

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Spl. Sales Tax Reference Application No. 135 of 2025

Sindh Revenue Board, Karachi versus M/s. The Coca-Cola Export Corporation,
Lahore

Spl. Sales Tax Reference Application No. 136 of 2025

Sindh Revenue Board, Karachi versus M/s. The Coca-Cola Export Corporation,
Lahore

Spl. Sales Tax Reference Application No. 137 of 2025

Sindh Revenue Board, Karachi versus M/s. The Coca-Cola Export Corporation,
Lahore

Spl. Sales Tax Reference Application No. 138 of 2025

Sindh Revenue Board, Karachi versus M/s. The Coca-Cola Export Corporation,
Lahore

Date of hearing: 14.09.2026

Date of decision: 17.09.2026

Applicant: Through Mr. Fahad Hussain Areejo, Advocate.

Respondent: Through Mr. Adeel Wahid, Advocate.

J U D G M E N T

DR. SHAH NAWAZ MEMON, J.: — These four connected reference applications, preferred by the Sindh Revenue Board under section 63 of the Sindh Sales Tax on Services Act, 2011 (“the Act, 2011”), arise out of one and the same order of the Appellate Tribunal, Sindh Revenue Board, and raise identical questions of law. We propose to decide them by this common judgment.

I. THE CONTROVERSY AND THE QUESTION

1. The controversy lies within a narrow compass. The respondent, M/s. The Coca-Cola Export Corporation, is a corporation incorporated in the United States of America which operates in Pakistan through a single registered branch office situated at 27-Q, College Road, Gulberg-II, Lahore, in the Province of the Punjab. It is engaged in the manufacture and sale of beverage bases, syrups and

- concentrates, which it sells to a designated bottler, M/s. Coca-Cola Beverages Pakistan Limited, a company incorporated under the laws of Pakistan. That bottler, which has a plant and sales offices in Sindh, is a distinct juristic person with its own board of directors, its own management and its own books.
2. During the tax periods with which we are concerned, the respondent received advertisement services, and certain other taxable services, from service providers registered with the applicant Board in Sindh. Those service providers charged Sindh sales tax on their invoices. The respondent deducted the amounts so charged from the payments made to them and deposited those amounts with the Punjab Revenue Authority, with which it stood registered, and not with the applicant Board.
 3. The case of the applicant Board is that the respondent was a withholding agent within the meaning of the Sindh Sales Tax Special Procedure (Withholding) Rules, 2014 (“the Withholding Rules, 2014”); that it had accordingly withheld Sindh sales tax which it was bound to deposit in the Sindh Government’s head of account No. B-02384; and that, having failed to do so, the amount is recoverable from it under section 47(1B) read with section 16 of the Act, 2011,¹ together with default surcharge and penalty. The answer of the respondent, taken at the first opportunity and maintained ever since, is that it is neither a resident of Sindh nor has a place of business in Sindh, and that in the absence of one or the other of those attributes it could not, upon the Rules as they then stood, be treated as a withholding agent at all.

II. THE PROCEEDINGS BEFORE THE FORA BELOW

4. For the tax periods July 2019 to June 2020, a show-cause notice dated 13.02.2023 was issued by the Deputy Commissioner (Unit-24), Sindh Revenue Board. It was alleged that against taxable services of a total value of Rs.568,358,934/- the SRB-registered service providers had charged Sindh sales tax of Rs.73,876,554/-, of which the respondent had deducted Rs.72,298,951/- while making payment and had failed to deposit the same. By Order-in-Original No. 3890/2023 dated 27.04.2023 the charge was confirmed and a demand of Rs.75,913,899/- was created, comprising the principal amount of Rs.72,298,951/-, default surcharge under section 44 of the Act, 2011, and penalty of Rs.3,614,948/- under serial No. 3 of the Table to section 43. Orders

¹ Section 47(1B) of the Act, 2011: “[1B) Where any person, required to withhold tax under provision of this Act or rules made thereunder, fails to withhold the tax or fails to deposit the withheld or deducted amount of the tax in the prescribed manner, an officer of the SRB shall determine the amount in default and order its recovery in the prescribed manner.]” Inserted by the Sindh Finance Act, 2016 (XXIV of 2016).

in like terms were passed for the remaining tax periods, which, taken together, range from July 2011 to December 2022.

