IN THE HIGH COURT OF SINDH AT KARACHI

Sr. No.	Case Nos.	Parties Names
01	Spl. Sales Tax Ref: A. 86/2025	Sindh Revenue Board, Karachi VS M/s. Itecknologi Tracking Services (Private) Limited
02	Spl. Sales Tax Ref: A. 489/2022	Sindh Revenue Board, Hyderabad VS M/s. K.B. Panhwar & Co., Govt. Contractor, Dadu
03	Spl. Sales Tax Ref: A. 1285/2023	Sindh Revenue Board, Karachi VS M/s. First Women Bank Limited, Karachi
04	Spl. Sales Tax Ref: A. 1302/2023	Sindh Revenue Board, Karachi VS M/s. Pakistan Services Limited, Karachi
05	Spl. Sales Tax Ref: A. 1571/2023	Sindh Revenue Board, Karachi VS M/s. Fluro Chemical Industries, Karachi
06	Spl. Sales Tax Ref: A. 2059/2023	Sindh Revenue Board, Karachi VS M/s. M3 Technologies Pakistan (Pvt) Ltd. Karachi
07	Spl. Sales Tax Ref: A. 126/2024	Sindh Revenue Board, Karachi VS M/s. Shakoo (Pvt) Ltd., Karachi
08	Spl. Sales Tax Ref: A. 210/2024	Sindh Revenue Board, Hyderabad VS M/s. Reliance Consultancy & Engineering Works (Pvt) Ltd
09	Spl. Sales Tax Ref: A. 3/2024	Sindh Revenue Board, Karachi VS M/s. Pak Arab Engineering (Pvt) Ltd., Karachi
10	Spl. Sales Tax Ref: A. 52/2024	Sindh Revenue Board, Hyderabad VS M/s. Zaheer & Company, Hyderabad
11	Spl. Sales Tax Ref: A. 153/2025	Sindh Revenue Board, Through AC (Unit-34), Karachi VS M/s. Ghulam Ali Zour & Company, Tando Muhammad Khan
12	Spl. Sales Tax Ref: A. 197/2025	Sindh Revenue Board, Through AC (Unit-12), Karachi VS M/s. Zafar Securities (Pvt) Ltd., Lahore

Present:

Mr. Justice Agha Faisal

Mr. Justice Shah Nawaz Memon

Date of hearing: 18.08.2026

Date of decision: 21.08.2026

Petitioners: Through Messrs. Summiya Kalwar, Fahad Hussain, Ameer Bux Metlo & Shamshad Ahmed, Advocates.

Respondents: Through Messrs. Muhammad Tariq Masood, Zia Ahmed, Rehan Kiyani, Abdul Rahim Lakhani, Atta Muhammad Qureshi, Anwar Kashif Mumtaz, Usman Alam, Advocates.

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.:— These twelve connected reference applications, preferred by the Sindh Revenue Board under section 63 of the Sindh Sales Tax on Services Act, 2011, raise a single and recurring question of law. We propose to decide them by this common judgment.

I. THE CONTROVERSY AND THE QUESTION

1. Section 44 of the Sindh Sales Tax on Services Act, 2011 (**"the Act, 2011"**) obliges a registered person who does not pay the tax due, or any part of it, *"whether wilfully or otherwise"*, in time or in the manner specified, to pay default surcharge at Inter-Bank Rate plus three per cent per annum. In each of these references the respondent taxpayer paid the tax but paid it late. In each, default surcharge was accordingly demanded. In each, the learned Appellate Tribunal, Sindh Revenue Board deleted that demand upon the reasoning that the default had not been shown to be willful and that, absent *mens rea*, no surcharge could be visited upon the taxpayer. It is those orders which the applicant Board assails.

2. Being satisfied under section 63(3) of the Act, 2011 that a question of law arises out of the orders of the learned Appellate Tribunal, and the several statements of case having proposed a number of overlapping questions, we consider that the controversy is comprehended within the following single question, which we accordingly frame:

> *"Whether the liability to pay default surcharge under section 44 of the Sindh Sales Tax on Services Act, 2011 is a strict liability attracted upon the occurrence of default in payment of the tax due by the due date, or whether such liability is attracted only where the default is shown to be willful and attended by mens rea?"*

3. What has given the question its edge is that the respondents did not seek to meet the plain words of section 44 head on. They accepted, as they were bound to accept, that the section says what it says. Their case was that even a strict liability admits of exceptions, and that the circumstances of these references fall within them.

II. FACTS

4. The facts of the individual references differ in detail but not in substance, and it is unnecessary to burden this judgment with all of them. It is sufficient to take Spl. Sales Tax Reference Application No. 86 of 2025 as illustrative, and to record that the pattern in the remaining eleven references is the same: a registered person who deposited the tax after the due date, a demand of default surcharge under section 44, and an order of the learned Appellate Tribunal deleting that demand for want of proof of willfulness.

