

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Agha Faisal
Mr. Justice Dr. Shah Nawaz Memon

Spl. Sales Tax Reference Application No. 179 of 2018

Sindh Revenue Board, Karachi VS M/s. Media 5ive Holdings (Karachideals.com),
Karachi

Date of hearing: 22.10.2026

Date of decision: 22.10.2026

Applicant: Through Mr. Shamshad Ahmed Narejo, Advocate.

Respondent: Nemo.

JUDGMENT

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”), arises out of the order dated 26.03.2018 of the learned Appellate Tribunal, Sindh Revenue Board in Appeal No. AT-16/2017, by which the deletion of a penalty of Rs. 5,004,864/-, imposed upon the respondent under Serial No. 13 of the Table to section 43 of that Act¹ for repeating the offence of not furnishing true and correct returns, was maintained. Two questions arise: what Serial No. 13 requires before an offence may be said to have been repeated, and what course is to be followed where the premise upon which the deletion rests cannot be sustained and the culpability of the alleged repetition has not been determined by any forum.

I. THE CONTROVERSY AND THE QUESTIONS

- Serial No. 2 of the Table to section 43 penalises the failure to furnish a return within the due date. Serial No. 13 penalises a person who “repeats an offence” with twice the penalty provided for it. By a single Order-in-Original the respondent was visited with a penalty under Serial No. 2 for the tax periods July 2013 to October 2015 and, in addition, with a penalty under Serial No. 13 equal to twice the aggregate of the former. The learned Commissioner (Appeals) maintained the first and set aside the second, and the learned Appellate Tribunal, in the departmental appeal, maintained that decision. It is the penalty under Serial No. 13 alone that the applicant Board seeks to restore.

¹ Section 43: “43. Offences and penalties. — Whoever commits any offence described in column (1) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the penalty mentioned against that offence in column (2) thereof. The sections referred to in column (3) are meant for illustrative purposes only and the corresponding offence described in column (1) may fall and be prosecuted under other sections of this Act as well.”

3. Three questions were proposed in the reference application, upon which pre-admission notice was ordered on 12.11.2019. They read:

“A. Whether under the circumstances and on the facts of the case, the learned Appellate Tribunal-SRB was justified to uphold the order of the Commissioner (Appeals) SRB setting aside the penalty imposed under section 43(13) of the Sindh Sales Tax on Services Act, 2011 for repeating the offence of non-filing of the sales tax return?

B. Whether under the circumstances and on the facts of the case, the learned Appellate Tribunal-SRB was justified to confirm the order of Commissioner (Appeals)-SRB holding that non-filing of more than one return in a row is a continuous offence and not a repetition of the offence?

C. Whether or not the act of consecutive non-filing of returns on the part of registered person constitutes repeated offence as envisaged in serial No. 13 of the Table under section 43 of the Sindh Sales Tax on Services Act, 2011?”

Although notice was issued upon three questions, they are in substance two, the first and the second being different ways of putting the same point and the third the question of construction which underlies both. Being satisfied under section 63(3) of the Act, 2011² that questions of law arise out of the order of the learned Appellate Tribunal, and the remedy by way of reference being appellate in nature and not to be needlessly narrowed,³ we rephrase them, and answer them, as follows:

(i) Whether the learned Appellate Tribunal was justified in maintaining the deletion of the penalty under Serial No. 13 of the Table to section 43 of the Act, 2011 upon the footing that the non-filing of more than one return in a row is a continuous offence and not a repetition of the offence?

(ii) Whether, and upon what conditions, the failure of a registered person to furnish true and correct returns for successive tax periods constitutes the repetition of an offence within the meaning of Serial No. 13?

II. THE FACTS

4. The respondent, M/s. Media 5ive Holdings (SNTN S4346598-6), carries on business through the website Karachideals.com, offering discount vouchers and the deals of partner merchants together with online shopping. It

² Section 63(3): “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.”

