

IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference Applications Nos. 41 and 42 of 2025

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

M/s Ajmer Electric Engineering Works (Pvt.) Ltd.

... Applicant

versus

Commissioner (Hyderabad), Sindh Revenue Board
and another

... Respondents

Date of hearing:

25.09.2026

Date of decision:

07.10.2026

Mr. Taimoor Ahmed Qureshi, Advocate for the Applicant in both References.

Mr. Shamshad Ahmed Narejo, Advocate for the Respondents (SRB).

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.: — These two References under section 63 of the Sindh Sales Tax on Services Act, 2011 (the “Act”)¹ are brought by the same taxpayer and raise the same questions. Each arises out of an order of the Appellate Tribunal, Sindh Revenue Board (the “Tribunal”) sustaining a levy of sales tax on services on the Applicant’s work of repairing, or reclaiming, damaged distribution transformers belonging to the Hyderabad Electric Supply Company (“HESCO”). In each case the levy was proposed in the show cause notice under one tariff heading of the Second Schedule to the Act and was sustained by the Tribunal under another, and the principal question is whether that change defeats the levy. In the lead case a further question arises, whether the tax could be laid on the whole value of a contract. Special Sales Tax Reference Application No. 41 of 2025 is treated as the lead case, and the facts are taken from its file.

I. FACTS OF THE CASE

2. The Applicant is a private limited company carrying on business at Hyderabad. It holds a sales tax registration with the Federal Board of Revenue, in which its principal activity is recorded as the manufacture of

¹Section 63(1) and (5) of the Act: “(1) Within sixty days of the communication of the order of the Appellate Tribunal under section 62, the aggrieved person or any officer of the SRB not below the rank of an Assistant Commissioner SRB, authorized by the Commissioner SRB may prefer an application in the prescribed form alongwith a statement of the case to the High Court, stating any question of law arising out of such order. ... (5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and deliver a judgment thereon specifying the grounds on which the judgment is based and the order of the Tribunal shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.”

electric motors, generators, transformers and electricity distribution and control apparatus. Whether it is also registered with the Sindh Revenue Board (the “Board”) is in dispute: the Board says the Applicant registered voluntarily, under tariff heading 9814.2000; the Applicant says it never did.

3. HESCO invited bids under Tender Inquiry No. 1666/22 for the repair of damaged 200 kVA distribution transformers to WAPDA Specification No. DDS-84:2007. The Applicant’s bid succeeded and, on 30.06.2022, HESCO issued it a rate contract for 425 transformers at Rs. 573,900 each, Rs. 243,907,500 in all, with sales tax at 17% added under the federal law. Under the contract HESCO hands over “repairable damaged transformers having healthy body and core” from its regional stores; the Applicant repairs them at its workshop to the Specification and returns them to HESCO’s stores within forty-five days, giving HESCO credit for the dismantled copper and bushing rods.
4. On information drawn from HESCO’s bid evaluation report, the Assistant Commissioner, Unit-34, Hyderabad issued a show cause notice dated 14.02.2023.² It described the Applicant as a person registered with the Board in the service category of “Contractor of Building” covered under tariff heading 9814.2000, took the gross tender value of Rs. 248,160,000 as the value of taxable services, and called upon the Applicant to show cause why sales tax of Rs. 28,538,400, worked out by the tax fraction at 13%, should not be assessed under section 23(1) read with section 47(1A) of the Act, with default surcharge under section 44 and penalty under serial 3 of the Table in section 43.³ No reply was filed and no one appeared. By Order-in-Original No. 4035 of 2023 dated 11.05.2023 the demand was confirmed as proposed, with a penalty of Rs. 1,426,920.

²The notice bore the date 14.02.2022, which was corrected to 14.02.2023 by a corrigendum dated 22.03.2023.

³Section 23(1) of the Act: “Where on the basis of any information acquired during an audit, inquiry, inspection or otherwise, an officer of the SRB, not below the rank of Assistant Commissioner SRB is of the opinion that a registered person has not paid the tax due on taxable services provided by him or has made short payment, the officer shall make an assessment of sales tax actually payable by that person and shall impose a penalty and charge default surcharge in accordance with sections 43 and 44.”

Section 47(1A) of the Act: “Where by reason of some collusion, abetment, deliberate attempt, mis-statement, fraud, forgery, false or fake documents, (a) any tax or charge has not been paid or is, short paid, assessed or collected, the person liable to pay such tax shall be served with a notice within eight years of such tax period, requiring him to show cause for non-payment of such tax; ...”

