

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl. STRA 06 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

1. For orders on CMA No.638/2026
2. For orders on office objection
3. For orders on CMA No.87/2026
4. For hearing of main case

12.05.2026

Mr. Imtiaz Ali Solangi, advocate
Mr. Muhammad Masood Ahmed Gorski, Additional Commissioner IR, LTO

This matter remains in the docket and the diary demonstrates that no effort has ever been taken by the applicant to ever have it listed or heard. On the last date, learned counsel for the applicant had intimated the court that there was absolutely no revenue loss in the instant case and any issue of the price being stickered and / or printed had been in fact remedied by the taxpayer. Under such circumstances learned counsel was asked as to how the present reference was merited. He remained unable to demonstrate any infirmity in the impugned order, however, sought time to obtain instructions.

Today Mr. Muhammad Masood Ahmed Gorski, Additional Commissioner IR, LTO Karachi, appeared, of his own volition, to argue the brief instead. He did not controvert the aforesaid, however, confined his challenge to his assertion that the penalty ought to have been imposed/sustained. Respectfully, his contention could not be sustained in *mutatis mutandis* application of the binding Division Bench judgment of this Court in the case of New Era Fabrics reported as 2025 PTD 1519.

The impugned order observes as follows:

- “15. As appears from bare perusal of the judgments referred above, section 33, is not a charging or revenue-generating provision. Its purpose is ensuring compliance with the Act. If no short levy of tax has occurred, imposing the maximum penalty is not justified. The conduct of the taxpayer must be examined to determine the gravity of default. Penalty must have a direct nexus with the seriousness of the offence. Unlike Section 182 of the Income Tax Ordinance, 2001, Section 33 does not clarify that mens rea is irrelevant. Therefore, intent/conduct remains relevant for imposition of penalty. Whereas on the contrary Section 34 was amended by adding "willful or otherwise," making it a strict liability provision. The Hon'ble Supreme Court in *Byco* (Civil Petition No. 1221-K to 1257-K of 2022 & others) held that Section 34 applies irrespective of intention. However, no such amendment has been made to Section 33, hence its application remains distinct.
16. We may also observe that the officer, in order to justify the imposition of penalty imposed vide impugned order, has also placed reliance on the certain judgments of the Hon'ble superior courts, including judgment passed by Hon'ble Supreme Court in the case of *BYCO* (Commissioner Inland Revenue v *Byco Petroleum Pakistan Ltd* - CP No.122-K of

2022), from bare perusal it is evident that all these judgments are on the issue of recovery of surcharge, for which no mens rea is required to be established, and hence all these judgments are not applicable or related to the law and facts subject matter of captioned appeal

17. Therefore, in our considered opinion, it was under the circumstances, a question of interpretation and apparently not a deliberate ploy to circumvent/defy the statutory compliance; and hence without the element of mens-rea on part of taxpayer, especially when under this count there is not even a single allegation either for loss of revenue/tax fraud against the Appellant during this entire period stretching about 5 years, the penalty imposed upon the Appellant amounting to Rs.1,884,122,853/- is extremely harsh and cannot be confirmed. In view thereof, for reasons as recorded supra the order passed under hierarchy is set aside.”

No effort was made by the applicant to distinguish or displace the findings and it was never their argument that the conclusion could not be rested thereupon. Since no question of law has been articulated for consideration before this court, therefore, this reference application is dismissed in *limine*.

The Supreme Court has taken judicial notice of the fact that the fiscal docket in the superior courts has been clogged with unmerited litigation, including that precipitated / perpetuated at the behest of Revenue. The Supreme Court considers such conduct as that of a *habitual litigant* in the recent Supreme Court judgment in the case of *Umar Tariq Khan*¹ especially paragraphs 8, 9 and 10 thereof. It is apparent that precipitation and / or perpetuation of unmerited litigation has been unequivocally disapproved by the superior courts and the cited judgment meticulously reiterates the same. *Prima facie* the present matter appear to fall within the ambit of such proscription. Perpetuating such matters clogs the docket of the Courts and the consequence thereof is eventually borne by revenue. The learned officer graciously appeared to insist upon the department’s stance, however, the outcome was as particularized supra. We consider the department is in itself best placed to determine how to deal with such matters, therefore, let a copy of this order be sent to the learned Attorney General for Pakistan, the Secretary Revenue Division and the Chairman, FBR, at Islamabad, for appropriate measures.

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

Amjad

¹ Per *Miangul Hassan Aurangzeb J* in *ACIR Rawalpindi vs. Umar Tariq Khan* (CPLA 1990 of 2025); judgment dated 15.01.2026.