5. In appeal, the Commissioner (Appeals-II), Sindh Revenue Board, recorded a finding which has governed this case ever since. At paragraph 5.1.2 of Order-in-Appeal No. 94 of 2024, dated 12.02.2024, she held:

“Now, as regards the question whether the appellant is a resident of Sindh or has a place of business in Sindh, the answer is negative for the reasons that: (i) the appellant’s registered office is not located in Sindh; (ii) the appellant has no place of business whether whole or part thereof in Sindh; (iii) no evidence as to the designation of a permanent representative by the appellant to act on its behalf or to provide service on its behalf in Sindh has [been] produced by the respondent to this forum; and (iv) no evidence as to the control or management of appellant’s company in Sindh was provided by the respondent ... In light of the above discussion, I am of the considered view that the appellant is not a resident of Sindh and does not have any place of business in Sindh.”

6. Having so held, the learned Commissioner (Appeals-II) nevertheless sustained the demand, not under the Withholding Rules, 2014, but under section 16 of the Act, 2011, upon the reasoning that whether or not the respondent was a withholding agent, it had in fact deducted Sindh sales tax and was therefore bound to deposit it with the applicant Board. She also recorded, at paragraph 5.3 of her orders, that the amounts in question had been deposited with the Punjab Revenue Authority.
7. It is to be noticed at once that the finding on residence and place of business was recorded not by an outside forum but by the departmental appellate authority, that is to say by an officer of the applicant Board itself. The applicant Board did not assail that finding before the Appellate Tribunal, whether by a cross-appeal or otherwise. It therefore stood unchallenged at the instance of the very party which now invites us to displace it.
8. The respondent carried the matter further. By a common order dated 12.05.2025 passed in Appeals Nos. AT 67-68 of 2023 and AT 52 to 55 of 2024, the Appellate Tribunal, Sindh Revenue Board, allowed the appeals. Its conclusions, shortly stated, were these: that the respondent, not being a resident of Sindh and having no place of business in Sindh, could not have been required to act as a withholding agent for the applicant Board during the periods in question; that for the tax periods July 2011 to February 2014 liability could in any event not be fastened upon it in view of the judgment of this Court in *Fatima Fertilizer Company Limited*, section 13(3) of the Act, 2011 having been inserted only on

05.07.2019 and having no retrospective operation; that for those periods section 16 had found no mention in the show-cause notices or in the Orders-in-Original and could not be introduced belatedly at the appellate stage; that section 16, being in *pari materia* with section 3B of the Sales Tax Act, 1990, applies to a service provider who collects excess tax the incidence whereof has been passed on, and not to a service recipient; and that the amounts had in fact been deposited with the Punjab Revenue Authority, a position recorded by the Commissioner (Appeals-II) herself and never displaced.

9. It is from that order that these four references arise. On 12.11.2025 a Division Bench of this Court admitted the references and framed the questions set out below for our determination.

III. THE QUESTIONS PROPOSED

10. The questions are:

- (i) Whether the learned Appellate Tribunal has erred in holding that the Respondent is non-resident and does not have a place of business in Sindh, of the case hence cannot be treated as a withholding [agent] under section 13 of the Act-2011 read with rule 2(f) of Sindh Sales Tax Special Procedure (Withholding) Rules 2014?
- (ii) Whether the judgment of the learned Appellate Tribunal is in line with the judgment of SHC delivered in *Fatima Fertilizer Company v. Commissioner-II, Sindh Revenue Board*, in the circumstances when the withholding agent himself admits that the tax has been withheld by them?
- (iii) Whether it is a fit case of section 16 of the Act, 2011, when the respondent has withheld and retained the amount of tax and whether the learned Appellate Tribunal has erred to hold that section 16 does not apply?

11. We propose to take the first and the third questions together, the second being in substance an offshoot of them.

IV. THE SUBMISSIONS AT THE BAR

12. Mr. Fahad Hussain Areejo, learned counsel for the applicant Board, submitted that the learned Tribunal had erred in law in holding that the respondent was not liable to be registered with the applicant Board upon the view that it had neither any business in the Province of Sindh nor any agent here. He next contended that the invoices in question were issued from the Province of Sindh, and that this circumstance by itself attracted the Sindh levy. We confronted learned counsel to place those invoices before us, or to point to any material on the record which bore out the assertion; learned counsel was unable to do so. He

then submitted that the respondent is now registered with the applicant Board and is paying Sindh sales tax, which, he urged, is itself demonstrative of liability. Finally, he took us to sections 3 and 9 of the Act, 2011, and submitted that upon a conjoint reading of those provisions the incidence of the levy fastens upon the respondent.