Section 44(1) of the Act provides that 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”, he shall, in addition to the tax due and any penalty under section 43, pay default surcharge at the rates there mentioned. Serial 3 of the Table in section 43 prescribes, where a person “fails to deposit the amount of tax due or any part thereof in the time or manner laid down”, a penalty of ten thousand rupees per month or five per cent of the total tax payable for that period, whichever is higher.

5. The Commissioner (Appeals-I) dismissed the Applicant's appeal by an order dated 02.11.2023 as barred by eight days, while recording the view that the transaction was one of services. Meanwhile the Applicant, under orders made in C.P. No. D-4238 of 2023, deposited Rs. 2,996,532 with the Nazir of this Court. The Tribunal, by the impugned order dated 25.01.2025 in Appeal No. 144 of 2023, took up the matter on merits. It held that the reclamation of the transformers was not manufacture; that both authorities below had "failed to properly classify the service category of the appellant"; and that the service "would properly fall under the tariff heading 98.20 ... and more specifically under the tariff heading 9820.3000", "Workshops for electric or electronic equipments or appliances, etc. including computer hardware". It deleted the penalty and otherwise disposed of the appeal on that footing. The Tribunal did not take up the question of limitation and the Board has not brought it before us.
6. Reference No. 42 of 2025 concerns the earlier tax periods from December 2018 to June 2020. There a show cause notice dated 22.03.2022 alleged that the Applicant had provided "services under contract/agreement covered under tariff heading 9809.0000", of the value of Rs. 59,563,879, worked out from the income tax withheld by HESCO on its payments, and proposed sales tax of Rs. 7,743,304. The Applicant replied that it was a manufacturer supplying goods, not a provider of services. By Order-in-Original No. 1171 of 2022 dated 26.05.2022 the demand was confirmed under tariff heading 9809.0000, with penalty. The Commissioner (Appeals-I) dismissed the appeal by Order-in-Appeal No. 168 of 2023 dated 23.06.2023. The Tribunal, by a separate order of the same date, 25.01.2025, in Appeal No. 94 of 2023, recorded the same findings on manufacture and classification, again placed the activity under tariff heading 9820.3000, and deleted the penalty. Six of the seven questions in the lead case are proposed in that Reference; the seventh, as to the partly performed contract, is not.

II. THE QUESTIONS PROPOSED

7. The Applicant has proposed the following questions:
 - (1) *Whether learned Tribunal erred in holding that reclamation of damaged distribution transformers was not a manufacturing process?*

- (2) *Whether learned Tribunal erred in holding the applicant as not a manufacturer or producer under sections 2(16) & 2(17) of the Sales Tax Act, 1990?*
- (3) *Whether applicant was engaged in manufacturing on toll basis for HESCO?*
- (4) *Whether learned Tribunal erred in going beyond the scope of show cause notice by recategorizing the appellant as providing or rendering services of workshops for electric or electronic equipment or appliances, etc. including computer hardware falling under tariff heading 9820.3000?*
- (5) *Whether Authorities below were justified to confirm the SST levy on entire contract price ignoring the fact that dominant portion thereof comprised supply of goods on which 17% sales tax was charged & deposited with Federal Board of Revenue?*
- (6) *Whether an assessment can be issued under the Sindh Sales Tax on Services Act, 2011 against an un-registered person?*
- (7) *Whether the Authorities below were justified to confirm SST levy on entire contract which was partly performed till the date of issuance of show cause notice?*

III. SUBMISSIONS

8. Mr. Taimoor Ahmed Qureshi, for the Applicant, submitted that the Applicant renders no service at all. It is a manufacturer, enrolled as such with the Federal Board of Revenue, and it has paid the sales tax due on the HESCO contract to the federal exchequer, in time and at 17%, a rate higher than it would have paid under the Act. Its work for HESCO, he said, is manufacture on toll basis. In answer to our queries, he stated that the transformers are repaired by the Applicant, using its own parts. He further submitted that the Applicant is not registered with the Board and so is not liable to pay tax under the Act. When the Reference was admitted he had also contended that the alleged service is not described in the Second Schedule, and that the Tribunal had placed the activity under tariff heading 9820.3000, which the show cause notice never alleged.
9. Mr. Shamshad Ahmed Narejo, for the Board, submitted that every forum below has found the Applicant to be registered with the Board. He drew our attention to the documents on record, which include the Applicant's