³ *Squibb Pakistan* [2017 SCMR 1006]; reaffirmed in *Haseeb Waqas Sugar Mill* [2026 SCMR 833].

obtained voluntary registration with the applicant Board with effect from 01.12.2015 as a commission agent under tariff heading 9819.1300 of the Second Schedule to the Act, 2011. In proceedings for compulsory registration under section 24B,⁴ the Assistant Commissioner, by Order-in-Original No. 692 of 2015 dated 04.01.2016, found its activity to be “business support services” under tariff heading 9805.9200, and that category was added to its registration profile. No penalty was imposed in those proceedings, and the order was not challenged.

5. By a show-cause notice dated 18.04.2016 the respondent was called upon to show cause why, having neither paid tax nor e-filed returns for the tax periods July 2013 to March 2016, penal action should not be taken under Serial Nos. 2, 3, 13 and 15 of the Table. On 26.04.2016, during those proceedings, the respondent e-filed “null” returns for the tax periods July 2013 to October 2015; its returns for November 2015 to March 2016 had been filed in the category of commission agent.
6. By Order-in-Original No. 778 of 2016 dated 05.09.2016 the Assistant Commissioner (Unit-11) held the respondent’s services to be business support services, treated the filing of “null” returns, and the non-filing of true and correct returns, as the offence, and imposed a penalty of Rs. 2,502,432/- under Serial No. 2 for not furnishing true and correct returns for the twenty-eight tax periods July 2013 to October 2015, computed period by period according to the days of delay.⁵ No penalty was imposed for November 2015 to March 2016, the respondent being directed to revise those returns, and the penalty for non-payment of tax was left to separate proceedings under section 23. The order then imposed a further penalty of Rs. 5,004,864/- under Serial No. 13, “for repeating the offence of non-filing / not filing the true and correct returns”. That figure is exactly twice the aggregate penalty under Serial No. 2.
7. In appeal, the learned Commissioner (Appeals), by Order-in-Appeal No. 222/2016 dated 31.12.2016 in Appeal No. 276/2016, examined the respondent’s website, held its activity to fall within business support services, and recorded that the returns were “also not true and correct as the same have been filed as NUL”, adding that “the element of *mens rea/malafides* patently floats on surface”. He maintained the penalty under

⁴ Section 24B: “(1) If an officer of the SRB is satisfied that a person is required to be registered under this Act and that the person has not applied for registration, the officer of the SRB shall, after such inquiry as he may deem fit, register the person through an order to be issued in writing and such person shall be deemed to have registered from the date he became liable to registration. (2) No person may be registered compulsorily without being given an advance notice and an opportunity of being heard.”

⁵ Rs. 1,019,100/- for the twelve tax periods July 2013 to June 2014 and Rs. 1,483,332/- for the sixteen tax periods July 2014 to October 2015.

Serial No. 2. As to Serial No. 13, he observed that the non-filing of more than one return in a row is a continuous offence in its nature and not a repetition of the offence; that the only earlier proceedings against the respondent were those for compulsory registration, which concluded without penalty; that the offence under Serial No. 2 had never been established against the respondent in the past; and, in substance, that a repetition is established only where the offence has earlier been established against the person in proceedings in which he was penalised. The penalty under Serial No. 13 was accordingly set aside.⁶

8. The registered person and the department each appealed. By a common order dated 26.03.2018 in Appeal Nos. AT-06/2017 and AT-16/2017 the learned Appellate Tribunal dismissed both appeals. It held the findings of the learned Commissioner (Appeals) to be in conformity with the material on record and in consonance with the law; noted that the respondent's profile reflected "Null" returns from July 2013 to October 2015, which in its view further confirmed that the respondent had no reservation to being placed in the category of business support services; and, upon the departmental appeal, held that the learned Commissioner (Appeals) had "for valid reasons" set aside the penalty imposed under Offence No. 13. The penalty under Serial No. 2 thus stands, and is not before us.