13. Mr. Adeel Wahid, learned counsel for the respondent, adopted and reiterated the observations recorded by the learned Tribunal. He submitted that the respondent neither received the services in the Province of Sindh nor has any physical presence in Sindh, and was accordingly not liable to the Sindh levy. He accepted, with candour, that the respondent is at present registered with the applicant Board and is paying Sindh sales tax, but explained that this came about only after a consensus was arrived at between the Provincial Governments and the harmonised Place of Provision of Services Rules, 2023 were notified. For the periods in dispute, he submitted, the respondent was registered with the Punjab Revenue Authority and regularly paid the tax there, and no part of the amount in question was retained by it.
14. In rebuttal, Mr. Areejo pressed that it was the duty of the respondent to pay the tax to the applicant Board, and that since it is paying now, it was required by law to pay earlier as well.
15. We have heard learned counsel for the parties and have, with their assistance, examined the record of the proceedings before the fora below.

V. THE SCOPE OF THE JURISDICTION UNDER SECTION 63

16. Before turning to the merits it is necessary to recall the nature of the jurisdiction we exercise. Section 63 of the Act, 2011 confers upon this Court an advisory jurisdiction, to be exercised upon questions of law arising out of an order of the Appellate Tribunal.² It is not an appellate jurisdiction, and it is not a jurisdiction in which findings of fact may be reappraised. The Appellate Tribunal is the final forum of fact, and a finding of fact recorded by it binds this Court unless it is shown to be perverse or to rest upon no evidence whatever. That much is settled beyond controversy.³

² Section 63 of the Act, 2011, so far as material: “(1) Within sixty days of the communication of the order of the Appellate Tribunal under section 62, the aggrieved person or any officer of the SRB not below the rank of an Assistant Commissioner SRB, authorized by the Commissioner SRB may prefer an application in the prescribed form alongwith a statement of the case to the High Court, stating any question of law arising out of such order. (2) The statement to the High Court referred to in sub-section (1), shall set out the facts, the determination of the Appellate Tribunal and the question of law, which arises out of its order. (3) Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order referred to in sub-section (1), it may proceed to hear the case. ... (5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and deliver a judgment thereon specifying the grounds on which the judgment is based and the order of the Tribunal shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.”

³ *Sindh Engineering (Pvt.) Limited* [2002 SCMR 527]; *Qadbros Engineering (Pvt.) Limited* [2023 SCMR 939].

17. Whether the respondent has its registered office in Sindh, or a place of business in Sindh, or a permanent representative in Sindh, or whether the control or management of its affairs is situated in Sindh, is quintessentially a question of fact, to be answered upon the material placed on the record. Here not one but two forums below, the second of them being the departmental appellate authority, have answered it in the negative, and have done so upon the express finding that the applicant Board produced no evidence at all in support of its assertion. Concurrent findings of that character are not open to reappraisal in the jurisdiction we exercise.
18. We may add this. When learned counsel for the applicant Board asserted at the bar that the invoices were issued from the Province of Sindh, and was called upon to support that assertion from the record, he was unable to do so. An assertion from the bar is not a substitute for evidence. The burden of establishing that the respondent answered the statutory description of a resident, or of a person having a place of business in Sindh, lay upon the applicant Board; and it was a burden to be discharged before the fora of fact, not by inviting this Court to embark upon an inquiry into facts which it has no jurisdiction to undertake.

VI. WHETHER THE RESPONDENT COULD BE TREATED AS A WITHHOLDING AGENT

19. Even if the matter were at large, we would have found ourselves in agreement with the learned Tribunal, and for reasons which are, if anything, more elementary than those which commended themselves to it.
20. The Withholding Rules, 2014 were framed in exercise of the power conferred by section 13 of the Act, 2011, read with sub-section (4) of section 3, sub-section (3) of section 9 and section 72. Sub-rule (2) of rule 1 specifies the classes of persons who are withholding agents, and clause (f) thereof, which is the clause pressed into service, covers FBR-registered or SRB-registered persons who receive or procure advertisement services. That enumeration, however, does not stand alone. It is controlled by two provisos, which learned counsel for the respondent rightly placed at the forefront of his submissions, and which we set out in full:

“Provided that a person shall be treated as a withholding agent, for the purpose of these rules, only if he is resident in Sindh or has a place of business in Sindh:”

“Provided further that a person resident in Pakistan at a place outside the Province of Sindh and not having a place of business

in Sindh shall be treated as a withholding agent only if he has e-signed up as withholding agent by e-filing an application in Form SSTW-01 and has obtained a e-Sign up number duly activated by the User ID, Password and the PIN Code obtained from SRB for withholding of Sindh sales tax and e-depositing the same in the Sindh Government Head of Account “B-02384”.”