application for registration and its registration profile showing it as registered, voluntarily, under tariff heading 9814.2000; its denial, he said, is not *bona fide*. The Tribunal, he said, being the last forum of fact, examined the bid documents, the contract and the registration profile, and, relying upon *Pakistan WAPDA Foundation*,⁴ rightly held the activity to be a service and not toll manufacturing. He argued that where an activity falls under more than one description in the Schedule the more specific prevails, and tariff heading 9820.3000 is the more specific; that there were two show cause notices, one under tariff heading 9814.2000 and the other under 9809.0000, so the nature of the activity was in issue throughout; and that section 62(5) empowers the Tribunal to affirm, modify or annul, so that in placing the activity under its proper heading the Tribunal only modified the orders below and spared the parties a remand. On the fifth question he relied on the input tax mechanism in sections 15, 15A and 15B of the Act and rules 22 and 22A of the Sindh Sales Tax on Services Rules, 2011, and on *Cherat Cement*⁵ and a judgment of the Federal Constitutional Court dated 02.02.2026. He said that *Tufail Chemical*⁶ had been set aside by the Supreme Court by an order dated 06.06.2024, and that the reliance in *Amie Investment* and *Ori-Tech Oils*⁷ on the law of bailment was misplaced. On the sixth question he said that the Applicant, having registered voluntarily, cannot claim any benefit available to persons who were unregistered; and on the seventh, that it is a question of fact which was not raised before the Tribunal.

IV. THE SCOPE OF THE REFERENCE

10. A reference under section 63 lies on a question of law arising out of the order of the Tribunal, and the source of the question must be that order. The Tribunal is the final forum of fact. Its findings are conclusive unless there was no evidence on which it could reach them, or they are perverse or rest on surmise and conjecture;⁸ and this Court will neither determine facts for itself nor act on material that was not before the fora below.⁹ Within those limits the jurisdiction is not confined to the points argued before the Tribunal. The facts stated in the Tribunal's order are

⁴*Pakistan WAPDA Foundation v. Collector of Customs, Sales Tax, Lahore* [2023 SCMR 79].

⁵*CIR, Peshawar v. Cherat Cement Co. Ltd.* [PTCL 2025 CL 1990].

⁶*Tufail Chemical and Surfactants (Pvt.) Ltd. v. Province of Sindh* [2024 PTD 793].

⁷*Amie Investment (Pvt.) Ltd. v. Additional Collector-II* [2006 PTD 1459]; *Ori-Tech Oils (Pvt.) Ltd. v. Manager Registration* [2017 PTD 1497].

⁸*Qadbros Engineering* [2023 SCMR 939]; *Khudadad Heights* [2025 SCMR 716].

⁹*Middle East Construction Co.* [2023 SCMR 838].

taken as recorded, and any question of law that can be made out of those facts may be referred, whether or not it was urged earlier.¹⁰ The legal character of a transaction on the facts so found, such as whether a given contract is one of service or of manufacture, is a question of that kind. With that in view we take up the questions in turn.

V. WHETHER RECLAMATION IS MANUFACTURE (QUESTIONS 1 TO 3)

11. The facts on this part of the case lie in a narrow compass. Under the contract HESCO hands over its damaged distribution transformers; the Applicant dismantles them at its workshop, replaces the damaged parts, using its own materials as counsel confirmed, tests them to the WAPDA Specification, and returns the same transformers to HESCO's stores, painted "RECLAIMED", for HESCO's own use. It is paid a fixed "total repair cost" for each transformer, less a credit for the dismantled copper and bushing rods. The ownership of the transformers never passes. These are the facts the Tribunal found on the tender and the rate contract, and nothing has been shown to place them outside the record. Whether, on these facts, the Applicant manufactures goods on toll basis or renders a service of repair is a question of law.
12. Toll manufacturing and repair have one feature in common, and it is the feature on which the Applicant's argument rests: in each the goods are at all times owned by the customer, and which are held by the person in possession as a bailee, and possession of which is handed back to the customer when the work is done.¹¹ That common feature decides only that the processor makes no supply of goods; it does not decide which of the two the transaction is. The distinction lies elsewhere, in what the process does to the article, and the law has settled three tests by which it is drawn.
13. The first is the test of identity. Manufacture, under section 2(16) of the Sales Tax Act, 1990, requires that the article be converted into another distinct article, or be so changed, transformed or reshaped that it becomes capable of being put to use differently or distinctly.¹² Toll

¹⁰*Squibb Pakistan (Pvt.) Ltd.* [2017 SCMR 1006]; *Haseeb Waqas Sugar Mills Ltd.* [2026 SCMR 833].

