

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Sales Tax Reference Application No.144 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE

Fresh case

1. For order on CMA No.3341/2024
2. For hearing of main case
3. For order on CMA No.3342/2024

19.05.2026

Mr. Shamshad Ahmed, Advocate for the applicant

This reference has been pending since 2024 without any progress and even notice has not been sought till date. Diary demonstrates that since inception no efforts have been made by the applicant to ever have the matter listed or heard. The operative part of the impugned judgment reads as follows:

"5. After hearing arguments of both the side, following are the points for determination before this Tribunal;

1. Whether appellant's compulsory registration under section 24 of the Act, 2011 on account of carrying on economic activity of rendering taxable services provided under Tariff Heading 9842.0000 Le. "Cosmetic and Plastic Surgery" is justified?
- 2 Whether imposition of subject penalty is justified?
3. What should the judgment be?

POINT NO.1 & 2:

6. Per is providing learned counsel, appellant consultation services of skin disease and she never carried out any economic activity under Tariff Heading 9842.0000 from the place of her business nor did she advertize any sort of Cosmetic and Plastic Surgery Service anywhere. On the contrary, per Assistant Commissioner (Unit-13) appellant advertized services of Cosmetic and Plastic Surgery on Facebook, therefore, they have been registered compulsorily in terms of section 24B of the Act, 2011.

7. Before proceeding further, reproduce herein below the I feel necessary to definition of "taxable service" provided in section 3 of the Act, 2011 which reads as under;

3. Taxable Service.-(1) A taxable service is a service listed in the Second Schedule to this Act, which is provided by a person from his office or place of business in Sindh in the course of an economic activity, including the commencement or termination of the activity.

Explanation.--This sub-section deals with services provided by registered persons, regardless of whether those services are provided to resident persons or non-resident persons.

(2) A service that is not provided by a registered person shall be treated as a taxable service if the service is listed in the Second Schedule to this Act and is provided to a resident person in the course of an economic activity:--

- (a) ****
- (b)****

Explanation--This sub-section deals with services provided by non-resident persons to resident persons whether or not the said resident person is an end consumer of such services.

(3) For the purposes of sub-section (2), where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons.

(4) The Board may, by notification in the official Gazette, prescribe rules for determining the conditions under which a particular service or class of services will be considered to have been provided by a person from his registered office or place of business in Sindh.

(underlining is emphasized)

8. Bare reading of above provision shows that a service, listed in the Second Schedule of the Act, 2011, can only be treated as taxable service in case same has been provided from its office or place of business, in course of an economic activity. Per Department, the appellant is engaged in economic activity of Cosmetic and Plastic Surgery, which is described under section 2(29A) of the Act, 2011 which reads as under;

(29A) "cosmetic and plastic surgery" includes the services provided or rendered by any person, in relation to aesthetic or cosmetic surgery or plastic surgery like abdominoplasty (tummy tuck), blepharoplasty (eyelid surgery), mammoplasty, buttock augmentation and lift, rhinoplasty (reshaping of nose), otoplasty (ear surgery), rhytidectomy (face lift), liposuction (removal of fat from the body), brow lift, cheek augmentation, facial implants, lip augmentation, forehead lift, cosmetic dental surgery, orthodontics, aesthetic dentistry, laser skin surfacing, hair grafting, hair transplant and such other similar surgery.

9. It is settled principle of law that who alleged 9. something must prove the same through reliable, confidence inspiring and trustworthy evidence, Initiation proceedings of on advertisement without assessing officer engagement in economic the basis proof does of not Facebook the from proving appellant's slinged rendering taxable activity of services under Tariff Heading 9842.0000 i.e. "Cosmetic arid Plastic Surgery".

10. To this Tribunal's query, the Assistant Commissioner (Unit-13) candidly conceded that the services mentioned in section 2 (29A) above can only be provided through specific machines/instruments. The Assistant Commissioner (Unit-13) admitted that she proceeded against appellant on the basis Facebook brochure, which is not even presently available on Facebook. To further query, the Assistant Commissioner (Unit-13) further admitted that she never visited the Clinic to check whether specific

machines/instruments necessary to provide services of Cosmetic and Plastic Surgery were available there or not.

11. In view of the above discussion, I am of the considered view that there exists nothing on record to establish appellant's engagement in economic activity of rendering taxable services under Tariff Heading 9842.0000 i.e. "Cosmetic and Plastic Surgery". In such circumstances, appellant's compulsory registration under section 24 of the Act, 2011 under Tariff Heading 9842.0000 so also imposition of subject penalty is not justified, hence, these points de answered in negative.

POINT NO.2:

12. In view of the above discussion, instant appeal is hereby allowed. Resultantly, the findings of Assistant Commissioner (Unit-13) vide "the Original Order" dated 16.06.2023 and upheld by the Commissioner (Appeals-IV) in Appeal No.350/2023 vide "the first Appellate Order" dated 02.02.2024 stand set-aside. Let the copy of this order be provided to the learned representatives of the parties."

The findings of the learned Tribunal appear to be rested on appreciation of evidence of which no *de novo* adjudication is merited in reference jurisdiction. The questions proposed seek re-adjudication of evidential matters, however, the learned counsel remains unable to demonstrate as to how the same could be entertained in reference jurisdiction. Since no question of law has been articulated before us, therefore, 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 Appellate Tribunal, as required per section 47 subsection 5 of Sales Tax Act, 1990.

Judge

Judge

Asif