

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Spl. STRA 1247 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection
- 2. For hearing of main case

28.11.2025

Mr. Ameer Nausherwan Adil, advocate for the applicant  
Mr. Muhammad Ramzan Awan, advocate for respondent

Per learned counsel for the applicant the impugned judgment is rendered without any independent appreciation of facts / evidence and / or any independent reasoning having been assigned. Learned counsel states that the judgment has been rendered in a perfunctory manner and the same is not befitting the last fact-finding forum in the statutory hierarchy.

Learned counsel for the respondent controverts the assertions as above and states that impugned judgment is in fact well-reasoned. It is considered illustrative to reproduce the operative constituent herein below:

"9. We have heard learned Representatives for both the sides and perused the available record. It is settled law that whenever a challenge is made to the jurisdiction of any authority then the court must first determine this question before adjudging upon merits of the case. The Hon'able Supreme Court in the judgment cited as 1987 SCMR 1840 categorically held that the impugned order based on an allegation not mentioned in the Show Cause Notice is palpably illegal and void. The action based on the grounds not mentioned in the Show Cause Notice have been discussed and decided in the following judgment of the ATIR:-

- i. From bare perusal of the above extract, an inference can easily be drawn that if an order has been passed on the ground other than the grounds confronted to the taxpayer by way of issuance of show-cause notice has no legal sanctity. Since, the issue under consideration already stands resolved by Apex court of Pakistan and the learned first appellate authority has rightly held the order-in-original to be illegal and void and set-aside the same by following the ratio settled therein. In view of the foregoing, the learned DR has not been able to make out a case for our interference in the order-in-appeal and the same is upheld, I order accordingly". 2011 PTD (Trib.) 2124.
- ii. I find that the charge of non-filer against invoices of Messrs D.S. International (Pvt.) Ltd., was levelled in the impugned show-cause notice however, impugned adjudication order provides for rejection of refund on the charge of abnormal tax profile hence; rejection of refund is beyond scope, stance and contents of impugned show-cause notice. No such charge as adjudged in impugned adjudication order was primarily levelled in show-cause notice which renders it null and void in eye of law. It is trite law that a charge which was not framed in show-cause notice cannot be adjudged through an adjudication order. I am also fortified in my views on the basis of settled law by the Hon'ble Supreme Court of Pakistan in case of Collector Central Excise and Land Customs v. Rahim Din reported as (1987 SCMR 1840) wherein it was laid down; "The order of adjudication being ultimately passed on a ground which was not mentioned in the show-cause notice was palpably illegal and void on the face of it; relying thereon, the Division Bench of the appellate Tribunal (Bench-II), Lahore has also

vacated a case of Messrs Aftab Industries Oil Mills, KehrorPacca v. The Collector Sales Tax Multan reported as (GST 2002 CL 210) on same cause of action. This verdict of Hon'ble Supreme Court of Pakistan has also been followed by a Division Bench of the Hon'ble Sindh High Court, Karachi in case of Messrs Excide Pakistan v. the Deputy Collector reported as (2004 PTD 1449). The dictum laid down by the Customs, Excise and Sales Tax Appellate Tribunal (Bench-III), Karachi in case of Messrs B.P. Industries, Karachi v. the Additional Collector of Customs, Sales Tax and Central Excise (Adjudication) and another reported as 2008 PTD (Trib.) 36 is also attracted in circumstances of the instant case that; "One cannot go beyond the allegations mentioned in the show-cause notice "2010 PTD (Trib.) 451.