21. The first proviso is the short answer to these references. Its language is not permissive but restrictive: a person shall be treated as a withholding agent “*only if*” he is resident in Sindh or has a place of business in Sindh. Residence in Sindh, or a place of business in Sindh, is therefore not a matter of mere description but a condition precedent to the very status. A person answering neither description does not become a withholding agent by receiving advertisement services, and does not become one by deducting an amount from the payment he makes. It is to be noticed, further, that this proviso has never been omitted. It stood when each of these tax periods arose, and it stands today.
22. We should deal, lest it be thought to have been overlooked, with the only amendment in this area on which anything might have been built. Clause (11) of rule 2, which defines “withholding agent”, formerly carried the same condition in the words “provided that he is resident in Sindh or has a place of business in Sindh”, and those words were omitted by Notification No. SRB-3-4/41/2023, dated 27th July, 2023, with effect from 1st September, 2023.⁴ That omission did not enlarge the class of withholding agents by so much as one person. It removed a duplication, the condition having all along been imposed, and continuing to be imposed, by the first proviso to sub-rule (2) of rule 1. The substantive change effected by the same notification lay elsewhere, and it lay in the addition of the second proviso reproduced above.
23. That second proviso is instructive in two respects. It addresses, for the first time and expressly, the precise position of a person such as the respondent: one who is resident in Pakistan at a place outside the Province of Sindh and has no place of business in Sindh. And it provides that such a person shall be treated as a withholding agent “*only if*” he has e-signed up as a withholding agent in Form SSTW-01 and obtained an activated e-sign-up number. The status of such a person is thus made to depend upon a voluntary act of his own, done in a prescribed form. It was introduced with effect from 1st September, 2023, which is after the last of the tax periods before us. And, upon the applicant Board’s own Statement of the Case, the respondent e-signed up with the Sindh Revenue

⁴ Clause (11) of rule 2 of the Withholding Rules, 2014 read, until 31st August, 2023: “(11) ‘Withholding agent’ means a person as specified in sub-rule (2) of rule 1 of these Rules provided that he is resident in Sindh or has a place of business in Sindh;”. The words “provided that he is resident in Sindh or has a place of business in Sindh” were omitted by Notification No. SRB-3-4/41/2023, dated 27th July, 2023, with effect from 1st September, 2023 [PTCL 2023 St. 862], which notification also added the second proviso to sub-rule (2) of rule 1 reproduced above.

Board as a withholding agent on 30th December, 2024. Every tax period in dispute, ranging from July 2011 to December 2022, precedes that date. It follows that the respondent was not a withholding agent under the Rules as they stood in the tax periods in question, and would not have been one even if the regime introduced in 2023 had then been in force. This also disposes, and disposes conclusively, of the argument founded upon the respondent's present compliance, to which we return below.

24. Nor is the position altered when the statutory definitions are examined. "Resident" is defined by clause (73) of section 2, and "place of business in Sindh" by clause (64) of section 2.⁵ Both limbs of the latter definition are keyed to the carrying on of an "economic activity" in Sindh: under limb (a), by occupying a space in Sindh from where the person carries on an economic activity; under limb (b), by carrying on an economic activity through an agent, associate, franchisee, branch, office or otherwise in Sindh. What, then, is an economic activity? Sub-section (1) of section 4 answers that it means "any activity carried on by a person that involves or is intended to involve the provision of services to another person". Where the legislature has itself defined an expression, that definition binds the Court.⁶ The respondent provides no services. It manufactures and sells concentrate, which is goods. Upon the statutory definitions, therefore, even the material relied upon by the applicant Board could not make out a place of business in Sindh.
25. The case cannot be carried further by the commercial and shareholding relationship between the respondent and M/s. Coca-Cola Beverages Pakistan Limited. The two are distinct juristic persons, and the distinction is not a technicality but a first principle of company law.⁷ They do not share a board of directors or a management. The applicant Board's own appellate authority examined the audited accounts on which it relied and found that the description of the two companies as "related parties" evidenced nothing beyond transactions of purchase and sale. That a company sells its goods to another

