

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. 45 of 2026

Sindh Revenue Board, Karachi VS M/s. Brainchild Communications

Pakistan (Pvt.) Limited, Karachi.

Dates of hearing: 16.09.2026 & 17.09.2026

Date of decision: 25.09.2026

Applicant: Through Mr. Shamshad Ahmed Narejo, Advocate.

Respondent: Through Mr. Abdul Qayyum Abbasi, Advocate.

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference application, preferred by the Sindh Revenue Board under section 63 of the Sindh Sales Tax on Services Act, 2011 (“the Act, 2011”), was heard along with four connected references. At the instance of the parties the connected matters have been heard and are being decided separately, and this judgment disposes of Spl. Sales Tax Reference Application No. 45 of 2026 alone.

I. THE CONTROVERSY AND THE QUESTIONS

- Chapter VIII of the Act, 2011 makes a twofold provision for default. Section 43 provides for offences and penalties; section 44 for default surcharge. Each has lately been construed by this Bench. In *Itecknologi Tracking Services*¹ this court held the liability to default surcharge under section 44 to be a strict statutory liability of a compensatory character, attracted upon the occurrence of a default “whether wilfully or otherwise”, of which proof of mens rea is no part. In *Fumicon Services*² this court held that a penalty under section 43

¹Sindh Revenue Board v. *Messrs Itecknologi Tracking Services (Private) Limited* and eleven connected references, Spl. Sales Tax Reference Application No. 86 of 2025 and others, decided on 21.08.2026.

²Sindh Revenue Board v. *Messrs Fumicon Services (Private) Limited* and three connected references, Spl. Sales Tax Reference Application No. 67 of 2019 and others, decided on 04.09.2026.

may not be imposed upon the mere occurrence of a default, the department being required to establish that the default was willful, contumacious, dishonest or otherwise attended by mens rea. Both provisions are in issue together in the present reference.

2. What gives this reference a character of its own is the state of the record upon the question of culpability. The plea that there was no mens rea was taken before the adjudicating officer and was answered by him; and the learned Commissioner (Appeals-I) thereafter examined the tabulated record of filings and payments and recorded a finding upon the respondent's intent. The learned Appellate Tribunal set aside both levies and annulled the order-in-original altogether, upon grounds which include the sufficiency of the show-cause notice, the opportunity of hearing, and the absence of a determination of the kind the law requires. Whether those grounds are borne out by the record is what this reference requires us to examine.
3. Upon admission of the reference four questions were proposed on behalf of the applicant Board. Being satisfied under section 63(3) of the Act, 2011 that questions of law arise out of the order of the learned Appellate Tribunal, and the questions proposed being in part overlapping, we consider the controversy to be comprehended within the following three questions, which we accordingly frame:
 - (i) Whether proceedings under the Act, 2011 are liable to be annulled upon the ground that a single show-cause notice covering several tax periods and invoking both section 43 and section 44 thereof is fatal to their validity; and whether, upon this record, the requirements of notice and of hearing were left unsatisfied?
 - (ii) Whether the default surcharge levied under section 44 of the Act, 2011 was rightly deleted?
 - (iii) Whether the penalties imposed under Serial Nos. 2 and 3 of the Table to section 43 of the Act, 2011 could be deleted upon the ground that no specific and

reasoned finding of mens rea had been made; and, if not, what course follows?

