IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Appeal No.06 of 2017
(Ali Shan v. the State)

Special Criminal Appeal No.23 of 2017
(The Director v. Ali Shan and 2 others)

Mr. Abdul Moiz Jafferi, advocate for the appellant in Appeal No.6 of 2017 and for respondent No.1 in Appeal No.23 of 2017

Mr. Khalid Javed Rana, Deputy Attorney General

Mr. Ghulam Asghar Pathan, Special Prosecutor Customs

Date of hearing: 12.05.2026

Date of Judgment: 12.08.2026

JUDGMENT

<u>Omar Sial, J.</u> These connected appeals under section 37-I of the Sales Tax Act, 1990 ("STA") have been preferred from a common judgement dated 28.2.2017 passed by the Special Judge (Customs and Taxation) Karachi in Case No. 148/2015. The case emanated from FIR No. 02/2015-16 dated 11.11.2015 lodged by the Directorate of Intelligence & Investigation (Inland Revenue), Karachi under sections 33(11) and (13) of the STA for the commission of tax fraud.

2. Both, the appellant in Special Criminal Appeal No.6/2017 i.e. Ali Shan and the Respondent in Special Criminal Appeal No. 23/2017 namely Faraz Haroon were charged with the offence under section 33(11) and (13) of the STA via Order dated 20.08.2016. The accusation against Ali Shan was that, (i) he had claimed bogus sales tax refunds against dubious purchases and exports and (ii) for the period from July to September 2015 he had made imports worth Rs. 240.00 million of textile related goods but did not declare them in his monthly sales tax returns and failed to justify heavy stock of such goods. Whereas, Faraz Haroon was alleged to have acted in connivance with Ali Shan and been the master mind behind the

entire tax fraud thereby causing the exchequer a loss of Rs. 64.058 million.

3. The prosecution led the trial with a total of six witnesses namely; (i) Syed Bilal Mehmood; the complainant/Deputy Director I & I, (ii) Saeed Imam; Assistant Director Audit, (iii) M. Yusuf Ali Tahir; the landlord of the premises from which Tanveer Arshad operated, (iv) Asif Sakhi; Clearing Forward Agent, (v) Ahmed; manager of the exchange company, (vi) M. Azam Nafees; IO. The consequential witnesses for the case were PW-1 and PW-6. Both made a number of admissions in their cross examination that casts serious doubts on the veracity of their versions and the lack of due diligence accorded by them to the investigation.

4. PW-1, the complainant of the FIR namely Syed Bilal Mehmood Deputy Director Inland Revenue during his cross examination made the following admissions *"I have no knowledge that the file was sent for post refund audit or not under rule 36 of the Sales Tax Refund Rules…relevant invoices were not verified from the Crest System under Rule 29 of the Sales Tax Refund Rules. I have not cross verified the GDs filed along with refund claim from the PRAL system. I have not cross verified the BCA (Bank Credit Advice) from the concerned banks. I have not verified the E-Form from concern Banks. It is correct to suggest that there was no discrepancy shown in the invoices. It is correct to suggest that the status of the suppliers who issued the sales tax invoice was not verified. It is correct to suggest that the proof of payment was not verified from the concerned bank or the bank statement of the registered person…It is correct to suggest that person whose annual turnover is less than Rs. 50 lacs is not required to be registered under the Sales Tax Act 1990…I have no knowledge…whether registered person is not required to have manufacturing facility being a commercial exporter under the law…"*

5. Whereas, the Investigation Officer, namely M. Azam Nafees (PW-6) made the following consequential admissions, *"It is correct to*

suggest that I have not verified sales tax invoices from CREST as the same was not under the domain of the IO. It is correct to suggest that there is mechanism of verification of sales tax invoices from suppliers. I have not filed the statement of supplier with the challan. I have not crossed verified the GDs from PRAL. Voluntarily says that the GD/exports have not been challenged or questioned during investigation. It is correct to suggest that the examination report endorsed on GDs verified the description and quantity of the goods exported. Voluntarily says that no examination report was seen during scrutiny of GDs. It is correct to suggest that I have not verified the MR number of the consignments exported from WeBOC systems from the customs. It is correct to suggest that I have not verified the relevant bill of lading from the concerned shipping company nor I verified the container number from the concerned container company…It is correct to suggest that I have not verified the BCA refund claim from the concerned bank. Voluntarily says that the export proceeds were verified from bank statements of the accused Ali Shan firm. It is correct to suggest that foreign exchange was repatriated. It is correct to suggest that I have not verified Form E on which the foreign exchange was repatriated.…"