⁵ Section 2(73) of the Act, 2011: "'resident' means – ... (b) an association of persons or a company which, in a financial year, has – (i) its registered office is in Sindh; or (ii) its place of business, whether whole or part thereof, in Sindh in any mode, style or manner; or (iii) a permanent representative to act on its behalf or to provide service on its behalf in Sindh; or (iv) the control or management of the association of persons or the company, whether whole or part thereof, situated in Sindh at any time during the financial year". Section 2(64): "'place of business in Sindh' means that a person – (a) owns, rents, shares or in any other manner occupies a space in Sindh from where it carries on an economic activity whether wholly or partially; or (b) carries on an economic activity through any other person such as an agent, associate, franchisee, branch, office, or otherwise in Sindh [or through virtual presence or a website or a web portal or through any other form of e-Commerce, by whatever name called or treated, but does not include] a liaison office." Section 4(1): "An economic activity means any activity carried on by a person that involves or is intended to involve the provision of services to another person and includes – (a) an activity carried on in the form of a business, including a profession, calling, trade or undertaking of any kind, whether or not the activity is undertaken for profit; [(b) an activity of supply or provision of movable or immovable property by way of lease, rent, license or other similar arrangement; and] (c) a one-off adventure or concern in the nature of a trade."

⁶ *Commissioner of Income Tax, Legal Division, Lahore v. Khurshid Ahmad* [PLD 2016 SC 545]: "Where the legislature defines, in the same statute, the meaning of the word used therein, such definition most authoritatively expresses its intent which definition and construction is binding on the courts."

⁷ *Salomon v. A. Salomon & Co. Ltd.* [1897] A.C. 22.

company which happens to have a place of business in Sindh does not give the seller a place of business in Sindh. Were it otherwise, every supplier in Pakistan would be a resident of every Province in which its customers happen to trade.

26. We accordingly find no error of law in the conclusion of the learned Tribunal that the respondent could not, for the tax periods in question, have been required to act as a withholding agent for the applicant Board.

VII. SECTIONS 3 AND 9 OF THE ACT, 2011

27. Sections 3 and 9, to which Mr. Areejo took us, do not assist the applicant Board. Upon a careful reading they tell against it. Sub-section (1) of section 3 provides that a taxable service is a service listed in the Second Schedule “which is provided by a person from his office or place of business in Sindh in the course of an economic activity”. Sub-section (2) provides that a service not provided by a registered person shall be treated as a taxable service if it is listed in the Second Schedule and “is provided to a resident person by a non-resident person in the course of an economic activity”. Section 9 then allocates the liability. By sub-section (1), where a service is taxable by virtue of sub-section (1) of section 3, “the liability to pay the tax shall be on the person providing the service”. By sub-section (2), where a service is taxable by virtue of sub-section (2) of section 3, “the liability to pay the tax shall be on the person receiving the service”.⁸
28. The scheme is plain. The ordinary rule is that the provider pays. The reverse charge is the exception, and it is engaged by a precisely defined state of affairs: a non-resident provider and a resident recipient. The present case is the converse of that state of affairs. The service providers were persons registered in Sindh who provided the services from their offices in Sindh; the case therefore falls squarely within sub-section (1) of section 3, and the liability to pay the tax lay, by force of sub-section (1) of section 9, upon those service providers. The respondent was the recipient, and it is not a resident person. Sub-section (2) of section 9 has no application whatever. Far from fastening the

⁸ Section 3 of the Act, 2011: “(1) A taxable service is a service listed in the Second Schedule to this Act, which is provided by a person from his office or place of business in Sindh in the course of an economic activity, including the commencement or termination of the activity. Explanation.— This sub-section deals with services provided by persons, regardless of whether those services are provided to resident persons or non-resident persons. (2) A service that is not provided by a registered person shall be treated as a taxable service if the service is listed in the Second Schedule to this Act and is provided to a resident person by a non-resident person in the course of an economic activity. Explanation.— This sub-section deals with services provided by non-resident persons to resident persons whether or not the said resident person is an end consumer of such services. (3) For the purposes of sub-section (2), where a person has a registered office or place of business in Sindh and another outside Sindh, the registered office or place of business in Sindh and that outside Sindh shall be treated as separate legal persons. (4) The Board may, by notification in the official Gazette, prescribe rules for determining the conditions under which a particular service or class of services will be considered to have been provided by a person from his registered office or place of business in Sindh.” Section 9: “(1) Where a service is taxable by virtue of sub-section (1) of section 3, the liability to pay the tax shall be on the person providing the service. (2) Where a service is taxable by virtue of sub-section (2) of section 3, the liability to pay the tax shall be on the person receiving the service. (3) Notwithstanding anything contained in sub-sections (1) and (2), Board may, by a notification in the official Gazette, specify the services or class of services in respect of which the liability to pay tax shall be on the person providing the taxable service, or the person receiving the taxable service or any other person. (4) Nothing contained in sub-sections (1) and (2) shall prevent the collection of tax from a different person if that person is made separately or jointly or severally liable for this tax under section 18.”

incidence upon the respondent, sections 3 and 9 place it upon the persons who provided the services.

