeds the legislative competence of the Province. A question of the vires of a statute therefore does not arise out of its order within the meaning of section 63(1), and this Court, sitting in its reference jurisdiction, is equally confined to answering what the law is and applying it; it can neither strike down a provision nor declare it ultra vires the Constitution, a declaration of that kind being available, if at all, in the constitutional jurisdiction of this Court.¹⁷ The Act of 2011 extends only to the Province of Sindh,¹⁸ and it is the Provincial Assembly that has chosen, through section 3 read with the amended section 2(64), the connecting factor that brings a service within its reach. Whether that connecting factor is a sufficient territorial nexus in terms of Article 141, and how the competing claim of another Province under its own law is to be reconciled, are matters that fall outside the questions arising in these References. We express no opinion on them, and nothing said here shall preclude the Applicant from pursuing any remedy available to it in law, including before the appropriate inter-provincial forum.

VIII. THE ANSWERS TO THE QUESTIONS

23. For the foregoing reasons, the questions are answered as follows:

¹⁷ *CIR v. Coca Cola Pakistan Ltd.* [2022 PTD 1400], holding that the High Court, in reference jurisdiction, "cannot either strike down a provision of law or declare it ultra vires of the Constitution", and that the constitutionality of a provision is not required to be entered upon in such matters.

¹⁸ Section 1(2) of the Act of 2011: "(2) It shall extend to the whole of the Province of Sindh."

(i) Question (i) is answered in two parts. For the tax periods before 01.07.2017, it is answered in the negative, in favour of the Applicant and against the Board, in terms of *Summit Capital*. For the tax periods from 01.07.2017 onwards, it is answered in the affirmative, against the Applicant and in favour of the Board.

(ii) Question (ii) is answered in the negative. The questions of double taxation and of the constitutional validity of the levy do not arise out of the order of the learned Tribunal and are not determined in these References.

IX. ORDER

24. Special Sales Tax Reference Application No. 183 of 2025, which relates wholly to FY 2021-22, is dismissed. Special Sales Tax Reference Application No. 182 of 2025 is partly allowed, in that the demand under Order-in-Original No. 1143 of 2022 dated 24.05.2022, to the extent that it relates to tax periods before 01.07.2017, is set aside, and the remainder of the demand is maintained. The impugned order stands modified accordingly. There shall be no order as to costs.
25. 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 63 (5) of the Sindh Sales Tax on Services Act, 2011.

JUDGE

JUDGE

Karachi,
Dated: 1st day of October 2026

M. Khan