

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Sales Tax Reference Application No.145 of 2024

Date Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman,**

Hearing of case [Priority]

- 1) For orders on office objection No.14, 15 & 27
- 2) For hearing of main case
- 3) For hearing of CMA No.3351 of 2024 [Stay Application]

24.03.2025

Mr. Ovais Ali Shah, Advocate for Applicant
Mr. Munawar Ali Memon, Advocate for Respondent

Muhammad Junaid Ghaffar, ACJ.- Through this Reference Application, the Applicant has impugned Order dated 07.09.2024 passed in STA No.644/KB/2024 by the Appellate Tribunal Inland Revenue (Division Bench-I) Karachi, proposing the following Questions of law:-

1. Whether the appeal of the Applicant was within time in view of Section 46 of the Sales Tax Act and whether the learned ATIR erred by dismissing the same on the issue of limitation?
2. Whether limitation is a mixed question of law and facts and the learned ATIR erred by deciding the same without calling for any reply / comments or documentation from the department and summarily rejecting the stance of the Applicant?
3. Whether the learned ATIR erred by upholding the ex-parte assessment order which was passed without providing an opportunity of hearing to the applicant and whether reliance on judgment in Special Sales Tax Reference Application No.102 of 2024 dated 06.08.2024 was misplaced?
4. Whether the ATIR erred by attributing fault to the Applicant when nothing had come on record to show that any notice of hearing had been served upon the Applicant or even the Order was served upon the applicant and the department had not even filed by comments or reply alleging the same nor produced any documents?

2. At the very outset, learned Counsel for the Applicant submits that if Questions No.1 & 2 are answered in favor of the Applicant, the matter can be remanded to the Tribunal for deciding of the case on merits. Such request is opposed by the Respondents Counsel.

3. Heard and perused the record. It appears that as per Tribunal's finding, the Appeal filed before the Tribunal was time barred by 415 days, as the order passed by the Deputy Commissioner was dated 15.06.2023, whereas the Applicant had failed to file any condonation application. It is the case of the Applicant that no such order was ever received, and it is only a demand notice which they received and then they got knowledge of the order of the Deputy Commissioner and immediately filed Appeal. According to the learned Counsel for the Applicant, the Appeal has to be filed from the date of receiving of the order and not from the date of order itself; hence, the Tribunal has erred in law and facts while dismissing the Appeal. When confronted, Department's Counsel submits that the Tribunal has dealt the issue of limitation in Paragraph-5, as the Applicant had not filed any condonation application; however, since the Applicant's case is that the order was not served and the Appeal was filed immediately upon receiving the demand notice without any condonation application, therefore, the Department ought to have placed on record before the Tribunal, the date of dispatch of the order and the acknowledgment as required under the Act as well as the Rules. There is nothing on record to rebut the contention of the Applicant that no order was received.

4. Moreover, in this case it is the second round of proceedings as earlier the matter was remanded to the Officer concerned, therefore, even otherwise, the matter ought to have been decided on merits instead of non-suiting the Applicant on

limitation. Therefore, the proposed Questions No.1 & 2 are answered by holding that the Appeal of the Applicant may be treated as pending before the Tribunal, which shall be decided on merits of the case after affording opportunity of hearing to all concerned. The order of the Tribunal stands set-aside and this Reference Application is **allowed** in the above terms. Let a copy of this order be sent to the Appellate Tribunal Inland Revenue, Karachi Bench in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*