

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Special Sales Tax Reference Application No.95 of 2024**

Date

Order with signature of Judge

**Hearing/ Priority Case**

- 1) For orders on office objection No.01
- 2) For hearing of main case
- 3) For hearing of CMA No.1929 of 2024 [Stay Application]

**18.03.2025**

M/s. Abdul Rahim Lakhani & Atta Muhammad Qureshi,  
Advocates for Applicant

Mr. Ameer Baksh Metlo, Advocate for Respondent

Through this Reference Application, the Applicant has impugned Order dated 29.03.2024 passed by the Commissioner Inland Revenue (Appeals-V), Karachi, under Section 45B of the Sales Tax Act, 1990, proposing the following Questions of law:-

- i) Whether on the facts and in the circumstances of the case, the learned Commissioner Inland Revenue (Appeals-V) was justified in levying sales tax based on holding of stock instead of supply under section 3 of the Sales Tax Act, 1990?
- ii) Whether on the facts and in the circumstances of the case, the learned Commissioner Inland Revenue (Appeals-V) has erred in confirming the levy of sales tax, without establishing supply has been made, which is a mandatory requirement of section 3 of the Sales Tax Act, 1990?

2. Heard learned Counsel for the Parties and perused the record. It appears that a Show Cause Notice was issued on 01.12.2023 to the Applicant alleging that for the tax period ending October 2023, the Applicant had declared huge / abnormal input of sales tax which was being carried forward and this leads to a presumption that goods have been sold physically; but the due sales tax has not been paid. The said Show Cause Notice was adjudicated by the assessing officer merely on the ground that no physical verification could be conducted due to non-cooperation of the Applicant and thereafter the Appeal has also been dismissed by the Commissioner (Appeals) by affirming the said observation of the Assessing Officer.

3. Record reflects that the matter pertains to October, 2023, whereas, the effort was made to carry out physical verification in December, 2023 and January, 2024, whereas, without any final determination as to the sales of the goods in question or scrutiny of subsequent returns of November and December, 2023, both forums below have passed the order merely on presumption that the goods may have been sold. If the Applicant was non-cooperative as alleged, then recourse to coercive measures would have been the appropriate way to substantiate the allegations and not on mere presumption that goods have been sold without payment of sales tax due. At least the returns for November and December 2023 were available while passing the Order in Original, but no effort was made to examine the same as to the allegations leveled in the show cause notice.

4. In terms of Section 3 of the Act, sales tax is leviable only on sales / supply of goods, and not on any stock being carried forward and on presumption as well. Though learned Counsel for Respondent has requested that matter be remanded to the Department; however, the conduct of the Department and the orders passed thereon does not warrant any interference so as to remand the matter, whereas, even otherwise, the issue relates to physical verification of the stock of October, 2023, which exercise presently is an impossibility; hence, a remand order would serve no useful purpose.

4. In view of above, both Questions are answered in favour of Applicant and against the Respondent; and as a consequence thereof, the orders passed by the forums below stand set-aside. This Reference Application is **allowed**. Let a copy of this order be sent to the Commissioner (Appeals) Inland Revenue, Karachi in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990.

**ACTING CHIEF JUSTICE**

**JUDGE**

**Qurban/PA\***