5. The respondent in Reference No. 86 of 2025, M/s. Itecknologi Tracking Services (Private) Limited, is registered with the applicant Board with effect from 23.11.2018 in the service category of *"Tracking Services"*, taxable under tariff heading 9812.9610 of the Second Schedule to the Act, 2011. In terms of section 17 of the Act, 2011 read with rules 14 and 35 of the Sindh Sales Tax on Services Rules, 2011 (**"the Rules, 2011"**), it was obliged to deposit the tax for each tax period by the 21st day of the following month.

6. On scrutiny of the respondent's e-returns and payment record for the tax periods from January 2019 to February 2024, the Assistant Commissioner (Unit-01) found that in a large number of periods the tax had been deposited beyond the due date, the delay ranging in individual instances from a few days to several weeks. An advisory notice dated 22.11.2023 having elicited no payment, a show-cause notice bearing No. SRB-COM-V/Unit-01/2022-23/369154 dated 30.03.2024 was issued, annexing a CPR-wise tabulation of the due date, the date of payment, the days of delay, the tax involved, the applicable rate and the resultant surcharge, and calling upon the respondent to show cause why default surcharge of Rs. 15,550,305/- should not be recovered under section 44.

7. By letter dated 24.04.2024 the respondent's Authorised Representative replied that the company had been in a financial crunch during the periods in question, that the COVID-19 outbreak had adversely affected its business, and that its own receivables had not been realised in time. By Order-in-Original No. 877 of 2024 dated 24.04.2024 the demand was confirmed, and by Order-in-Appeal No. 416 of 2024 dated 16.10.2024 the learned Commissioner (Appeals-I) dismissed the respondent's appeal, holding that the levy under section 44 is automatic and that the emphasis on *mens rea* is irrelevant to the statutory framework.

8. In further appeal under section 61 of the Act, 2011 the learned Appellate Tribunal, Sindh Revenue Board took a different view and, by the order impugned in this reference, deleted the default surcharge, holding in substance that the default was not deliberate and that in the absence of *mens rea* the levy could not be sustained. Hence this reference at the instance of the Board.

<u>III. SUBMISSIONS AT THE BAR</u>

9. Ms. Summiya Kalwar, learned counsel, led the arguments on behalf of the applicant Board, and Messrs. Fahad Hussain, Ameer Bux Metlo and Shamshad Ahmed, learned counsel appearing in the connected references, adopted her submissions. She submitted that the language of section 44 is plain and leaves no room for the enquiry upon which the learned Appellate Tribunal embarked: the section opens with a non obstante clause, is expressed in the imperative, is triggered by the mere failure to pay *"the tax due or any part thereof"* in time and declares in terms that it operates *"whether wilfully or otherwise"*. Her principal submission was that section 44 is in *pari materia* with section 34 of the Sales Tax Act, 1990 as amended by the Finance Act, 2005, from which it was plainly borrowed, and that the construction of the latter is concluded by the order of the Hon'ble Supreme Court of Pakistan dated 05.07.2024 in *Commissioner Inland Revenue v. M/s. Byco Petroleum Pakistan Limited* (Civil Petitions Nos. 1221-K to 1257-K and 1290-K to 1299-K of 2022), by which section 34 has been declared to be a strict liability provision. She added that the Act, 2011 itself designates the avenues through which relief from default surcharge may be sought, sections 45 and 65, and that no such power resides in the adjudicating officer, the Commissioner (Appeals) or the learned Appellate Tribunal.

10. On behalf of the respondents the arguments were led by Dr. Muhammad Tariq Masood, Mr. Rehan Kiyani and Mr. Anwar Kashif Mumtaz, learned counsel, and the remaining learned counsel adopted them. Without disrespect to any of the learned counsel, and in order to avoid repetition, the submissions advanced on the respondents' side may be summarised thus. It was not disputed that section 44 employs the words *"whether wilfully or otherwise"*, that the phrase is identically worded with section 34 of the Act, 1990 as it stands after the Finance Act, 2005, or that *Byco Petroleum* declares that provision to create a strict liability. What was urged, relying on an Article published in West Virginia Law Quarterly by Edmund C. Dickinson titled *THE RYLANDS VS. FLETCHER RULE IN WEST VIRGINIA*, was that the strict liability so declared is nevertheless subject to exceptions, and that these references fall within them: **(a)** that during the COVID-19 pandemic business was paralysed by lockdowns imposed under executive orders and receivables dried up, so that payment by the due date was rendered impossible, the maxim *lex non cogit ad impossibilia* being invoked; **(b)** that in one of the references the tax was deposited within time but, by reason of an arithmetical mistake in the working, fell short of the correct figure, the shortfall being made good as soon as it was detected, and that a bona fide computational slip is not a default at all; **(c)** that where the liability was, under section 9 of the Act, 2011 read with the withholding rules, primarily that of the recipient of the services under the reverse-charge mechanism, the delay was occasioned by the recipient and not by the registered person; **(d)** that in one of the references the recipient of the services had obtained an interim order from this Court restraining payment and recovery of the sales tax component of the invoices, so that the registered person never received the tax and the period covered by that order ought to be excluded in reckoning the period of default under section 44(2); and **(e)** that the Sindh COVID-19 Emergency Relief Act, 2020 (Sindh Act No. XII of 2020), which by its section 1(3) is deemed to have taken effect on and from 1st April 2020, confers relief upon persons so circumstanced. Section 5 of that Act provides that where, by any law, rule, regulation, order, contract or otherwise, any act or proceeding is directed or required to be done or undertaken in any court or office, or any legal, regulatory, contractual or other obligation is to be performed by any person in the Province, that act, proceeding or obligation *"shall be considered as done or undertaken in due time if it is done or undertaken thirty working days after the prescribed period"*, the period to do or undertake it being deemed to be extended accordingly; and section 6 provides that the provisions of that Act *"shall have effect notwithstanding anything to the contrary contained in any laws, rules, regulations, judgments or anything otherwise for the time being in force."* The obligation to deposit sales tax by the due date being a legal obligation to be performed by a person in the province, it was urged that the due dates falling within the prescribed period stood extended by force of section 5, and that section 44 of the Act, 2011 must that extent give way.