II. THE FACTS

4. The respondent, M/s Brainchild Communications Pakistan (Private) Limited, has been registered with the applicant Board since 18.07.2013 as a provider of the taxable services of an advertising agent. By rule 33(6) of the Sindh Sales Tax on Services Rules, 2011 ("the Rules, 2011") an advertising agent is required to deposit the tax involved upon the services provided or rendered during a tax period by the fifteenth day of the second month following that period, and to file his return within three days of that due date. Under Chapter III of the Rules, 2011 the due date for other registered persons is the fifteenth day of the month next following. An advertising agent has, in short, a further month.
5. Upon scrutiny of the respondent's profile the department found that in a large number of tax periods between August 2018 and April 2023 the tax had been deposited, and the returns filed, after the respective due dates. A show-cause notice dated 04.09.2023 was issued, proposing penalty of Rs.599,133/- under Serial No. 2 of the Table to section 43, penalty of Rs.9,523,059/- under Serial No. 3 of that Table, and default surcharge of Rs.4,407,398/- under section 44. The notice was accompanied by tables setting out, for each tax period, the due date, the date of actual filing or of actual payment, the number of days in default, the amount of tax involved, and the sum computed under each head.
6. The respondent replied on 20.09.2023 through M/s KPMG Taseer Hadi & Co. It contended, first, that the days of default had been computed without regard to circulars of the Board extending compliance dates and without regard to due dates falling upon weekends, and it annexed two reconciliations putting the actual days of default at 2,018 upon payment and 1,323 upon filing; secondly, that it intended to apply for condonation under section 81 of the Act, 2011 and that the matter be kept in abeyance meanwhile; and thirdly,

that no adverse inference should be drawn, there being no mens rea. At the hearing of 03.10.2023 two of its representatives appeared and contended that the delay arose because payment was received from clients after a long time, and that in the absence of mens rea no penalty could follow.

7. By Order-in-Original No. 5443 of 2023 dated 11.10.2023 the Deputy Commissioner accepted the contention upon the circulars and upon due dates falling on public holidays, revised the working accordingly, and imposed penalty of Rs.566,167/- under Serial No. 2 and of Rs.9,521,658/- under Serial No. 3, together with default surcharge of Rs.4,261,530/- under section 44. Each figure is lower than the figure proposed in the notice. Upon the plea of absence of mens rea the officer recorded that no plausible reason for the delay had been advanced; that an advertising agent enjoys under rule 33 of the Rules, 2011 a longer period than other service providers; that notwithstanding that additional time the record disclosed a settled practice of late deposit and late filing; and that the respondent had failed to deposit the tax and to file the returns for tax periods falling due while the show-cause proceedings were pending.
8. By Order-in-Appeal No. 368 of 2025 dated 16.10.2025 the learned Commissioner (Appeals-I) maintained the order-in-original. Upon the surcharge it was held that section 44, by the words “wilfully or otherwise”, attaches the liability whether or not the delay was deliberate. Upon the penalty the learned Commissioner examined the question under the head of intent, recording that the record of the dates upon which payments were made and returns filed had been reviewed, that over the period from August 2018 to April 2023 the respondent had consistently paid and filed after the prescribed dates, and that such continuous and habitual non-compliance reflected mala fide and had deprived the Provincial exchequer of timely revenue. A concession was added by which the penalty under Serial No. 2 would stand reduced by one half if the surcharge and the penalty under Serial No. 3 were paid within twenty days.

9. By the order impugned, dated 03.02.2026 in Appeal No. AT-170/2025, the learned Appellate Tribunal, Sindh Revenue Board allowed the appeal, held the order-in-appeal unsustainable, annulled the order-in-original, and deleted both the penalties and the default surcharge. Hence this reference at the instance of the Board.

III. THE ORDER IMPUGNED

10. The grounds upon which the learned Appellate Tribunal proceeded fall under three heads.
11. Upon procedure, it was held that the proceedings had been initiated and concluded through a single composite notice and a single composite order although the defaults alleged pertained to several tax periods and involved distinct statutory provisions; that provisions each carrying their own ingredients and consequences cannot be invoked in a blended manner; that the notice did not specify with clarity the exact statutory basis of the proceedings in relation to certain defaults; and that a defective notice cannot be cured by subsequent reasoning in the order. It was further held that the record did not demonstrate that a meaningful opportunity of hearing had been afforded.
12. Upon the penalty, it was held that penalty provisions are quasi-criminal in character, that mens rea, or at the least a finding of willful default, remains a necessary ingredient unless the statute clearly excludes it, and that the observation of the learned Commissioner (Appeals) that habitual non-compliance implies mala fide intention is a general observation which cannot substitute for a specific and reasoned finding upon the material on record. Guidance was taken from *Muhammad Muslim* and from the decision of that forum in *Honda Palace*.³
13. Upon the default surcharge, it was held that precedents rendered upon section 34 of the Sales Tax Act, 1990 ought not to be applied to section 44 of the Act, 2011 without examining the textual and