¹¹*Ori Tech Oil* [2019 SCMR 875], paras 9 and 10: an importer of base oil had it blended into lubricants under its own brand by a vendor under a "toll blending agreement" at Rs. 7 per litre; the vendor held the material as bailee, made no taxable supply, and the importer, owning the product and the brand, was the manufacturer under section 2(17)(c). *Pakistan WAPDA Foundation (supra)*, paras 17 and 18: the reclamer of WAPDA's transformer oil held it under a bailment and was not the manufacturer.

¹²Section 2(16) of the Sales Tax Act, 1990: "manufacture" or 'produce' includes (a) any process in which an article singly or in combination with other articles, materials, components, is either converted into another distinct article or product or is so changed, transformed or reshaped that it becomes capable of being put to use differently or distinctly and includes any process incidental or ancillary to

manufacturing is that process performed on another's goods: ship plates become steel bars, base oil becomes branded lubricant.¹³ Repair is the process that leaves the article what it was and restores it to the use it always had. The Supreme Court has applied the test on each side of the line. Retreading a worn tyre is repair, not manufacture, for the owner gets back the same tyre with its life prolonged.¹⁴ Sterilising syringes is not manufacture, for "the syringes remain syringes after sterilization".¹⁵ Reclaiming used transformer oil, by removing its impurities so that it may be used as transformer oil again, is "akin to repair" and is not manufacture under the sales tax law, though it is under the excise law, whose definition expressly extends to "re-manufacture, remaking, reconditioning or repair".¹⁶ The second test follows from the statutes themselves. Both legislatures have described toll manufacturing as the "manufacture of goods belonging to another person" and as "manufacturing or processing for others on toll basis";¹⁷ each presupposes a manufacture, and a repairer who manufactures nothing cannot be a toll manufacturer. The third concerns the materials. Where the repairer supplies material of his own in the course of the repair, the material is an integral part of the repair and takes its character from it; it is not a supply of goods, and it does not turn the repair into manufacture.¹⁸ In toll manufacturing, by contrast, it is ordinarily the

the completion of a manufactured product; (b) process of printing, publishing, lithography and engraving; and (c) process and operations of assembling, mixing, cutting, diluting, bottling, packaging, repacking or preparation of goods in any other manner". Section 2(17) defines "manufacturer" or "producer" as "a person who engages, whether exclusively or not, in the production or manufacture of goods whether or not the raw material of which the goods are produced or manufactured are owned by him", and includes the persons described in its clauses (a) to (c).

¹³*Amie Investment* [2006 PTD 1459], where ship plates supplied by a principal were converted into M.S. twisted bars and returned against conversion charges, was held by this Court to involve "surely a manufacturing process", though, before clause (d) was added to section 2(33), no supply; and *Ori Tech Oil (supra)*. See also *IFFCO Pakistan* [2024 SCMR 1548], para 6, describing toll manufacturing as the outsourcing of production to a third party to whom the principal provides raw material or semi-finished products.

¹⁴*Tyrex Pakistan* [PLD 1992 SC 364], paras 5 and 7: the assessee received worn tyres from customers, repaired, re-serviced and retreaded them for repair charges; held that it "does not manufacture the goods but repair it", that "anything used again after repairs does not mean that the goods have been shaped into a new product", and that the wider excise definition, which takes in "reconditioning or repair", does not govern the sales tax.

¹⁵*Al-Technique Corporation* [PLD 2017 SC 99], affirming *Al-Technique Corporation v. Additional Collector* [2009 PTD 1702]: the respondent gamma-sterilised syringes and other medical products belonging to pharmaceutical companies against sterilisation charges; held that the products were "not converted into another distinct article or product nor ... so changed, transformed or reshaped" as to be put to a different use, so that the respondent was neither a manufacturer nor making a supply.

¹⁶*Pakistan WAPDA Foundation (supra)*, paras 15, 26 and 27.

¹⁷Section 2(33)(d) of the Sales Tax Act, 1990 includes in "supply", "in case of manufacture of goods belonging to another person, the transfer or delivery of such goods to the owner or to a person nominated by him"; section 2(46)(f) values such a supply at "the actual consideration received by the manufacturer for the value addition carried out in relation to such goods". The Second Schedule to the Act listed, under tariff heading 9830.0000, the "Service provided in the matter of manufacturing or processing for others on toll basis".