- iii. Taxpayer contended that it was primarily confronted with the allegation of "invoice summary not submitted" in the show-cause notice whereas orders of adjudicating authority as well as First Appellate Authority provide rejection of refund on the charge of "scrutiny for verification of input tax" which was not only illegal but also beyond the scope, stance and contents of show-cause notice. The order was held to be not maintainable by the Tribunal. Raza Apparels, Faisalabad vs. CIR, RTO, Faisalabad 2014 PTD (Trib.) 600.
- iv. Taxpayer contended that case was decided on the facts which were not confronted through show-cause notice and order of Assessing Officer was beyond the show-cause notice and was not maintainable; that show cause notices were issued on the basis of income tax record which was not permissible under the law; that order had been passed for July, 2008 to June, 2009 and July, 2009 to June, 2010 whereas in the show cause notices tax years 2009 and 2010 were confronted; that liability had been determined on the ground that taxpayer had not enjoyed exemption on account of capacity purchase price; and that if the contention of the department was accepted then it would be a case of misconstruction/error falling under S.36(2) of the Sales Tax Act, 1990 which had not been invoked and order was not maintainable in the eye of law which was liable to be cancelled-Revenue contended that input tax had rightly been disallowed and exemption claimed on account of capacity purchase price had rightly been disallowed as registered person could not substantiate his claim---Validity---Contentions made by the taxpayer were forceful---Orders-in-original were passed beyond the show-cause notice and beyond the pecuniary jurisdiction which were without Jurisdiction and were set aside by the Appellate Tribunal. ) 1001.
- v. The show cause notice alleged as having supplied pre-casting goods but later on the Department changed their stance and alleged that the appellant supplied girders, beams and building wall columns Adjudicating authority went beyond the scope of the show cause notice as much cut if they did not restrict to the specific allegation stated In the show cause notice rather took a new stand which was not incorporated in show cause notice which is not lawful. Gujrat Pre-casting industries, Gujrat vs. CIR (Zone-II) RTO, Sialkot 2013 PTD (Trib.) 1796

10. We have observed that the Hon'able Lahore High Court in case cited as 2013 PTD 1536 observed as under: -

Quote

Show-cause Notice, is a foundational document, which is to comprehensively describe the case made out against the taxpayer by making reference to the evidence collected in support of the same. It is the narration of acts in the show-cause notice along with the supporting evidence which determines the offence attracted in a particular case. Show-cause notice is not a casual correspondence or a tool or license to commence a roving inquiry into the affair of the taxpayer based on assumptions and speculations but is a fundamental documents that carries definitive legal and factual position of the Department against the taxpayer." 2013 PTD 1536 [LHC] Valid show cause notice

Un-quote

11. The issue of valid Show Cause Notice, default in Show Cause Notice and non-mentioning of sub-section of section 11 were also deliberated and decided by the ATIR in the following judgment:

- i) Show-cause notice is a foundational document, which is to comprehensively describe the case made out against the

taxpayer by making reference to the evidence collected in support of the same. It is the narration of acts in the show-cause notice along with the supporting evidence which determines the offence attracted in a particular case. The show-cause notice is not a casual correspondence or a tool or license to commence a roving inquiry into the affair of the taxpayer based on assumptions and speculations but is a fundamental document that carries definitive legal and factual position of the revenue against the taxpayer. Indeed, in this case, the revenue grossly erred by proportionately working out the alleged defaults on the basis of averaging. Considering the legal position on the proposition, we have no hesitation to conclude that no lawful life could be given to such a show-cause notice which violates all norms of justice and fair play. The revenue, could not be allowed to take refuge under technical defense taken by the learned counsel for the department. Faisalabad Electric Company vs. CIR 2014 PTD (Trib.) 1629