³*Muhammad Muslim v. Commissioner of Income Tax, Karachi* [42 TAX 129]; *Messrs Honda Palace v. Commissioner Inland Revenue* [(2019) 120 TAX 113 (Trib.)].

contextual differences between the two provisions; that the levy, though often characterised as one of strict liability, is not an unstructured or mechanical exercise, and must be preceded by a determination of the tax actually due, verification of the computation, ascertainment of the precise number of days of default, and account taken of any extension of due dates or intervening holidays; and that the record does not show that such a structured determination was undertaken, the orders below containing no reasoned computation demonstrating how the liability was determined, nor reflecting consideration of any factors that may have affected the due dates.

IV. SUBMISSIONS AT THE BAR

14. Mr. Shamshad Ahmed Narejo, learned counsel for the applicant Board, submitted that the question of default surcharge is covered by the judgment of this Court and no longer admits of argument; and that upon the penalty the learned Appellate Tribunal fell into error in the facts and circumstances of this case, the adjudicating officer having established mens rea, so that its deletion was not justified.
15. Mr. Abdul Qayyum Abbasi, learned counsel for the respondent, supported the order impugned. He submitted that the learned Appellate Tribunal had deleted the penalty upon an examination of the facts and circumstances of the case; that it is the final forum upon the facts; and that a view so reached is not open to interference in the reference jurisdiction of this Court.
16. In rebuttal it was submitted that the adjudicating officer and the learned Commissioner (Appeals) had each given sound reasons upon the question of culpability, and that reasons so given upon the record could not be left out of account.
17. We have heard learned counsel for the parties, examined the record of the reference with their assistance, and considered the law and the authorities cited at the Bar as well as such further authority as our own research has yielded.

V. QUESTION (i): THE SHOW-CAUSE NOTICE AND THE OPPORTUNITY OF HEARING

18. We take this question first, because the order-in-original was annulled upon it, and if the foundation of the proceedings were gone nothing would remain to be decided.
19. The proposition from which the learned Appellate Tribunal began is a sound one and we affirm it. A person proceeded against must be told, with reasonable certainty, what provision is invoked against him, for what period, and upon what basis of computation, for it is upon the notice that his opportunity to answer depends. But the requirement is one of substance. The Act, 2011 does not prescribe the form of a show-cause notice, and there is nothing in it which forbids a single notice from embracing more than one tax period, or from proposing a penalty under section 43 and a surcharge under section 44 arising out of the same course of conduct. Where the Legislature intends that a separate notice issue for each period, it says so. A composite notice is therefore not bad in itself; it is bad where, by combining what it combines, it leaves the person served unable to know the case he has to meet. The test is one of notice and of prejudice, and not of form.
20. Applied to this record, the notice dated 04.09.2023 named Serial No. 2 and Serial No. 3 of the Table to section 43 and named section 44; it stated separately the amount proposed under each of those three heads; and it carried tables setting out, period by period, the due date, the date of filing or of payment, the days in default and the sum referable to each head. What such a notice conveyed may be measured by the answer it drew. The reply of 20.09.2023 dealt with each head separately, disputed the days of default period by period, annexed two reconciliations and arrived at a revised figure of days of default under each head, and took in addition the pleas of condonation and of absence of mens rea. A notice which enables an answer of that kind is not a notice which left its recipient in doubt as to the case against him.