11. Finally, and it was the submission pressed with the greatest force, reliance was placed upon the judgment of the Hon'ble Supreme Court of Pakistan in *Directorate of Intelligence and Investigation-FBR v. Taj International (Pvt.) Ltd.* (2025 PTD 1270), decided on 04.12.2024, and in particular upon the observation that *"[i]mposition of additional tax, default surcharge, penalty or fine etc. depends upon peculiar facts of each case whereas, such penal provisions are only attracted once the Revenue Authorities can establish that the default in payment of tax was willful and there was element of mens-rea on the part of tax payer, while not making payment of such amount of tax due"*, together with their Lordships' approval in that context of *D. G. Khan Cement Company Ltd. v. Federation of Pakistan* (2004 SCMR 456). It was urged that *Taj International*, being a considered judgment delivered on 04.12.2024 and therefore later in time than *Byco*, must prevail, and that proof of *mens rea* is accordingly a condition of the levy.

12. In rebuttal, learned counsel for the applicant Board made a submission upon the COVID-19 defence which is short but, in our view, telling. The respondents, she pointed out, *did pay* the principal amount of tax during the very period they now describe as one of impossibility; and if they were able to find and remit the principal sum, they were equally able to find and remit the surcharge, which is a fraction of it and which accrued upon the very same money. What the respondents are really saying, she submitted, is not that payment was impossible, but that payment was inconvenient; and inconvenience is not a defence known to a fiscal statute.

13. We have heard learned counsel for the parties at some length, examined the records of the references with their assistance, and considered the authorities cited at the Bar as well as such other authority as our own research has yielded.

IV. THE STATUTORY SCHEME

14. It is convenient to begin with the architecture of the Act, 2011, because much of the argument addressed to us proceeded as though section 44 stood alone. It does not.

15. Section 8 is the charging provision. Section 9 identifies the person upon whom the liability to pay the tax rests: by sub-section (1), where a service is taxable by virtue of section 3(1), the liability is on the person providing the service; by sub-section (2), where a service is taxable by virtue of section 3(2), the liability is on the person receiving it; and by sub-section (3), the Board is empowered by notification to specify the services or classes of services in respect of which the liability shall be on the provider, the recipient, or any other person. Section 18 provides, in the circumstances there described, for the joint and several liability of the recipient of a taxable service.

16. Section 17 fixes the time, manner and mode of payment, requiring that the tax in respect of a taxable service provided during a tax period *"shall be paid by a person by the due date prescribed for payment of tax"*. Section 17(2) provides that a taxable service shall be considered to have been provided in the tax period during which it was provided to the recipient, or an invoice was sent to the recipient, or consideration was received, whichever *is earlier*. Section 17(3) empowers the Board, by notification, to direct that tax in respect of any class of taxable services be charged, collected and paid in any other way, mode, manner or time as may be specified.

17. Section 43 deals with *"Offences and penalties"*. Serial No. 3 of the Table to that section provides that a person who fails to deposit the amount of tax due or any part thereof in the time or manner laid down under the Act or the rules shall be liable to a penalty of Rs. 10,000/- or five per cent of the total tax payable for that period. That is the penal response to late payment. It is distinct from, and additional to, the response provided by section 44.