III. SUBMISSIONS

9. Mr. Shamshad Ahmed Narejo, learned counsel for the applicant Board, submitted that even though it was found that the respondent had deliberately filed "null" returns, the learned Appellate Tribunal erred in law in deleting the penalty; that there is no finding that *mens rea* was not established; that, on the contrary, the finding is duly recorded in the Order-in-Original and the Order-in-Appeal that the respondent filed incorrect returns by filing "null" returns; and that the interest of justice demands that the matter be remanded to the learned Appellate Tribunal to decide the issue in the light of the case law developed on the penalty provisions. The statement of the case adds that the learned Appellate Tribunal, having treated the non-filing for each tax period as a separate offence for the purposes of Serial No. 2, could not treat the same defaults as a single continuing offence for the purposes of Serial No. 13.
10. None appeared on behalf of the respondent. Pre-admission notice was ordered on 12.11.2019 to be served through the first three modes, and the

⁶ The operative paragraph of the Order-in-Appeal speaks of "Offence No. 3". It is plain from the discussion immediately preceding it, and was so understood by the learned Appellate Tribunal and by the parties, that Offence No. 13 is meant.

reference application has awaited adjudication upon the docket of this Court since the year 2018. Service is held good. No useful purpose would be served by keeping the matter pending indefinitely in the expectation that the respondent may one day appear, and we have accordingly proceeded to decide it. The questions being questions of law upon a record which is complete, we have had the assistance of learned counsel for the applicant Board, and have proceeded upon the record and the law, including such authority as our own research has yielded. The absence of the respondent has counselled restraint in deciding anything beyond what the disposal of the reference requires.

IV. THE PROVISIONS

11. Section 30 of the Act, 2011 obliges every registered person to furnish a true and correct return, for each tax period, not later than the due date.⁷ The tax period is a month, and the due date is the fifteenth day of the month following it.⁸ The obligation is thus periodic: every month brings its own return and its own due date.
12. The penalty for failing to meet it is prescribed by Serial No. 2 of the Table to section 43. It is attached to the return, being incurred in respect of each return not furnished within the due date, and it is graded by the length of the delay. The entry reads:⁹

Column (1): "Where any person fails to furnish a return within the due date."

Column (2): "Such person shall be liable to a penalty of 10,000 rupees per month or a fraction thereof; provided that if a return is filed within ten days of the due date, a penalty of 300 rupees for each day of default shall be paid."

Column (3): "30".

13. Serial No. 13 of the Table, which falls to be construed, reads:

Column (1): "Where any person repeats an offence for which a penalty is provided under this Act."

⁷ Section 30(1), as it stood during the tax periods in question: "Every registered person shall furnish, not later than the due date, a true and correct return in the prescribed form to a designated bank or to any other office specified by the Board, indicating the tax due and paid during a tax period and such other information, as may be prescribed." The sub-section now requires the return to be e-filed (Sindh Sales Tax on Services (Amendment) Act, 2021, VII of 2023).

⁸ Section 2(95): "'tax period' means a period of one month or such other period as the Board may, by notification in the official Gazette, specify". Section 2(36): "'due date', in relation to the furnishing of a return or a statement or for payment of tax under the Act, means the 15th day of the month following the end of the tax period to which it relates, or such other date as the Board may, by notification in the official Gazette, specify".

⁹ Column (2) of Serial No. 2 was substituted by the Sindh Finance Act, 2014, and the word "ten" by the Sindh Finance Act, 2015 for "fifteen". As originally enacted it read: "Such person shall be liable to pay a penalty of 5,000 rupees provided that if a return is not filed within fifteen days of the due date, a penalty of 100 rupees for each day of default shall be paid."

Column (2): “Such person shall be liable to pay twice the amount of penalty provided under the Act for the said offence.”

Column (3): “General”.

V. THE ORDER IMPUGNED AND ITS PREMISE

14. Two features of the order impugned bear upon the questions. The first is that the learned Appellate Tribunal confirmed the findings of the learned Commissioner (Appeals) that the returns were not true and correct and that the element of *mens rea* was evident, describing them as in conformity with the material on record; its order does not record that culpability was wanting. The second is that the deletion of the penalty under Serial No. 13 was maintained upon the footing adopted by the learned Commissioner (Appeals): that the non-filing of more than one return in a row is a continuous offence and not a repetition, and that a repetition presupposes an offence earlier established against the person in proceedings in which he was penalised.
15. Those findings are directed to the default which Serial No. 2 penalises. Whether any later default was a repetition within Serial No. 13, and whether it was a culpable one, is a further question, and upon the premise adopted it was not reached. We turn first to the premise.