29. That the applicant Board may have found it more convenient to proceed against a single recipient than against forty of its own registered service providers is no reason for fastening a liability upon a person on whom the statute has not placed it. Indeed, the Withholding Rules, 2014 contemplate the very situation which has arisen here and provide for it expressly. Sub-rule (4) of rule 4 reads: “Where service provider allows withholding of tax by a person who is not covered by the terminology ‘Withholding agent’ as defined in clause (11) of rule 2 of these rules, read with sub-rule (2) of rule 1 thereof, the service provider shall be liable to pay the tax involved alongwith the default surcharge thereon.”⁹ The remedy of the applicant Board, if it has one, is thus written into its own Rules, and it lies elsewhere than against this respondent.

VIII. SECTION 16 OF THE ACT, 2011

30. We turn to section 16, which was the foundation of the order of the Commissioner (Appeals-II) and is the subject of the third question. Sub-section (1) provides that “any person who has collected or collects any tax or charge, whether under misapprehension of any provision of this Act or otherwise, which was not payable as tax or charge or which is in excess of the tax or charge actually payable and the incidence of which has been passed on to the person to whom the service is provided, shall pay the amount of tax or charge so collected to the Government”. Sub-section (3) places the burden of proof on the question of incidence upon “the person collecting the tax or charge”.
31. The ingredients of the provision are cumulative, and in the case of this respondent not one of them is satisfied. First, the section speaks of a person who “has collected or collects”. To collect is not to deduct or to withhold. The distinction is not one of drafting elegance; it was expressly drawn by the Supreme Court in *Pakistan Television Corporation Limited*, where it was held that these expressions are not used interchangeably and are not to be treated as

⁹ Rule 4 of the Withholding Rules, 2014, “Responsibility of the registered service provider”: “(1) The registered service provider shall issue tax invoice, as stipulated in section 26 of the Act, read with sub-rule (1) of rule 29 of the Sindh Sales Tax on Services Rules, 2011, in respect of every taxable service provided or rendered to a withholding agent. (2) The registered service provider shall ensure that he allows withholding of tax to only such of his service recipients as are withholding agents in terms of sub-rule (2) of rule 1 of these rules and also that such service recipients have provided, to the service provider, the prescribed notice in Form SSTW-05. (3) The registered service provider shall file monthly return, as prescribed in the Sindh Sales Tax on Services Rules, 2011, and shall adjust the admissible input tax against the output tax in terms of the provisions of section 15 of the Act, taking due credit (in his tax return SST-03) of the amount of sales tax deducted by the withholding agent, in the manner as prescribed under Chapter III of the said Rules. (4) Where service provider allows withholding of tax by a person who is not covered by the terminology ‘Withholding agent’ as defined in clause (11) of rule 2 of these rules, read with sub-rule (2) of rule 1 thereof, the service provider shall be liable to pay the tax involved alongwith the default surcharge thereon.” It is not suggested that the respondent ever issued a notice in Form SSTW-05.

synonyms.¹⁰ A service recipient does not collect tax; he bears it, and, if he is a withholding agent, he deducts it.

32. Secondly, the section is confined to tax “which was not payable as tax or charge or which is in excess of the tax or charge actually payable”. The amounts here were neither. They were the tax actually chargeable upon the services in question, charged at the rate prescribed by the Second Schedule. Section 16 is directed at the mischief of a collector enriching himself by exacting more than the law allows; it is not a residuary charging provision to be pressed into service whenever a demand fails elsewhere. Thirdly, the section is attracted only where “the incidence of which has been passed on to the person to whom the service is provided”. A service recipient, by definition, provides no service and has nobody upon whom he might pass the incidence. The words cannot be applied to him without being read out of the section altogether, and sub-section (3) confirms as much by placing the burden upon “the person collecting”.
33. Section 16 of the Act, 2011 is, in its material parts, in *pari materia* with section 3B of the Sales Tax Act, 1990, which the Supreme Court construed in *Army Welfare Trust* as applying to a supplier who has collected an excess amount the incidence of which has been passed on to the consumer.¹¹ What is true of a supplier of goods under that section is true of a provider of services under this one. There is a further consideration. If section 16 bore the meaning contended for by the applicant Board, and could be used to recover from any person who has withheld an amount of tax, then sub-section (3) of section 13 and sub-section (1B) of section 47 would have nothing to operate upon.¹² Redundancy is not to be imputed to the legislature.¹³ On this part of the case we find ourselves in respectful agreement with the learned Tribunal.

