

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SpI. STRA No. 163 of 2024

Date	Order with Signature of Judge
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Fresh case

1. For order on CMA No.3717/2024 (exemption)
2. For hearing of Main Case

27.01.2026

Mr. Muhammad Immad Qamar, advocate for applicant

This matter has been pending since 2024 without any progress, even notice has not been issued. Operative part of the impugned Appellate Order reads as follows:-

“Perusal of the record reveals that the office found that the registered person claimed adjusted input tax at Rs.3,588,807/- on the strength of fake/flying invoices. Hence, the said claimed input tax was inadmissible being in violation of Section 7,8(1)(ca), 8(1) (eaa), 8(1)(d), 8A, 73 read with Section 2(37) and 21(3) of the Sales Tax Act, 1990 and Rule 12 of the Sales Tax Rules, 2006 by claiming such inadmissible input tax which ultimately reduced the output tax liability. Therefore, the said inadmissible input tax was recoverable along with default surcharge under section 34 and penalty Rs.3,588,807/- imposed under section 33(Sr.No.13) of the Sales Tax Act, 1990. Consequently, the officer issued show cause notice to the appellant. The registered person submitted written reply, which was found unsatisfactory, hence, the officer passed the impugned order for recovery of sales tax amount under section 11(2) of the Sales Tax Act, 1990 along with default surcharge u/s 34 and penalty u/s 33(Sr. No.13) ibid.

03. During the hearing, at the very outset the learned counsel of the appellant vehemently agitated that all compliances were made accordingly, but the officer failed to consider. The suppliers were operative and active at the time of transactions. The AR produced before me evidence of receipts through banking channel along with their respective receipts in the bank account of the appellant. AR of the appellant further argued that this view has already been decided by learned Appellant Tribunal Inland Revenue, Faisalabad in the case law reported as 2023 PTD 552 (Trib.).

The learned counsel of the appellant/AR contended that the supplier was active on FBR portal and having genuine transfer of goods and the appellant has made 100% payment the supplier through cross cheques, the learned counsel of the appellant produced before me evidence of receipts through banking channel along with their respective receipts in the bank account of the appellant. In this regard, AR of the appellant argued that this view has already been decided by the Honourable Supreme Court of Pakistan in the case law reported Civil Petition No.682 of 2017, (The Petitioner, Commissioner of Inland Revenue, Zone-II, Faisalabad versus M/s. Sky Pak Enterprises, Faisalabad. The honorable Supreme Court has upheld the decision of High Court in favor of the taxpayer by holding that the transactions executed before the date of suspension blacklisting are not inadmissible for the purpose of input adjustment and refund claim, hence, the allegation is baseless. Moreover, the matter has already been decided by Honorable Supreme Court of Pakistan in the case law reported as 2001 SCMR 1161, wherein it was held that:

"if blacklisting or suspension of registration of a supplier was effected subsequent to a period in which purchases and bank payments were transacted, supplier could not be made a tool to deprive the buyer of a valuable right accrued in his favor prior to such blacklisting or suspension of registration of any supplier due to subsequent default whatever on his part - Executive orders or notification, which conferred rights and were beneficial, would be given retrospective effect, and those which adversely affect or invade upon vested right, could not be applied with retrospective effect Taxpayer, could not be deprived from his valuable right through retrospective application of S.21 of the Sales Tax Act, 1990.

Furthermore, the AR cited the reference of case of Elahi Cotton Mills Ltd v/s Federation reported as PLD 1997 SC 582 decided by the Supreme Court of Pakistan, wherein was held that:

"past and closed transaction cannot be reopened especially when the beneficiary has no role in the legalities committed by the other party.

In view of the direction issued by the Honorable Supreme Court of Pakistan, which is law of land, accordingly, the sales tax demand created in the impugned order is not tenable and is hereby deleted. As for the levy of penalty provisions is concerned, it is well settled by superior courts that penalty cannot be imposed unless mens-rea (deliberate guilty act) is established. As no mens-rea has been established, the penal action under the circumstances is also not tenable under the law and is accordingly deleted.

The appeal is disposed off as indicated above."

Prima facie, the findings of learned Commissioner are rested on appreciation of evidence and learned counsel is unable to distinguish or displace the same and no question of law arising herefrom has been articulated. Hence this reference application is dismissed in *limine*.

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

Judge

Judge

Ashraf