VI. SUCCESSIVE DEFAULTS ARE SEVERAL OFFENCES

16. The obligation under section 30 being periodic, the failure to furnish the return for July 2013 and the failure to furnish the return for August 2013 are distinct defaults, each complete upon the passing of its own due date and each attracting Serial No. 2 on its own account. That is how the penalty under Serial No. 2 was computed, return by return and by days of delay, and that is how it stands maintained. An offence is continuing in the strict sense where a single obligation remains unperformed and the default renews itself from day to day; that describes each return which remains unfurnished, and it is a case which Serial No. 2 itself prices by the day and by the month. It does not describe the failure to furnish a series of returns, each due on a different date. The premise that the non-filing of more than one return in a row is a single continuous offence cannot therefore be sustained as a statement of law, and the conclusion on Serial No. 13 cannot rest upon it.

VII. WHAT SERIAL No. 13 REQUIRES

17. That the defaults are several, and that each attracts Serial No. 2, does not without more make every default after the first a repetition within Serial No.

13. Serial No. 2 counts the defaults and grades each by its duration; Serial No. 13 enhances the penalty where an offence is repeated. The one is a matter of number, the other of persistence. To repeat is to do again what has been done before, and three things follow from the words of the entry. The first is that there must be an earlier offence of the same description committed by the same person, so that the first default in a series cannot be the repetition of anything. The second is that what is doubled is “the amount of penalty provided under the Act for the said offence”, that is, the penalty for the offence which is repeated, and not the aggregate of the penalties for every default in the series. Where more than one default is found to be a repetition, the entry applies to each such default, the penalty in each case being twice the penalty provided for that offence. The third is that the doubled figure is a substituted penalty and not an addition to the penalty otherwise provided for the same default: the entry doubles the sanction for the offence repeated, it does not treble it.
18. The figure of Rs. 5,004,864/- was reached by doubling the aggregate of the penalties under Serial No. 2 for all twenty-eight tax periods, the first among them. Whatever view is taken of the meaning of “repeats”, a computation of that kind does not accord with the words of the entry, and the quantum of any penalty under Serial No. 13 will have to be determined afresh, if the entry is attracted at all.
19. There lies at the centre of this reference a question which the words of the entry do not answer at a glance. If the obligation is periodic, and each month’s default a separate offence, does the succession of those defaults of itself amount to the repetition of an offence? Two constructions are reasonably open. Upon the first, a registered person who fails to furnish the return for August, having failed to furnish it for July, has by that very fact done again what he did before, so that every default after the first in an unbroken series is a repetition and twenty-eight defaults yield twenty-seven repetitions. Upon the second, something beyond succession is required, and an uninterrupted course of default is penalised by the entry which prices it rather than doubled under Serial No. 13.
20. We are satisfied that succession alone does not amount to repetition, and we say so for four reasons.
- (a) Serial No. 2 itself prices multiplicity and duration. The penalty is “10,000 rupees per month or a fraction thereof”, so that the number of months of default is already the measure of what is payable. To make that same multiplicity the occasion for doubling

under Serial No. 13 would visit the registered person twice over with a penalty for one and the same feature of his conduct.

(b) Where the Legislature of the Province intended that successive or consecutive defaults within a single course of conduct should carry a graded or enhanced penalty, it said so in terms, and in this very Table.¹⁰

(c) Column (3) against Serial No. 13 reads “General”: the entry applies to every offence for which the Act provides a penalty. Upon the first construction it would attach as a matter of course to almost every default outliving a single tax period, and the graded scheme of the Table would in practice always stand doubled. An entry of general application is not readily to be read so as to work that result.