IX. THE SECOND QUESTION, AND THE SUBSEQUENT REGISTRATION

34. The second question assumes the very thing it has to prove. It asks whether the order of the learned Tribunal is in line with *Fatima Fertilizer* “in the circumstances when the withholding agent himself admits that the tax has been

¹⁰ *Messrs Pakistan Television Corporation Limited v. Commissioner Inland Revenue (Legal)*, LTU, Islamabad [2017 SCMR 1136].

¹¹ *Army Welfare Trust (Nizampur Cement Project), Rawalpindi v. Collector of Sales Tax (now Commissioner Inland Revenue)*, Peshawar [2017 SCMR 9].

¹² Section 13 of the Act, 2011, so far as material: “(2) Notwithstanding anything contained in this Act, the Board may, by notification in the official Gazette, require any person or class of persons, whether registered or not, to withhold full or part of the tax charged from or invoiced to such person or class of persons on the provision of any taxable service or class of taxable services and to deposit the tax, so withheld, with the Government, within such time and in such manner as may be specified in the notification. [(3) Where a person or class of persons is required to withhold or deduct full or part of the tax on the provision of any taxable service or class of taxable services and either fails to withhold or deduct the tax or, having withheld or deducted the tax, fails to deposit the tax in the Government treasury, such person or class of persons shall be personally liable to pay the amount of tax and the default surcharge thereon in the prescribed manner.]” Sub-section (3) was added by the Sindh Finance Act, 2019 (XII of 2019), assented on 5th July, 2019. For section 47(1B), see footnote 1 above.

¹³ *Pakistan Tobacco Co. Ltd. v. Karachi Municipal Corporation* [PLD 1967 SC 241]; *State Life Insurance Corporation of Pakistan v. Mercantile Mutual Insurance Company Limited* [1993 SCMR 1394].

withheld by them”. The premise is that the respondent is a withholding agent, and that premise is precisely what both fora below negated. Status under a fiscal statute is conferred by the statute; it is not acquired by conduct, and a person who is not a withholding agent under the Rules does not become one by deducting an amount from a payment. In any event *Fatima Fertilizer* decides a different point altogether, namely that sub-section (3) of section 13, inserted by the Sindh Finance Act, 2019 with effect from 05.07.2019, does not operate retrospectively so as to fasten liability upon a withholding agent for tax periods anterior to its insertion.¹⁴ A Division Bench of this Court there held that the generic definition of “person” in clause (63) of section 2 could not be used to impose liability upon one who did not otherwise qualify as a person liable to tax, and went on to observe:

“It is manifest that the legislature intended a change in the law, hence, incorporated the obligation upon withholding agents per the Finance Act, 2019. To assume that such an obligation pre-existed, as suggested by the department’s counsel by relying upon the generic definition of the term person, would imply redundancy in so far as Section 13(3) of the Act is concerned. It is [a] maxim of the law that the legislature remains aware of the statutory position and undertakes an amendment to alter the status, existing prior to the amendment having been incorporated.”

35. The learned Tribunal applied that decision to the periods July 2011 to February 2014; it did not depart from it. The judgment holds the field and has not been set aside. Two further features of it deserve mention. The first is that the Division Bench, alive to the ambit of the reference jurisdiction, expressly declined to pronounce upon section 16 of the Act, 2011, observing that although departmental counsel had adverted to it in argument, it was admitted that no notice under that provision had been sent. Section 16 was thus left open in *Fatima Fertilizer*, and nothing said there stands in the way of the construction placed upon it by the learned Tribunal in the present case. The second is that the Court restated the settled canons governing fiscal statutes, that a provision creating a tax liability is to be construed strictly in favour of the taxpayer, that doubts are to be resolved in his favour, and that amendments to charging provisions are prospective unless the legislature has said otherwise. Those canons apply with full force to the provisos we have construed above. For the periods July 2011 to February 2014 there is, in addition, the independent circumstance that section 16 found no mention in the show-cause notices or in the Orders-in-Original and made its first appearance at the appellate stage,