¹⁸*Tyrex Pakistan (supra)*, paras 11 and 13, approving *Zook v. Perkins* (118 Colo. 464), on the camelback, cement and cord used in retreading, and *Guntur Tobaccos* (AIR 1965 SC 1396), where

principal who supplies the raw material, and the processor who contributes the labour and the plant.¹⁹

14. Applying those tests, the Applicant's case cannot succeed. On the test of identity, a damaged 200 kVA distribution transformer belonging to HESCO comes in and the same 200 kVA distribution transformer, repaired, goes back to HESCO for the same use; no new article comes into being, and the contract itself calls the work "repair" and directs that the word "RECLAIMED" be painted on each unit. The case is the case of the retreaded tyre and the reclaimed oil, not of the ship plates or the base oil. On the statutory test there is, therefore, no manufacture of goods belonging to another, and so no manufacture on toll basis. On the test of materials, the parts the Applicant fits are consumed in restoring HESCO's transformer and are paid for within the single repair cost; the Applicant sells no goods, and HESCO acquires none except as part of its own repaired asset. If anything, the use of the repairer's own materials takes the case further from toll manufacturing, in which the principal supplies them. What the Applicant renders is a service of repair, which is what learned counsel, in answer to our queries, described it as doing, and the Tribunal so held, following *Pakistan WAPDA Foundation*. Nor do the Applicant's registration with the Federal Board of Revenue as a manufacturer, or the charge of federal sales tax under the terms of HESCO's tender, alter that conclusion: registration records the activity the taxpayer declares, and the nature of a transaction is found from its substance, not from the tax the parties chose to apply to it.
15. The first three questions are accordingly answered in the negative.

VI. THE TARIFF HEADING (QUESTION 4)

16. Under the Act a taxable service is a service listed in the Second Schedule, and the tax is charged at the rate specified against the entry under which it is listed.²⁰ The Applicant is therefore right that a service

packing material supplied by a re-dryer of the customer's tobacco was held "an integral part of the process of re-drying".

¹⁹*Ori Tech Oil and IFFCO Pakistan (supra)*.

²⁰Section 3(1) of the Act, as it stood when the show cause notice was issued: "(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." The sub-section was substituted by the Sindh Sales Tax on Services (Amendment) Act, 2021 (VII of 2023), assented on 08.03.2023; the substituted text retains the words "a service listed in the Second Schedule to this Act".

Section 8(1) of the Act: "Subject to the provisions of this Act, there shall be charged, levied and collected a tax known as sales tax on the value of a taxable service at the rate specified in the Schedule in which the taxable service is listed."

attracts the tax only if it falls within an entry of the Schedule. The question is whether the levy fails because the show cause notice described the service under one entry and the Tribunal placed it under another.

17. In the lead case the show cause notice described the Applicant as registered in the category of “Contractor of Building” under tariff heading 9814.2000. In the connected case the notice described the Applicant in the same way, but alleged services “under contract/agreement covered under tariff heading 9809.0000”, and the demand was confirmed under that heading.²¹ Before the Tribunal the Board’s written report placed the work under tariff heading 9820.3000, and the Tribunal so held. The Applicant’s own counsel described it before this Court as running an engineering workshop.
18. What a show cause notice must convey is the case the taxpayer has to meet. Here it was plain from the outset: the Board sought sales tax on the services of repairing damaged distribution transformers rendered to HESCO, on a stated value, for stated periods, at 13%. That case did not change. The Applicant’s answer to it was equally plain and equally constant: that he rendered no service at all but manufactured and supplied goods, a matter within the federal domain. He urged that answer before the assessing officer in the connected case, before the Commissioner (Appeals) and before the Tribunal, and both appellate fora decided it against him on a reading of the HESCO contract documents. He met the Board’s report invoking tariff heading 9820.3000 and argued the appeal on merits. The rate under each of the three entries was 13%; the value, the periods and the recipient were the same; and the Tribunal did not increase the tax, so that section 62(6) is not engaged. In placing the same service under its proper entry, the Tribunal exercised its power to “modify” the order under appeal.²² A

²¹The entries of the Second Schedule to the Act, as they then stood: “9809.0000 Services provided or rendered by persons engaged in contractual execution of work or furnishing supplies”; “9814.2000 Contractor of building (including water supply, gas supply and sanitary works), electrical and mechanical works (including air conditioning), multi-disciplinary works (including turn-key projects) and similar other works”; “98.20 Services provided or rendered by specialized workshops or undertakings ... 9820.3000 Workshops for electric or electronic equipments or appliances, etc., including computer hardware”.