6. The appellant in his section 342 CrPC statement has relied on the validity of the documentation in the following terms, *"It is incorrect that I have filed the sales tax refund legally along with requisite documents which have been duly verified by the CREST System by the processing officer and sanctioning officer. The GDs were also verified from the PRAL system and after due verification of the payment of tax made through banking instruments the claim was found admissible and accordingly was sanctioned as per the procedure provided under the Sales Tax Refund Rules. The refund pertaining to the period of July to September 2015 has still not been sanctioned and the refund claim for this period is still pending."*

7. As apparent from the cross examination reproduced above, the investigation appears to have left a lot wanting in terms of the verifications required to determine whether the sales tax invoices were bogus or not. In the absence of these reports that could have proved fatal for the genuineness of the sales tax invoices involved, the accused(s) are entitled to the benefit of the presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 which provides that, in the absence of *"evidence which could be and is not produced" the Court may infer that the said evidence "if produced" would be "unfavourable to the person who withholds it."* Reliance is placed in the case of Umer Draz & another v. the State & others (2026 SCMR 1185). That in the absence of the said material, in accord with the best evidence rule, the prosecution has failed to establish its case beyond a reasonable doubt.

8. That apart from the evidence led there are a number of legal infirmities present in the Impugned Order. Firstly, the Impugned Order is a non-speaking Order and merely reproduces at length the examination in chief and cross-examination of PW(s) without any discussion on the merits of the case and the learned Judge's reasoning for having reached the conclusion that he does. That on this ground alone, it is liable to be set aside. Reliance is placed in the case of Ashiq Hussain & others v. The State & 2 others (2003 SCMR 698), which provides that, *"It is a cardinal principle of law that judgement must be speaking one, so its reader may understand with clarity, the reasons for which conviction or sentences have been maintained."*

9. More fundamentally, no discussion of the scheme of the STA is found in the Impugned Judgement. As per the scheme of the STA (as it then was) and which more recently stood confirmed in the case of Directorate of Intelligence and Investigation v. Taj International (Pvt) Limited (PLD 2025 SC 633); before the initiation of a criminal trial, a determination of a due tax liability is a *sine qua non*. In fact, the fine

to be levied for the commission of the offences that the accused(s) have been charged with, there has to be a determination of the tax liability for the fine to be computed accordingly under section 33, STA.

10. That even at the time of the commission of the alleged offences and prior to the passing of the Impugned Judgement, the Lahore High Court in the oft-cited case of Taj International, 2014 PTD 1807 had already expounded upon the scheme of the STA in no unclear terms. *"Collective reading of sections 11, 25(5), 33, 37 and 72B of the Act (STA) indicates that the criminal under the Act is principally to effectuate recovery or is being largely used to effectuate recovery. Two clear pointers are: dependence of fine on the "amount or loss of tax involved" and the window of compoundability available to the tax payer who can pay the "amount of tax due along with such default surcharge and penalty as determined under the provisions of this Act. If the purpose was simple retribution and deterrence, there was no need to load the fine with the amount or loss of tax involved. However, if the fine under criminal prosecution is to be loaded with the amount or loss of tax, such a criminal construct must be prefaced with the mandatory requirement of assessment of tax through civil adjudication provided under section 11 of the Act. (STA) This precondition is the minimum constitutional requirement to ensure fair trial and due process under Article 4 and 10-A of the Constitution."* This was more recently upheld in the case reported as PLD 2025 SC 633.

11. In view of the non-speaking Order, the infirmities in the investigation, admissions by the prosecution witnesses and the lack of any tax determination under section 11, STA pre-dating the FIR, I allow the appeal (i) 6/2017 and dismiss (i) 23/2017.

JUDGE