(d) Serial No. 13 is a penal provision. Where two constructions of such a provision are reasonably open, the one under which the offence is made out and the other under which it is not, it is the latter which is to be preferred.¹¹ That is the settled approach to a provision which imposes a punishment, and it governs the entry now in question.

21. The department must accordingly show something beyond the number of defaults. What that something is admits of more than one answer: it may be enough that the person knew his conduct to be an offence when he committed the later default, or it may be necessary that the earlier offence should first have been brought home to him by an adjudication. The point was touched upon below only briefly, this Court has not had the assistance of the respondent upon it, and we do not decide it in the abstract. It falls to be determined by the learned Appellate Tribunal, with both parties before it, upon the words of the entry, its place in the Table and the approach to construction set out above.
22. Nor can the entry be read apart from the principle which governs every penalty of this class. A penalty punishes and does not compensate, and the presumption is that a mental element is an ingredient of a statutory offence unless the statute excludes it by express words or by necessary

¹⁰ Serial No. 2A, inserted by the Sindh Finance Act, 2019, prescribes “a penalty of twenty thousand rupees on first default and fifty thousand rupees for each subsequent default”, with sealing of the business premises “in case of three acts of such default”; Serial No. 2B, inserted by the same Act, provides for sealing “in case of three consecutive defaults”. Both entries post-date the tax periods in question and are referred to only as showing the manner in which the Legislature expresses such an intention.

¹¹ *Tolaram Relumal* [AIR 1954 SC 496], where, of two reasonable constructions of a penal provision, the one favourable to the subject was adopted.

implication.¹² Where the Legislature of the Province intended to exclude it, it said so in terms: default surcharge under section 44(1) attaches to non-payment “whether wilfully or otherwise”.¹³ Neither section 43 nor Serial No. 13 contains any such words.¹⁴ The department must therefore establish, upon the record of the adjudication, that the default said to be a repetition was wilful, contumacious, dishonest or otherwise attended by *mens rea*, and only upon its doing so does the burden of explanation pass to the registered person.¹⁵

23. The enhanced penalty answers to persistence, and the question peculiar to it is whether the later default was committed by a person who, knowing that his conduct was an offence, did it again. The number of defaults measures persistence; it does not of itself establish wilfulness, for defaults many in number may be born of a single continuing cause. Further, the words “shall be liable to” confer a discretion, to be exercised judicially and in a measure proportionate to the gravity of the offence, and not mechanically upon a tabulation of defaults.¹⁶
24. We do not overlook the finding recorded below that the respondent filed “null” returns which were not true and correct, and that the element of *mens rea* was evident. It is a finding of fact by the last fact-finding forum, it is not assailed by any question before us, and it bears directly upon the quality of the respondent’s conduct in relation to those returns. It was, however, recorded in sustaining the penalty under Serial No. 2. Whether, upon that finding and the rest of the record, any default was a repetition of an offence within Serial No. 13, and from which point, are matters upon which the record presents features that have not been examined. All of the “null” returns were furnished on a single day, 26.04.2016, in the course of the show-cause proceedings. The determination of 04.01.2016 that the respondent’s activity was business support services preceded that day, but followed the due date of every return in question. The only earlier proceedings against the respondent had concluded without penalty. We set out these features not to indicate how they fall to be weighed, upon which

¹² *Hardcastle Waud* [PLD 1967 SC 1] (note of Hamoodur Rahman J); *Hindustan Steel* [AIR 1970 SC 253]; *D. G. Khan Cement* [2004 SCMR 456].

¹³ Section 44(1): “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: ...”

¹⁴ *Byco Petroleum* [Civil Petitions Nos. 1221-K to 1257-K and 1290-K to 1299-K of 2022, order dated 05.07.2024], holding section 34 of the Sales Tax Act, 1990, after the insertion of the words “whether wilfully or otherwise”, to be a strict liability provision, and remitting the separate question under section 33; *New Era Fabrics* [2025 PTD 1519], para 6; *Taj International* [2025 PTD 1270].