²²Section 62(5) and (6) of the Act: “(5) In deciding the appeal, the Appellate Tribunal may, without prejudice to the powers specified in sub-section (2), make an order to (a) affirm, modify or annul the order being appealed against; or (b) remand the case to the officer of the SRB or the Commissioner (Appeals) SRB for making such inquiry or taking such action as the Tribunal may direct. (6) The Appellate Tribunal shall not increase the amount of any tax payable, penalty or default surcharge unless the taxpayer has been given a reasonable opportunity of showing cause against such increase.”

wrong or imprecise description of the entry does not defeat a levy where the power to levy exists and the charge has been understood and met.²³

19. Nor does the category in which a person is registered limit what he is liable to pay. The liability to pay the tax is on the person providing the service, and registration is required of every person providing any of the services listed in the Second Schedule.²⁴ A person registered in respect of one service who provides a service falling under another entry is liable to the tax on that service as well. The registration category is an administrative description; it is not a limit on the charge.
20. The position would be different if the change of entry altered the rate, the value or the facts on which the levy rests, so that the taxpayer had no fair opportunity to meet the case, or if the service fell under no entry at all. Neither is the case here. The Tribunal found that the work, the repair at the Applicant's workshop of electric equipment in the form of HESCO's distribution transformers, falls within tariff heading 9820.3000, "Workshops for electric or electronic equipments or appliances, etc.". That view is reasonably open on the record, and nothing has been shown to us that would place it outside it.
21. *Pakistan WAPDA Foundation* does not lead to a different result. The show cause notice there charged excise duty on the manufacture of excisable goods. To sustain a levy on excisable services under heading 9809.0000 would have been to substitute a different taxable event, and the Supreme Court declined to render a finding on a point "not put to the appellant in the Show Cause Notice".²⁵ Here the taxable event, the provision of the service of repair to HESCO, was the charge from beginning to end.
22. The fourth question is accordingly answered in the negative.

VII. THE VALUE OF THE SERVICE (QUESTION 5)

23. The value of a taxable service is the consideration in money which the provider receives from the recipient, "including all Federal and Provincial

²³See *Muhammad Swaleh v. United Grain and Fodder Agencies* [PLD 1964 SC 97], on the mention of a wrong provision where the power exists under the law.

²⁴Section 9(1) of the Act: "Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the person providing the service."

Section 24(1) of the Act: "Registration will be required for all persons who: (a) are residents; (b) provide any of the services listed in the Second Schedule from their registered office or place of business in Sindh; and (c) fulfil any other criteria or requirements which the Board may prescribe under sub-section (2)."

²⁵*Pakistan WAPDA Foundation (supra)*, para 22.

duties and taxes”.²⁶ The rate contract fixes a single “total repair cost” per transformer; the parts and materials consumed in the repair are part of the consideration for the service and not a separate supply of goods. The federal sales tax collected from HESCO forms part of the value in the very words of the section, and its payment to the federal exchequer does not discharge the tax under the Act, as the Tribunal held. Whatever relief may be open to the Applicant in respect of the federal tax lies with the federal authorities.²⁷ The fifth question is answered in the negative.

VIII. REGISTRATION (QUESTION 6)

24. The sixth question assumes that the Applicant was unregistered. The Commissioner (Appeals) and the Tribunal both found that it was a registered person, and the Applicant’s application for registration and the Board’s registration profile on the record, to which learned counsel for the Board drew our attention, show a voluntary registration applied for on 12.03.2016. That is a concurrent finding of fact, and nothing has been shown to us to displace it. The premise of the question failing, it does not arise.²⁸

IX. THE PART PERFORMANCE OF THE CONTRACT (QUESTION 7, LEAD CASE ONLY)

25. The seventh question, proposed in the lead case only, asks whether the levy could be confirmed on the entire contract when, it is said, the contract had been only partly performed by the date of the show cause notice. The question presupposes a fact, the extent to which the contract had been performed, and that fact was never put in issue in the proceedings from which the lead Reference arises. The Applicant stayed away from the adjudication despite repeated opportunities; its memorandum of appeal before the Commissioner (Appeals) raised no such ground; and the grounds before the Tribunal, as recorded in its order, were confined to manufacture and toll manufacturing, registration with the Federal Board of Revenue, natural justice and penalty. The Tribunal’s order in Appeal No. 144 of 2023 accordingly records no fact

²⁶Section 5 of the Act: “The value of a taxable service is: (a) the consideration in money including all Federal and Provincial duties and taxes, if any, which the person providing a service receives from the recipient of the service but excluding the amount of sales tax under this Act ...”.