18. Section 44, which lies at the heart of this controversy, 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.*
>
> *(2) For the purpose of calculation of default surcharge, the period of default shall be reckoned from the day following the due date prescribed for the tax period to which the default relates to the day preceding the date on which the tax due is actually paid.*
>
> *Explanation.— For the purpose of this section tax due does not include the amount of penalty."*

19. Sections 45 and 65 are the provisions by which the Act, 2011 contemplates that relief against an accrued liability to default surcharge may be obtained. Section 45 provides:

> *"45. Exemption from penalty and default surcharge.— The Board may, by a notification in the official Gazette, exempt any registered person or class of registered persons from payment of the whole or any part of the penalty and default surcharge imposed under sections 43 and 44 subject to such conditions and limitations as may be specified in such notification."*

20. Section 65 establishes the machinery of alternate dispute resolution and, by sub-section (1)(b), extends expressly to a dispute pertaining to *"the extent of waiver of default surcharge and penalty"*. Finally, section 83A, inserted by the Sindh Sales Tax on Services (Amendment) Act, 2021 (VII of 2023), provides that the provisions of the Act, 2011 *"shall have overriding effect notwithstanding anything contrary or inconsistent contained in any other law for the time being in force."*

V. THE PRINCIPLES GOVERNING THE CONSTRUCTION OF A FISCAL STATUTE

21. Before turning to the section itself it is right to recall the principles by which a Court is guided in construing a taxing statute, for they govern not only the meaning to be given to section 44 but also the treatment of the several defences pressed before us.

22. A fiscal statute is to be construed strictly and literally. There is no equity about a tax. Nothing is to be read in and nothing implied; one looks merely at what is clearly said, and if the words are clear, effect must be given to them irrespective of the consequences. The corollary is twofold, and it cuts both ways. A subject is not to be taxed unless the charging words clearly impose the levy upon him; but equally, once the levy is clearly imposed, he is not to be relieved of it upon considerations of hardship, sympathy or supposed fairness, for a Court administering a taxing statute possesses no dispensing power and cannot mitigate what the Legislature has enacted. And where relief or exemption from a fiscal burden is claimed, it must be found in express words, and he who claims it must bring himself squarely within the four corners of the provision granting it.

23. These principles are not a matter of formalism. A tax statute is an instrument of general application administered upon a very large scale, and certainty in its operation is itself a value. A construction which makes liability depend upon an enquiry into the state of mind or the financial circumstances of each of many thousands of registered persons would introduce into the administration of the Act, 2011 precisely the uncertainty which the Legislature, by the words it chose, appears to have been at pains to exclude.

VI. THE CONSTRUCTION OF SECTION 44

24. Five features of section 44, taken together, appear to us to place its character beyond argument.

25. First, the words *"whether wilfully or otherwise"*. Language of this kind is not employed by a Legislature at large. Its natural and grammatical meaning is that the mental element is immaterial: the surcharge attaches whether the failure to pay was deliberate or was *otherwise* than deliberate. To read into the section a requirement that the default be wilful is to read the words *"or otherwise"* clean out of the statute. A construction which renders express statutory words redundant is impermissible, and it is impermissible with particular force in a fiscal statute, where effect must be given to the plain language used and the Court cannot supply what the Legislature has deliberately omitted. With respect, this is the error into which the learned Appellate Tribunal fell.

26. Nor can the phrase be read ejusdem generis, so as to confine *"otherwise"* to some genus of culpability akin to wilfulness. The rule requires a genus, and a genus requires at least two enumerated species from which it may be gathered; here there is a single word, *"wilfully"*, followed by an expression of exclusion. That very construction was canvassed before, and rejected by, the Hon'ble Supreme Court in *Byco Petroleum*.

27. Secondly, the imperative *"shall"*. The registered person *"shall ... pay default surcharge"*. Applying the tests laid down by the Hon'ble Supreme Court in *The Collector of Sales Tax, Gujranwala v. Super Asia Mohammad Din and Sons* (2017 SCMR 1756), the ordinary grammatical meaning of the word, the object and purpose of the statute, the consequences of non-compliance, and the fact that the provision was cast in its present form by a deliberate amendment, the provision is mandatory. There is no residual discretion in the officer to levy or not to levy, and none in an appellate forum to remit.

28. Thirdly, the *measure* of the liability. Under section 44(1)(a) the surcharge is Inter-Bank Rate plus three per cent per annum, a rate referable to the cost of money, not to the gravity of a wrong. Under section 44(2) it runs from the day following the due date to the day preceding actual payment, a period referable to the duration of the delay, not to the degree of fault. Nothing in that formula varies with culpability. It is, upon its face, the price of the use of the exchequer's money for the period during which the registered person retained it. A provision so constructed is compensatory in character.

29. That is the distinction drawn by a Division Bench of this Court in *Commissioner of Income Tax v. National Refinery Limited* (2010 PTD 737), where it was held at paragraph 11 reproducing paragraphs-27(6) and (7) that where the excess amount payable on account of delay is fixed and automatic, requiring mere calculation, where it is not within the discretion of any authority, and where no separate proceedings or order are required, the amount so charged is in the nature of compensation for the delay and *"shall not be deemed as penalty or fine, or in the nature of penalty/fine"*. The Hon'ble Lahore High Court reached the same conclusion in *Commissioner Inland Revenue v. Saritow Spinning Mills Ltd.* (2016 PTD 786), observing that additional tax, now default surcharge, is compulsory in nature and is meant to retrieve the loss caused to the revenue on account of delayed payment of tax.