¹⁵ Cf. *Chawala Footwear* [2025 PTD 574], para 8, applying *MCB Bank* [2021 SCMR 1325], where the burden of showing absence of default was held to arise only once the officer had crossed the threshold of objective reason.

¹⁶ *Shamroz Khan* [PLD 1978 SC 89]; *Saadat Ali Khan* [2018 SCMR 387].

we express no opinion, but because they show that the question of repetition was never reached. What they mean for that question is for the learned Appellate Tribunal to determine.

25. Whether a particular default was wilful, 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 this Court decides the question of law arising out of the order of the Tribunal; the Tribunal is the last fact-finding forum, and its findings of fact are not open to re-examination here unless a question of the recognised kind is distinctly raised.¹⁷ No such question has been proposed. We are accordingly in no position to pronounce upon whether any default of the respondent was a culpable repetition, and nothing in this judgment is an expression of opinion upon it, one way or the other.
26. Nothing in this judgment touches the penalty under Serial No. 2, which was maintained by the learned Appellate Tribunal and is not before us.

VIII. THE ANSWERS AND THE COURSE TO BE FOLLOWED

27. Question (i) is answered in the negative. The failure to furnish the return for each tax period is a separate offence, and the learned Appellate Tribunal was not justified in maintaining the deletion of the penalty under Serial No. 13 upon the footing that the non-filing of more than one return in a row is a single continuous offence. To that extent the answer is in favour of the applicant Board, and the question whether the respondent repeated an offence within the entry stands open for decision.
28. Question (ii) is answered as follows. Failures to furnish returns for successive tax periods do not, by their number alone, constitute the repetition of an offence within Serial No. 13; the department must show something beyond the number of defaults, and the entry, being penal, is to be construed in favour of the subject where two readings are open. What more is required, and whether it is made out upon this record, falls to be determined by the learned Appellate Tribunal in the light of what is said above. The first default in a series is not a repetition; the entry applies to each default found to be a repetition, the penalty in each case being twice the penalty provided for that offence and not an addition to it, and a single penalty computed as twice the aggregate of the penalties for every default in the series is not sanctioned by the entry; and, the penalty being punitive, it may be imposed only where the department establishes that the repetition

¹⁷ *Johri* [1993 SCMR 287]; *Qadbros Engineering* [2023 SCMR 939]; *Abdul Karim* [2025 SCMR 969]. As to the recognised exceptions, *Sindh Engineering* [2002 SCMR 527].

was wilful, contumacious, dishonest or otherwise attended by *mens rea*. Whether, and from which default, the respondent repeated the offence, and whether that repetition was culpable, are questions for the learned Appellate Tribunal as the last fact-finding forum.

29. The ground upon which the penalty under Serial No. 13 was deleted cannot be sustained as it stands. Nor has the question upon which the fate of the penalty depends been deliberated upon at any stage: whether the respondent repeated an offence within the entry and, if he did, whether that repetition was wilful, contumacious, dishonest or otherwise attended by *mens rea*. The finding of *mens rea* recorded below was directed to the default which Serial No. 2 penalises, and it was in sustaining that penalty that it was made. The course to be followed is therefore to modify the order of the learned Appellate Tribunal in terms of section 63(5) of the Act, 2011¹⁸ and to remit that question for its decision, as the Hon'ble Supreme Court did, upon a like footing, in *Byco Petroleum*.¹⁹ The order of the learned Appellate Tribunal dated 26.03.2018 in Appeal No. AT-16/2017 shall accordingly stand modified; and that appeal shall stand restored to the extent of the penalty under Serial No. 13 and shall be decided afresh by the learned Appellate Tribunal, after affording the parties an opportunity of being heard, in the light of this judgment.

IX. ORDER

30. The reference application is answered and disposed of in the above terms, with no order as to costs.
31. 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.

JUDGE

JUDGE

Karachi,

Dated: 22nd day of October 2026

Ayaz PS.

¹⁸ Section 63(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."

¹⁹ *Byco Petroleum*, cited above, where the separate question arising under section 33 of the Sales Tax Act, 1990 was remitted for decision.