²⁷The joint statement of the Federal Board of Revenue and the Board, placed on record by learned counsel for the Board, concerns the manufacturing or processing of goods for others on toll basis, and so does not reach the present case.

²⁸We have seen *Sindh Revenue Board v. Logon Broadband (Pvt.) Ltd.* [2026 PTD 95], on the assessment of persons who were not registered during the period in question; on the facts found it has no application here.

as to performance. What it does record, as the basis of the demand, is that the Applicant provided taxable services to HESCO of the value assessed, and that statement was not challenged before it.

26. A contention to the contrary does appear on the record, but in the connected appeal. In Appeal No. 94 of 2023 the Tribunal noted a submission that the tender of 22.03.2022 “was not acted upon by the appellant until rate contract execution dated 30.06.2022”, that “the works commenced from July 2022”, and that the Order-in-Original of 11.05.2023 in the lead case was therefore based on miscalculation.²⁹ That submission was directed at the order under appeal in the lead case. It had no bearing on the demand in the connected appeal, which rests on HESCO’s actual payments for the tax periods December 2018 to June 2020, and the Tribunal had no occasion to decide it there. No question has been proposed on it in the connected Reference, in which notice was issued on six questions only. The contention thus remains an assertion of counsel, made in a proceeding in which it did not arise and never examined in the proceeding in which it would have.
27. That notice was issued on the seventh question when the lead Reference was admitted on 18.03.2025 does not alter the position. Under section 63(3) the Court proceeds to hear a reference where it is satisfied that a question of law arises; the issuance of notice is a provisional step, and whether a question in fact arises out of the order is decided at the hearing.³⁰ Nor does the fact that the point was not argued before the Tribunal, by itself, exclude it: a question may be referred if it can be made out of the facts stated in the Tribunal’s order, whether or not it was urged.³¹ But the facts stated in the Tribunal’s order in the lead case are that services of the value assessed were provided, and the question proposed assumes the opposite. To answer it this Court would have to find a fact which no forum below was asked to find, which this jurisdiction does not permit; and a remand for that purpose, on a plea first raised here after the Applicant chose not to contest the adjudication, would be a remand to make a new case rather than to correct an error of law in the order under reference.³² The seventh question is accordingly

²⁹Order of the Tribunal dated 25.01.2025 in Appeal No. 94 of 2023, para 4(x).

³⁰Section 63(3) of the Act: “Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order referred to in sub-section (1), it may proceed to hear the case.”

³¹*Squibb Pakistan and Haseeb Waqas Sugar Mills (supra)*.

³²Section 63(1) of the Act, reproduced in footnote 1; *Qadbro Engineering and Middle East Construction Co. (supra)*.

declined. We express no view on the merits of the contention, which was not before the Tribunal.

X. THE ANSWERS TO THE QUESTIONS

28. The questions are answered as follows:

Questions 1 to 3:	In the negative.
Question 4:	In the negative.
Question 5:	In the negative.
Question 6:	Does not arise, the Applicant having been found to be a registered person.
Question 7:	(In the lead case only.) Not answered, the question not arising out of the order of the Tribunal.

XI. ORDER

29. Both References are dismissed, and the orders of the Tribunal dated 25.01.2025 in Appeal No. 144 of 2023 and Appeal No. 94 of 2023 are maintained.
30. The amount deposited by the Applicant with the Nazir of this Court in C.P. No. D-4238 of 2023 shall be dealt with in those proceedings in the light of this judgment. C.M.A. Nos. 768 and 771 of 2025 and all other pending applications stand disposed of. There shall be no order as to costs. Office shall place a signed copy of this judgment in the connected Reference.
31. A copy of this judgment under the seal of the Court shall be sent to the learned Appellate Tribunal, Sindh Revenue Board, in terms of section 63(5) of the Act.

J U D G E

J U D G E

Karachi
Dated:07.10.2026