21. It may be added that the answer did more than meet the notice; it prevailed in part. Paragraph 5.3 of the order-in-original records the contention upon the circulars and upon public holidays as correct, and records that the working of penalty and of default surcharge was revised accordingly; and the figures which emerged are, at each of the three heads, lower than those proposed. A notice which is answered, and upon which the answer succeeds in part, has served the very purpose for which the law requires that notice be given.
22. The same considerations govern what was said upon the opportunity of hearing. The record discloses a written reply dated 20.09.2023; a hearing before the adjudicating officer on 03.10.2023, at which two representatives of the respondent's tax advisers appeared and were heard, and at whose conclusion the case was reserved; and, before the learned Commissioner (Appeals-I), hearings extending from 07.11.2023 to 15.10.2025, in the course of which, as that order records, both sides argued their respective cases in detail and the respondent's representative made submissions upon the last of those dates. Upon a record of that kind the requirement of *audi alteram partem* cannot be said to have been left unsatisfied.
23. One further matter raised in the reply should be noticed, since it bears upon what follows. The respondent stated that it intended to apply under section 81 of the Act, 2011 for condonation of the time-limits, and asked that the proposed penalty and surcharge be held in abeyance until that application was decided. Section 81 vests the power to permit an act to be done within a period other than that prescribed in the Board, and, where the Board so notifies, in a Commissioner SRB; it is not a power which the adjudicating officer exercises, and an intimation of an intention to invoke it neither suspends the running of the time already prescribed nor obliges the officer to stay his hand. The adjudication was accordingly not premature. It follows equally, and we say so for completeness, that if condonation has since been granted in respect of any tax period, the period so permitted becomes the period within which the act was to be done, and no default arises, and neither surcharge nor penalty

runs, upon the days so covered. That is a matter which may be placed before the learned Appellate Tribunal when the order conforming to this judgment comes to be passed.

24. Question (i) is accordingly answered in favour of the applicant Board.

VI. QUESTION (ii): THE DEFAULT SURCHARGE

25. Little need now be said upon this question, for it is concluded. The reservation expressed below, that authorities rendered upon section 34 of the Sales Tax Act, 1990 ought not to be transposed to section 44 of the Act, 2011 without attention to the language of the Sindh provision, is in itself a proper caution, and we would not wish to discourage it. It is, however, a caution which this Court has since had occasion to address directly. In *Itecknologi* section 44 was construed upon its own terms and not by transposition: upon the words “whether wilfully or otherwise”, which exclude the mental element and which cannot be read *ejusdem generis*; upon the imperative “shall”; upon the measure of the liability, tied to the Inter-Bank Rate and running with time, which marks it as the price of the use of the exchequer’s money rather than as a punishment; upon sub-section (2), which reckons the period of default from the day following the due date to the day preceding the date of actual payment; and upon the opening words, which detach the liability from the machinery of section 23. We held the surcharge to be a strict statutory liability of a compensatory character, attracted upon the occurrence of a default; and we held further that neither an officer of the Board, nor the Commissioner (Appeals), nor the learned Appellate Tribunal is vested with power to waive, reduce or defer it upon grounds of hardship, equity or absence of intention, relief residing with the Board under section 45 and with a committee under section 65.
26. That holding governs this case, and the deletion of the default surcharge cannot stand. Nor does the nature of the respondent’s business alter the position. Sales tax on services is an indirect tax: the advertising agent does not bear it, he collects it and holds it until the due date arrives. That the advertiser paid him late is, as held in

Itectnologi, a matter between him and the advertiser; it is not an answer to the Board, and the Act, 2011 itself provides, by section 18, for the liability of the recipient in an appropriate case.

27. We would add, since the point was pressed below and has a proper place, that the strictness of the liability does not dispense with an accurate computation. Sub-section (2) of section 44 fixes the two termini of the reckoning; and where the Board has by circular extended a compliance date, or where a due date falls upon a public holiday, no default arises for the days so covered and no surcharge runs upon them. So much is correct and is not in controversy. What the record discloses, however, is that the exercise was in fact undertaken. The tables annexed to the notice and reproduced in the order-in-original set out, for each tax period, the due date, the date of payment, the days in default and the computation; and paragraph 5.3 of that order records that the working was revised to give effect to the circulars and to due dates falling upon holidays. A finding that no such determination appears upon the record is one which the record does not bear out, and a conclusion reached without regard to material which is upon the record raises a question of law.⁴
28. Question (ii) is accordingly answered in favour of the applicant Board.

