

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Sales Tax Reference App. No.89 of 2011

Date

Order with Signature(s) of Judge(s)

For hearing of Main Case.

13.01.2025

Mr. Munawar Ali Memon, Advocate for the Applicant.

Mr. Jawad Qureshi, Advocate for the Respondent.

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Through this Special Sales Tax Reference Application, applicant has impugned order dated 24.02.2010 passed in Appeal No. ST No.26/KB/2009 (Order-in-Original No.82/2004) by the Appellate Tribunal Inland Revenue (Pakistan) Karachi proposing various questions; however, vide order dated 04.09.2012 notice was ordered on following two questions of law:

1. Whether the learned Appellate Tribunal Inland Revenue was justified in setting aside order under Section 36 merely on the ground that the show cause notice did not mention sub-section (3) of section 36 of the Sales Tax Act, 1990, despite the fact that the contents of the notice clearly indicate towards deliberate act of the taxpayer, which falls within the ambit of the sub section (2)?
2. Whether the learned Appellate Tribunal Inland Revenue was justified in relying on the Order of the Honourable Lahore High Court reported as PTCL 2003 CL 3621 despite the fact that grounds for show cause notice were available and only sub section (2) of Section 36 of the Sales Tax Act, 1990 was missed due to human error?
2. At the very outset Applicant's counsel has referred to Judgment reported as **2007 PTD 1804** (*Collector of Sales Tax and Central Excise Lahore vs. Zamindara Paper and Board Mills & Others*) and submits that the questions already stand answered and matter be remanded to the Appellate Tribunal to decide the issue on merits.
3. On the other hand, respondent's counsel opposes this argument and submits that the said Judgment of the Hon'ble Supreme Court in the case of *Zamindara (supra)* is not applicable as different facts are involved, hence, no exception can be drawn to the order of the Tribunal.

4. Heard and perused the record. From the perusal of the findings recorded by the Tribunal, it reflects that the Appeal was allowed merely on the ground that no sub-section of section 36 of the Sales Tax Act, 1990, was mentioned in the show cause notice; hence, the same was invalid and illegal. However, as reflected from the case of Zamindara (Supra), in identical facts, wherein learned Lahore High Court¹ had allowed the Appeal of a taxpayer on this very ground that since the Show-cause notice did not show at all the applicable law or relevant rule/sub-rules or reasons, therefore the Adjudicating Authority in absence of particular reasons in show-cause notice had no jurisdiction to imply applicability of sub-rules (2) & (3) of R. 10 of the Central Excise Rules 1944, to the case, and therefore, the show cause notice was illegal; but the Hon'ble Supreme Court in the case cited above by the Applicant's counsel, has been pleased to disapprove the same. The relevant findings of the Hon'ble Supreme Court read as under:

4. We have heard learned counsel for both the sides and have gone through the contents of the show-cause notices carefully. In our considered opinion the substantial compliance has been made by making reference of the rules to identify the period of time during which tax has been allegedly evaded. Therefore, merely for the reason that sub-rules 2 and 3 of Rule 10 of the Central Excise Rules, 1944 have not been mentioned, it would have not been proper to declare the notice illegal. In this view of the matter, the judgment of the High Court is not sustainable. It is to be noted that instead of taking into consideration technicalities, the Court looks into the matter with different angles namely as to whether substantial compliance has been made or if any of the sub-rule has been omitted then what prejudice is likely to cause to the party to whom the show-cause notice is given. But in the instant case, we are of the opinion that no prejudice shall be caused to the respondents because the substantial compliance of the relevant rules has been made. Therefore, under the circumstances, the judgment which has been relied upon by the learned counsel is of no help to him.

5 Thus for the forgoing reasons, petition is converted into appeal and allowed, the impugned judgment is set aside and the case is sent back to the Collector Sales Tax and Central Excise Lahore for the purpose of decision of the case expeditiously as for as possible but not more than a period of six weeks. The parties are directed to appear before the Collector on 17-7-2006. The respondents however shall be free to raise all legal and factual pleas in support of their case. The parties shall bear their own costs.

5. In our considered, view the judgment of the Hon'ble Supreme Court as above is fully attracted in present facts and circumstances of this case; whereas, the Hon'ble Supreme Court has already

¹ See 2003 PTD 1257

decided this legal issue; that mere non-mentioning of a sub-section of a provision of law in the show cause notice, would not render the very notice as illegal and therefore, the proposed questions are answered in negative; in favour of the Applicant and against the Respondent. Consequently, thereof, this Reference Application is allowed. The Impugned Order stands set aside, and the matter is remanded to the Appellate Tribunal to decide the issue afresh in accordance with law including *merits* of the case after affording opportunity of hearing to the respective parties. Office to send a copy of this order to the Appellate Tribunal in terms of Section 47(5) of the Sales Tax Act, 1990.

JUDGE

JUDGE

Aamir/P.S