30. Fourthly, the *structure* of Chapter VIII. Section 43 provides for offences and penalties; section 44 for default surcharge. Section 44(1) says in terms that the surcharge is payable *"in addition to the tax due and any penalty under section 43"*, and the Explanation removes penalty from the base upon which surcharge is computed. The Legislature has thus kept the two entirely distinct, and the incidents of the one are not to be transposed to the other. Whatever be the requirements of section 43, a question which does not arise in these references and upon which we express no opinion, authorities decided with reference to the imposition of a penalty afford no guidance upon the construction of section 44.

31. Fifthly, and to our mind decisively, the *existence of express relieving provisions*. Section 45 empowers the Board, and the Board alone, to exempt a registered person or a class of registered persons from the whole or any part of the default surcharge, by notification in the official Gazette. Section 65(1)(b) opens the alternate dispute resolution machinery to a dispute pertaining to the extent of waiver of default surcharge. Where a statute confers a dispensing power, designates the repository of that power and prescribes the manner of its exercise, the necessary implication is that the power is not to be exercised by anybody else or in any other manner: *expressio unius est exclusio alterius*. Were an adjudicating officer, a Commissioner (Appeals) or the learned Appellate Tribunal free to relieve a defaulter of surcharge upon grounds of hardship, sections 45 and 65(1)(b) would be reduced to dead letters. That result the Legislature cannot have intended.

VII. THE BINDING AUTHORITY

32. The construction we have placed upon section 44 is not res integra. Section 34(1) of the Sales Tax Act, 1990, as amended by the Finance Act, 2005, reads, so far as material:

> *"34. Default surcharge.— (1) Notwithstanding the provisions of section 11, if a registered person does not pay the tax due or any part thereof, whether willfully or otherwise, in time or in the manner specified under this Act, rules or notification issued thereunder ... he shall, in addition to the tax due, pay default surcharge at the rate mentioned below ..."*

33. Section 44 of the Act, 2011 is, in every respect material to this controversy, a reproduction of that provision. The opening non obstante clause, the trigger (*"does not pay the tax due or any part thereof"*), the critical words (*"whether wilfully or otherwise"*), the imperative (*"shall ... pay default surcharge"*) and the benchmark rate are the same. The two provisions are in pari materia, and provisions in pari materia in cognate fiscal statutes ought to receive a consistent construction.

34. Upon our own research we have had the advantage of considering the judgment of a Division Bench of the Hon'ble Islamabad High Court in *Messrs Attock Refinery Limited v. The Collector of Sales Tax* (2021 PTD 1680) (Athar Minallah, CJ and Babar Sattar, J), in which the post-amendment section 34 was construed. It was there held:

> *"From the language of the aforementioned provision, it is patent that the legislature has not vested the learned Tribunal with any authority to create a window period for the taxpayer, to pay any tax due that has not been paid willfully or inadvertently, without attracting a default surcharge. Once the Tribunal had held that payment of tax was due it could not have carved out a period of sixty days for payment of principal amount within which no default surcharge would be payable. The application of default surcharge under section 34 of the Act is automatic and is triggered even in cases, such [as] the instant one, where nonpayment of tax due is not deliberate but inadvertent."*

35. The first sentence of that passage is directly in point. What the Tribunal had done in *Attock Refinery* was to create a window of indulgence for a taxpayer whose default was not deliberate; and that, in substance, is what the learned Appellate Tribunal has done in the references before us. The Hon'ble Islamabad High Court held that the Tribunal possessed no such power. We respectfully agree.

36. The matter has since been placed beyond controversy by the Hon'ble Supreme Court of Pakistan. In *Byco Petroleum* (order dated 05.07.2024) the very question now before us arose directly. The taxpayer relied upon *China Power Hub Generation Company (Private) Limited v. Pakistan* and *Tianshi* (2018 PTD 900), decisions upon section 205 of the Income Tax Ordinance, 2001, and pressed the ejusdem generis construction, relying also upon *D. G. Khan Cement* and *Deputy Collector Central Excise v. ICI Pakistan* (2006 SCMR 626). Their Lordships rejected that construction in terms:

> *"5. We have examined the impugned judgment and noticed that the impugned judgment has not considered the amendment brought about in Section 34 of the Act, 1990 in the year 2005 and relied on the case law which does not attend to the said amendment. Section 34 post amendment is a strict liability provision and leaves no margin for any inadvertent mistake. ..."*
>
> *"7. In view of what has been discussed above, we hold that Section 34 of the Act, 1990 regarding default surcharge is a strict liability clause and is attracted on the occurrence of default whether it be deliberate or unintentional or inadvertent. ..."*

37. Two features of *Byco* must be noticed. The first is that their Lordships held expressly that the earlier line of authority, the line which includes *D. G. Khan Cement* and the cases decided under section 205 of the Ordinance, 2001, did not attend to the amendment of 2005 and is, for that reason, no longer a safe guide upon the point. The second is that their Lordships drew a deliberate distinction between section 34 and section 33 of the Act, 1990: while declaring section 34 to be a strict liability clause, they remanded the separate question whether section 33, the penalty provision, is also to be so read. That distinction, surcharge upon the one hand, penalty upon the other, is the very distinction which the Act, 2011 draws between sections 44 and 43, and it fortifies the conclusion we have reached.