VII. QUESTION (iii): THE PENALTY

29. Upon the law which governs a penalty under section 43 there is no difference between us and the forum below. As held in *Fumicon*, a penalty under that section may not be imposed upon the mere occurrence of a default; the department must establish, upon the record of the adjudication, that the default was willful, contumacious, dishonest or otherwise attended by mens rea; the burden lies in the first instance upon the department, and only upon its discharge does the registered person bear the burden of explanation; and the officer's power is a discretion to be exercised judicially, to impose a penalty proportionate to the gravity of the offence where the default

⁴*Commissioner of Income-Tax v. Messrs Sindh Engineering (Pvt.) Limited* [2002 SCMR 527].

is culpable, and to abstain where it is not. To that we adhere. We adhere equally to what was said in the same judgment, that the number of defaults measures persistence and does not of itself establish willfulness, since defaults many in number may be born of a single continuing cause and are then, in point of culpability, one default long continued.

30. Our difficulty lies elsewhere. The penalties were deleted upon the ground that no specific and reasoned finding of mens rea had been made, the observation of the learned Commissioner (Appeals) upon habitual non-compliance being treated as a general one incapable of standing in the place of such a finding. That ground proceeds upon the footing that the question was not addressed below. Upon this record it was addressed, and at each of the two stages.
31. The plea of absence of mens rea was taken before the adjudicating officer, in the written reply of 20.09.2023 and again at the hearing of 03.10.2023, and it was met. Paragraphs 5.4 to 5.6 of the order-in-original record that no plausible reason had been advanced for the delay; that an advertising agent has, under rule 33 of the Rules, 2011, a longer period than other service providers within which to deposit the tax and to file the return; that notwithstanding that additional time the record disclosed a settled practice of late deposit and of late filing; and that the respondent had failed to deposit the tax and to file returns for tax periods falling due while the show-cause proceedings were themselves pending. The learned Commissioner (Appeals-I) then took up the matter afresh. Paragraphs 8.1 to 8.3 of the order-in-appeal record that the record of the dates of payment and of filing had been reviewed in order to examine the respondent's intent; that over the period from August 2018 to April 2023 the respondent had consistently paid and filed after the prescribed dates; and that continuous and habitual non-compliance of that kind reflected mala fide and had deprived the Provincial exchequer of timely revenue.
32. Those are findings directed to the very question which section 43 requires to be asked. Whether they are sound is another matter

altogether, and one upon which we say nothing. They may on examination be found to establish no more than persistence, which, as we have held, is not by itself willfulness; the explanation which the respondent offered, that it pays the tax over when the advertiser pays it, may be found to displace them; and the weight to be given to the extended period allowed by rule 33, and to the continuance of the default during the pendency of the proceedings, is for the forum which decides the facts. But findings so recorded fall to be dealt with before the levy which rests upon them may be set aside, and an order proceeding upon the footing that they were not made leaves the question of culpability where it found it, namely undecided. The ground upon which the penalties were deleted cannot therefore be sustained.

33. It does not follow that the penalties stand restored. Whether a particular default was willful, contumacious or attended by mens rea is quintessentially a question of fact, or at its highest an inference of fact from facts. In the jurisdiction conferred by section 63 of the Act, 2011 this Court decides the question of law arising out of the order of the learned Appellate Tribunal; that forum is the final arbiter upon the facts, and factual controversies are not amenable to adjudication in a reference.⁵ We are accordingly in no position to pronounce upon the question, and we expressly refrain from doing so. Nothing in this judgment is to be read as an opinion, one way or the other, upon whether the respondent's default was culpable.
34. The course to be followed is that which the Hon'ble Supreme Court itself observed in *Byco Petroleum*.⁶ Their Lordships decided the question of construction which arose upon section 34 of the Sales Tax Act, 1990 and, the separate question upon section 33 not having been addressed, remitted it for decision by the forum competent to decide it. So here. In terms of section 63(5) of the Act, 2011 the order of the learned Appellate Tribunal shall stand modified in conformity

⁵*Haji Ibrahim Ishaq Johri v. The Commissioner of Income Tax (West), Karachi* [1993 SCMR 287]; *Messrs Middle East Construction Company v. The Collector of Customs* [2023 SCMR 838].