- ii) The revenue, in this case, undoubtedly discharge the initial burden to spell out chargeability of transactions with reference to 7 out of 12 tax periods. The stand of the revenue that such working should have been provided by the taxpayer as the adjudication officer had no material on the subject on record is self-destructive. The said admission evidently proves that the show-cause notice was nothing but a casual correspondence and a roving enquiry which is prohibited by law as held in the judgment cited as 2013 PTD 1536 (Lahore High Court). The adjudication officer also failed to specify transactions for determination of chargeability of such transactions as charge under section 3 of the Act is with reference to transactions covered under it and not on guess estimates and averages. The Adjudication Officer, clearly, resorted to guess work and inferences instead of evidence, which is not sustainable under the law. Faisalabad Electric Company vs. CIR 2014 PTD (Trib.) 1629
- iii) The original assessment order also suffers from certain infirmities as the correct subsection of section 11 of the Sales Tax Act has not been mentioned in the show-cause notice as section 11 of the Act has seven subsections and each subsection deals with different situation, hence it is required that correct subsection is to be mentioned in the show-cause notice as well as in the assessment order but contrary to it, the original adjudicating authority has not done so, therefore, it is directed that re-assessment be framed and the correct subsection be positively reflected in the assessment order. 2014 PTD (Trib.) 1717.

12. The AR relied on judgment of the ATIR in which the Hon'able Tribunal observed as under: -

- i) When the auditors had dropped the allegation in the Reconciliation Report and the First Appellate Authority had also accepted the same, the remand [u/s 458(3)] not being sustainable was set aside by the Appellate Tribunal. WAPDA vs CIR, LTU 2011 PTD (Trib.) 808
- ii) We have observed that the learned CIR(A) has annulled the Order-in-Original after observing that since "no contravention/audit report was issued to the registered person, which was the basic requirement of the law. The impugned show cause notices are thus, Coram non judice and without lawful authority, hence, the superstructure built on the same should fall flat" but on the other hand gave direction for thrashing out the matter properly after examining the record which is quite contrary to the provision of Section 458(3) of the Sales Tax Act, 1990. The learned CIR (A) was not justified in remanding the case and his action is violative of subsection (3) of Section 45B of the Sales Tax Act, 1990 particularly when he has annulled the orders of the adjudicating authority after holding the impugned show cause notices as coram non judice and without lawful authority. In this view of the matter the orders of both the authorities above are vacated meaning thereby the appeals preferred by the registered persons are allowed. Since the appeals are allowed purely on legal ground the other contentions raised in the memorandum of appeals need not be dilated upon. Servo Moto Oil (Pvt.) Ltd. Multan vs CIR Special Zone, RTO, Multan 2017 PTD (Trib.) 373

iii) The learned CIR(A) has illegally remanded the case back to the assessing authority which is against the decisions of this Tribunal cited at bar by the learned AR as he ceases to have such power under section 45B of the Act. Reliance in this regard is placed on the reported decisions of this Tribunal cited as 2017 PTD 373 and 2015 PTD 931. *Islam Soap Industries (Pvt.) Ltd. Sialkot vs. CIR, Zone-IV, LTU, Lahore* 2020 PTD (Trib.) 614

13. We have observed that matter adjudicated in the ONO were not confronted in Show Cause Notice, therefore following the bindings judgment cited above the impugned order in original and Appellate order were without jurisdiction, which are hereby annulled. The appeal filed by the Appellant is allowed.

It is observed that the entire purported discussion is nothing more than reproduction leading to a five lines paragraph No.13, which is a conclusion.

The Appellate Tribunal is the last fact-finding forum in the statutory hierarchy; therefore, it is incumbent upon it to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed has been emphasized by the Supreme Court in the judgment reported as 2019 SCMR 1626. This High Court has consistently maintained that the Appellate Tribunal is required to proffer independent reasons and findings, and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on the judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgments have also maintained that if the impugned order is discrepant in the manner as aforesaid, the correct course is to remand the matter for adjudication afresh. Reliance is placed on the judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned judgment could not be considered to be a speaking order and is *prima facie* devoid of any independent reasoning etc. The entire judgment comprises essentially of reproduction and is crowned with a dissonant conclusion. Hence, no case is set forth to sustain the impugned judgment, which is hereby *set aside* and the matter is remanded back to the Appellate Tribunal for adjudication afresh in accordance with law.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 47 subsection 5 of Sales Tax Act, 1990.

Judge

Judge

Amjad