<u>VIII. TAJ INTERNATIONAL DOES NOT ASSIST THE RESPONDENTS</u>

38. We come now to the submission pressed with the greatest force: that *Taj International* (2025 PTD 1270), being later in time, displaces *Byco* and restores mens rea as a condition of default surcharge. With respect, we are unable to accept it, for four distinct reasons.

39. First, and fundamentally, the *subject-matter* of *Taj International* is different. That batch of appeals concerned the registration of FIRs, the arrest of taxpayers and the initiation of criminal prosecution under sections 37A and 37B of the Sales Tax Act, 1990 without any prior assessment of tax under section 11. The question their Lordships answered was whether criminal process may be set in motion before civil adjudication has determined the *"amount or loss of tax involved"*; and they held that it may not, because the measure of the sentence is tied to the amount of tax, because the window of compoundability under section 37A(4) presupposes a determined liability, and because Articles 4 and 10-A of the Constitution require no less. Not a word of that reasoning concerns the civil liability to default surcharge upon tax which has been assessed, admitted and paid, late.

40. Secondly, the passage relied upon must be read in its setting. Their Lordships were contrasting the *civil* character of tax liability with the *penal* character of prosecution, observing that *"primarily tax liability is a civil liability to be determined through process of Assessment or adjudication as per law, whereas, in case of willful default, miscalculation, concealment or fraud penal provisions can be invoked …"*. The sentence relied upon follows immediately upon that contrast and is directed at *"such penal provisions"*. Read in context it is an observation upon the invocation of penal machinery, made in the course of reasoning towards a conclusion upon a different question, and is therefore obiter so far as the present controversy is concerned. What binds under Article 189 of the Constitution is the principle which the decision enunciates or upon which it is based; and the principle upon which *Taj International* rests is that prosecution must follow, and not precede, assessment.

41. Thirdly, the authority cited in support of that passage is *D. G. Khan Cement* (2004 SCMR 456), a decision of the year 2004 upon the text of section 34 of the Act, 1990 as it then stood, that is to say, *before* the Finance Act, 2005 introduced the words *"whether willfully or otherwise"*. The paragraphs quoted are paragraphs 26 and 27, which deal with the pre-amendment provision. It is exactly this line of authority which the Hon'ble Supreme Court in *Byco* held to be inapplicable because it *"does not attend to the said amendment"*. A later judgment which reproduces an earlier authority upon the pre-amendment text cannot, without more, be read as overruling a judgment which expressly construed the amended text.

42. Fourthly, *Byco* is directly in point and *Taj International* is not. Where one decision of the Hon'ble Supreme Court deals directly and expressly with the very provision in question and other deals with it only collaterally and in a different context, the former governs. A judgment is an authority for what it actually decides; observations made in a different context, however widely expressed, are not to be construed as though they were the words of a statute. The Act, 2011 was not under consideration in *Taj International*; section 34 of the Act, 1990 was not there construed; and *Byco* was neither cited to nor considered by their Lordships. There is, accordingly, no conflict between the two pronouncements requiring resolution: they occupy different fields.

IX. THE EXCEPTIONS PRESSED BY THE RESPONDENTS

43. There remain the several exceptions by which the respondents sought to escape a liability the strictness of which they did not dispute. They may be dealt with shortly, for the principles set out in Part V above dispose of most of what was urged. The common vice of all of them is that each seeks to make the incidence of a fiscal levy depend upon the reason for the default; and once it is accepted that the words *"whether wilfully or otherwise"* exclude the mental element altogether, an exception founded upon the *reason* for the default is a contradiction in terms. It should be added, as a matter of general principle, that an exception to a strict statutory liability can come only from the statute. Section 44 contains no *force majeure* clause, no proviso for reasonable cause, and no saving for circumstances beyond the control of the registered person. Fiscal legislation provides such savings where the Legislature intends them; their absence from section 44 is not an omission for a Court to repair.

44. **(a) The COVID-19 pandemic.** We do not underestimate the disruption which the pandemic caused to commercial life in this Province, and we have approached the submission with sympathy. But sympathy is not a source of jurisdiction, and there is no equity about a tax. The plea fails upon construction, for the reasons just given. It fails also because the Act, 2011 itself provides the route by which pandemic relief was to be obtained, and it is not the route the respondents took: section 17(3) empowers the Board to prescribe a different time for payment, section 45 to exempt from the whole or part of the surcharge, and section 65(1)(b) to resolve a dispute as to the extent of waiver. To the extent that due dates were extended or exemption notified, no default arose and no surcharge is exigible. What the respondents seek is relief beyond what the Board granted, and that lies with the Board or with the Legislature, not with the learned Appellate Tribunal, which is a creature of the statute possessed of no equitable jurisdiction.