¹⁴ *Fatima Fertilizer Company Limited v. Commissioner-II, Sindh Revenue Board* [2021 PTD 484], per Muhammad Junaid Ghaffar and Agha Faisal, JJ., Spl. Sales Tax Reference Application No. 30 of 2020, decided on 22.12.2020. To the same effect, *Indus Motor Company Limited v. Government of Balochistan* [2022 PTD 1226].

which is impermissible; a case not set up in the show-cause notice cannot be built up afterwards.¹⁵

36. There remains the submission, pressed with some vigour in rebuttal, that because the respondent is today registered with the applicant Board and is paying Sindh sales tax, it must have been liable to pay earlier as well. The submission does not survive statement. Liability to a tax is created by the charging provision as it stood in the tax period in question, and by nothing else. It is not created by the subsequent conduct of the taxpayer, and there is no estoppel against a statute. A taxpayer who pays today does not thereby confess that he owed yesterday, any more than a taxpayer exempted this year is to be taken to have been exempt last year. In the present case the submission is not merely unsound in principle; it is answered by the Rules themselves. As we have shown, the second proviso to sub-rule (2) of rule 1 makes the status of a person resident in Pakistan outside Sindh and having no place of business in Sindh depend upon his e-signing up in Form SSTW-01. The rule-making authority has thus made the very thing the applicant Board relies upon, the respondent's present registration and compliance, the source of the obligation rather than evidence of a pre-existing one. The respondent e-signed up on 30th December, 2024. It is registered and paying because it e-signed up; it did not e-sign up because it was already liable. The change in its position is further explained by the notification, following a consensus among the Provincial Governments, of the harmonised Place of Provision of Services Rules, 2023 with effect from May 2023. Each of these events post-dates every tax period before us; and that an inter-provincial consensus, a fresh set of rules and a new proviso were thought necessary at all is itself an acknowledgment that the position in the earlier periods was otherwise. If anything, the circumstance tells in favour of the respondent.
37. One last matter. The grievance of the applicant Board, reduced to its essence, is that the tax on these transactions has gone to the exchequer of one Province rather than another. The respondent has retained nothing. The finding that the amounts were deposited with the Punjab Revenue Authority was recorded by the Commissioner (Appeals-II) at paragraph 5.3 of her orders, was affirmed by the learned Tribunal, and has never been displaced. On that finding there is no unjust enrichment of the respondent, and the decision relied upon in that behalf¹⁶ has no application. A dispute between two Provincial revenue authorities as to which of them is entitled to the tax upon a given transaction is

¹⁵ *Collector, Central Excise and Land Customs v. Rahim Din* [1987 SCMR 1840].

¹⁶ *Fecto Belarus Tractors Limited v. Pakistan through Ministry of Finance, Economic Affairs* [2001 PTD 1829].

capable of resolution between them, and the harmonised Rules of 2023 are addressed to precisely that end. What cannot be done is to resolve it by recovering the same amount a second time from a taxpayer who has already paid it once.

X. THE ANSWERS TO THE QUESTIONS

38. For the foregoing reasons, the questions are answered as follows. Question (i) is answered in the negative; the learned Appellate Tribunal did not err in holding that the respondent, being neither a resident of Sindh nor a person having a place of business in Sindh, could not be treated as a withholding agent for the tax periods in question, that being the effect of the first proviso to sub-rule (2) of rule 1 of the Withholding Rules, 2014, and the respondent having in any event not e-signed up in Form SSTW-01 at any time during those periods. Question (ii) does not, strictly, arise, resting as it does upon an assumption which the fora below negated; and so far as it goes, the order of the learned Appellate Tribunal is in line with, and not contrary to, the judgment of this Court in *Fatima Fertilizer Company Limited*. Question (iii) is answered in the negative; section 16 of the Act, 2011 has no application to a service recipient, and the learned Appellate Tribunal was right so to hold. All three questions are thus answered against the applicant Board and in favour of the respondent.

XI. ORDER

39. The reference applications stand disposed of in the above terms, with no order as to costs. Office to place a copy of this judgment in the connected cases.
40. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, Sindh Revenue Board, in terms of sub-section (5) of section 63 of the Act, 2011.

J U D G E

J U D G E

Karachi, dated 17th day of September 2026

Avaz PS.