⁶*Commissioner Inland Revenue v. Messrs Byco Petroleum Pakistan Limited*, Civil Petitions Nos. 1221-K to 1257-K and 1290-K to 1299-K of 2022, order dated 05.07.2024.

with this judgment, and in giving effect to it that forum will determine, upon the material already upon the record of the adjudication and in the light of *Fumicon*, whether the applicant Board has established that the respondent's default was willful, contumacious, dishonest or otherwise attended by mens rea, dealing in so doing with the findings recorded in paragraphs 5.4 to 5.6 of the order-in-original and in paragraphs 8.1 to 8.3 of the order-in-appeal and with the explanation offered by the respondent; and, if culpability be found, what penalty is proportionate to the gravity of the default so found.

35. Two matters are best placed beyond doubt. First, Serial No. 2 and Serial No. 3 of the Table to section 43 answer to different offences, the one to the failure to furnish a return within the due date and the other to the failure to deposit the amount of tax due, or any part of it, within the time or in the manner laid down; the enquiry into culpability is therefore to be made in respect of each, and a conclusion upon the one does not conclude the other. Secondly, the conditional reduction of the penalty under Serial No. 2 recorded in paragraph 9 of the order-in-appeal has not been questioned in this reference, and we express no opinion upon it.
36. A word, finally, upon the applicant Board's complaint that the learned Appellate Tribunal departed from its own earlier orders of 27.10.2025 in Appeals Nos. AT-128 and AT-129 of 2025, in which the default surcharge was maintained. Consistency in a forum's own decisions is a value of the legal order, and where a different view is taken of the same question it is ordinarily to be explained. The complaint, however, does not require a separate answer, for the question of construction upon which it arises has since been settled by this Court in *Itecknologi*, and it is by that judgment, rather than by its own earlier orders, that the learned Appellate Tribunal is now guided.

VIII. THE ANSWERS TO THE QUESTIONS

37. For the foregoing reasons the questions framed in paragraph 3 above are answered as follows.

38. Question (i) is answered in favour of the applicant Board. The Act, 2011 contains no bar to a single show-cause notice embracing several tax periods, or invoking both section 43 and section 44 in respect of the same course of conduct. Such a notice is open to objection only where its composite character leaves the person served unable to know the case he has to meet, and the objection must be made good by showing prejudice. Upon this record neither the notice nor the opportunity of hearing was wanting, and the order-in-original was not liable to be annulled upon that ground.
39. Question (ii) is answered in favour of the applicant Board. The liability to default surcharge under section 44 of the Act, 2011 is a strict statutory liability of a compensatory character which accrues upon the failure to pay the tax due by the due date, and its deletion cannot be sustained. When the order conforming to this judgment comes to be passed, the surcharge is to be computed in accordance with sub-section (2) of section 44 upon the amounts which remained unpaid and for the periods for which they remained unpaid, giving effect, as the order-in-original did, to any extension of a due date granted by a circular of the Board and to any due date falling upon a public holiday.
40. Question (iii) is answered in the negative. The penalties imposed under Serial Nos. 2 and 3 of the Table to section 43 of the Act, 2011 could not be deleted upon the ground that no specific and reasoned finding of mens rea had been made, findings directed to that question having been recorded at both stages below. The penalties cannot, however, be restored by this Court, for whether the default was culpable is a question of fact upon which this Court does not pronounce in its reference jurisdiction. That question is to be determined by the learned Appellate Tribunal in the manner set out in paragraph 34 above.
41. For the avoidance of doubt, nothing in this judgment detracts from what was held in *Itecknologi* and in *Fumicon*. The two sections occupy distinct fields. Default surcharge is a strict and compensatory liability, attracted upon the occurrence of a default, in respect of

which questions of intention are irrelevant. Penalty under section 43 is a punitive liability of which culpability is an essential ingredient. The person who deposits late answers to the exchequer in surcharge; he answers in penalty only when his default is his fault.

IX. ORDER

42. This reference application stands disposed of in the above terms, with no order as to costs. The connected references, which at the instance of the parties were heard separately, shall be decided by separate judgments.
43. 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.

J U D G E

J U D G E

Karachi,

Dated: 25th day of September 2026

Ayaz P.S.