45. The plea fails, further, upon the facts. The maxim *lex non cogit ad impossibilia* is attracted by impossibility, not by difficulty, and the burden of establishing impossibility lies upon him who asserts it. In Reference No. 86 of 2025 the respondent asserted a financial crunch and a disruption of receivables but produced not a single document in support, no bank statement, no ageing of receivables, no correspondence. An assertion from the Bar is not evidence. Moreover, the demand there covers the tax periods from January 2019 to February 2024, a span of some sixty-two months, and the tabulation annexed to the show-cause notice discloses late payments in periods well before the pandemic began and in periods long after normal commercial activity had resumed. A defence which at its highest could explain part of a period cannot excuse a pattern of delay extending over five years. Finally, we accept the submission made in rebuttal: the respondents *did* pay the principal amount of tax during the very period said to be one of impossibility, and the submission that payment was impossible sits uneasily beside the admitted fact of payment.

46. We would add a consideration of principle which, though not developed at the Bar, seems to us of importance. Sales tax on services is an indirect tax. The registered person does not bear it; he collects it from the recipient of the service and holds it until the due date, when he is required to hand it over to the Provincial exchequer. Money so collected is not the taxpayer's working capital. When a registered person delays remittance, he is, in substance, retaining and using public money, and the surcharge under section 44 does no more than charge him for that use at a rate tied to the cost of borrowing.

47. **(b) Arithmetical error.** Section 44 is attracted where a registered person *"does not pay the tax due or any part thereof ... in time"*. The words *"or any part thereof"* are directed at precisely this situation: a payment made in time but short. To the extent of the shortfall the tax due was not paid by the due date, and surcharge runs upon that shortfall from the day following the due date until the day preceding the date upon which it was made good. That the shortfall was the product of a slip rather than of design is immaterial; an arithmetical error is the paradigm case of a default which is *"otherwise"* than wilful, and the Hon'ble Supreme Court in *Byco* has held that the provision *"leaves no margin for any inadvertent mistake"*. We would only observe that the scheme of the Act, 2011 rests upon self-assessment, so that the accuracy of the computation is the registered person's own responsibility; that the surcharge is chargeable upon the shortfall alone, and only for the period the shortfall subsisted; and that the bona fides of the taxpayer, and the promptness with which he rectified his error, are matters for the Board under section 45 or a committee under section 65.

48. **(c) Reverse charge and withholding.** This submission confuses two distinct questions: who is liable under the statute, and who was expected to pay under the parties' commercial arrangements. Only the first is relevant. Section 9 fixes the statutory incidence, and the withholding regime prescribed under the Rules, 2011 is machinery for collection at source which does not relieve the person upon whom section 9 fastens the liability. The enquiry in any given case is therefore a short one. If, upon the correct application of section 9 and of the notifications in force, the liability lay upon the recipient and not upon the registered person, then the latter was not the person who *"does not pay the tax due"* within the meaning of section 44, and no surcharge is exigible from him. If the liability lay upon him, then an arrangement with the recipient that the recipient would withhold and deposit the tax is a matter *inter partes* which cannot be set up against the Board, for a statutory liability cannot be transferred by private arrangement. His remedy for the recipient's delay lies against the recipient, the Act itself providing by section 18 for the joint and several liability of the recipient in appropriate cases.

49. **(d) Restraint by an order of Court.** An interim order operates *in personam*. An order obtained by the recipient of services, in proceedings to which the registered person was not a party, binds the parties to those proceedings; it did not restrain the registered person from performing his own obligation under section 17 to deposit the tax by the due date, and nothing in it forbade him from paying. Had he considered himself embarrassed by the order his remedy was to apply to be joined and to seek clarification or vacation, a course not adopted. Nor can the recipient's non-payment of the tax component of the invoice be converted into a defence against the Board, for the obligation under section 17 is not conditional upon realisation of the consideration:

section 17(2) fixes the tax period by reference to the earliest of provision of the service, issue of the invoice, or receipt of consideration, and the Legislature has thus expressly contemplated that tax may fall due before payment is received, placing the risk of non-realisation upon the provider. A commercial risk which the statute has deliberately allocated cannot be re-allocated by a Court. As to the plea that the period covered by the order should be excluded, section 44(2) admits of no exclusion: where the Legislature has intended that periods covered by an interim order be excluded from a computation it has said so expressly, and it has not said so here. We would add, lest the point be thought decided more widely than it has been, that the position would call for separate consideration had an order of a competent Court restrained the registered person himself from paying, or restrained the Board from recovering from him; that is not the case upon the material before us, and the question is left open.

50. **(e) The Sindh COVID-19 Emergency Relief Act, 2020.** This plea, which was pressed with ability, requires closer examination than the others, for section 5 of that Act is couched in wide terms and section 6 is a non obstante clause of considerable amplitude. Having examined the Act of 2020 as a whole, we are nevertheless satisfied that it does not relieve the respondents of the liability imposed by section 44 of the Act, 2011.

51. First, and in our view decisively, the Act of 2020 contains its own express provision dealing with provincial taxes, and it is not section 5. Section 3(2)(e) provides that during the prescribed period *"the Government may provide exemption in the provincial taxes, duties, fees, cess, levies and charges in a manner as notified by Government."* The Legislature thus applied its mind specifically to relief in respect of provincial taxes; and, having done so, it did not itself grant that relief but left it to be conferred by the Government by notification. Where a statute deals with a subject specifically in one provision, a general provision in the same statute is not to be construed so as to confer, by implication and sub silentio, the very relief which the specific provision leaves to be granted in a prescribed manner. To read section 5 as working a blanket extension of the due dates for the payment of every provincial tax would render section 3(2)(e) redundant, and redundancy is not to be attributed to the Legislature. No notification under section 3(2)(e) exempting Sindh sales tax on services, or default surcharge thereon, has been placed before us.

52. Secondly, and as already noticed, relief or exemption from a fiscal burden must be established by clear and express words. Section 5 makes no mention of tax. Read in the setting of the Act of 2020, whose preamble speaks of relief to the people of the province, and whose section 3 addresses the fees of educational institutions, the salaries of employees, water and sewerage bills and the rent of premises, section 5 is directed to the performance of acts, proceedings and obligations of that order, and to the timelines of courts and offices. It is not an exempting provision in a fiscal statute and cannot be pressed into service as one.

53. Thirdly, the plea is in any event confined in point of time. The Act of 2020 is deemed by section 1(3) to have taken effect on and from 1st April 2020, and the relief under section 5 operates by reference to the *"prescribed period"*, which section 2(i) defines as commencing on 1st April 2020 and continuing to the date which the Government, by notification in the official Gazette, declares as having come to an end. Whatever the reach of section 5, it can have no application to a default occurring before 1st April 2020; and in Reference No. 86 of 2025 the defaults extend from January 2019 to February 2024, the greater part of them falling outside any period to which the Act of 2020 could conceivably extend.

54. Fourthly, even upon the construction most favourable to the respondents, section 5 does not abolish the liability. It operates upon the time for performance, deeming the obligation to have been performed in due time if it is performed within thirty working days after the prescribed period. Its utmost effect would therefore be to postpone the due date, with the consequence that under section 44(2) of the Act, 2011 the period of default would be reckoned from the day following the postponed date. So understood, the plea goes to the computation of the surcharge and not to the existence of the liability, and it affords no warrant for the deletion of the demand which the learned Appellate Tribunal has ordered.

55. Fifthly, and by way of further answer, section 83A of the Act, 2011, inserted by the Sindh Sales Tax on Services (Amendment) Act, 2021 (VII of 2023), confers upon that Act overriding effect notwithstanding anything contrary or inconsistent contained in any other law for the time being in force. Where two statutes of the same Legislature each contain a non obstante clause, the later in time and the more specific to the subject-matter prevails; and upon both counts the Act, 2011 as amended prevails. We would add that the Act, 2011 is itself the special law upon the subject of sales tax on services, and that the repeal or abrogation of a special fiscal provision by implication is not favoured.

X. THE ANSWER TO THE QUESTION

56. For the foregoing reasons, the question framed in paragraph 2 above is answered in favour of the applicant Board and against the respondents, in the following terms. The liability to pay default surcharge under section 44 of the Sindh Sales Tax on Services Act, 2011 is a strict statutory liability of a compensatory character. It is attracted upon the occurrence of default, that is to say, upon the non-payment or short payment of the tax due by the due date, whether the default be deliberate, unintentional or inadvertent. Proof of wilfulness, or of *mens rea*, is not a condition of its imposition. Neither the officers of the Sindh Revenue Board, nor the Commissioner (Appeals), nor the learned Appellate Tribunal is vested with any power to waive, reduce or defer that liability upon grounds of hardship, equity or absence of intention; the power to grant relief resides, under the Act, 2011, in the Board under section 45 and in a committee under section 65, and, so far as the due date itself is concerned, in the Board under section 17(3). It follows that the learned Appellate Tribunal fell into error in requiring the Board to establish that the default was wilful, and its orders proceeding upon that footing cannot be sustained. In terms of section 63(5) of the Act, 2011, the orders of the learned Appellate Tribunal, Sindh Revenue Board impugned in these references shall stand modified accordingly.

57. We think it right to add, for the avoidance of doubt, that nothing in this judgment is to be read as an expression of opinion upon section 43 of the Act, 2011, which deals with offences and penalties, or upon the ingredients which must be established before a penalty under that section may be imposed. No penalty is in issue in any of these references, the question does not arise, and we leave it open, as did the Hon'ble Supreme Court in *Byco* in relation to the analogous section 33 of the Act, 1990. Our decision is confined to default surcharge under section 44.

XI. ORDER

58. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, Sindh Revenue Board, in terms of section 63(5) of the Act, 2011.

59. The reference applications stand disposed of in the above terms, with no order as to costs. Office to place copy of this order in the connected cases.

J U D G E

J U D G E

Karachi,
Dated: 21st day of August 2026

Ayaz PS.