IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Agha Faisal

Mr. Justice Dr. Shah Nawaz Memon

Special F.E.R.A Nos. 53 & 54 of 2017

(Paxar Pakistan (Pvt.) Limited Vs. Deputy Commissioner of Inland Revenue Zone-II and another)

Date of hearing:	03.11.2026
Date of decision:	03.11.2026
Applicant:	Through Mr. Ijaz Ahmed, Advocate.
Respondents:	M/s. Faheem Raza Khuhro, Rana Sakhawat Ali & Pervaiz A. Memon, Advocates.

JUDGMENT

DR. SHAH NAWAZ MEMON, J.: — These two references, filed by M/s. Paxar Pakistan (Pvt.) Limited ("the Applicant") under section 34A of the Federal Excise Act, 2005 ("the Act"), are directed against the common order dated 25.10.2016 of the learned Appellate Tribunal Inland Revenue, Karachi ("the Tribunal") in FEA Nos. 07/KB and 08/KB of 2015, whereby the orders of the Commissioner Inland Revenue (Appeals) and of the Deputy Commissioner Inland Revenue were annulled. On 27.03.2017 the Applicant was confronted as to how a reference could be maintained against an order that had set aside the order impugned before the Tribunal, when no adverse order or finding remained in the field. The Applicant has been confronted again today. The question before us is therefore confined to maintainability.

I. FACTS OF THE CASE

2. The Applicant manufactures labels and tags and is a group company of an international concern. It has a Corporate Services Agreement dated 29.12.2010 and an Intercompany Technical Services Agreement of January 2012 with two non-resident group entities. By a notice dated 24.03.2014 the Deputy Commissioner Inland Revenue treated the payments made under these agreements between July 2012 and February 2014 as franchise fee or royalty chargeable to federal excise duty, and proceeded under section 14A of the Act[1] to recover the amount through attachment of the Applicant's bank accounts, Rs. 11,785,196 being recovered.

[1]Section 14A of the Act: "14A. Short paid amounts recoverable.– Notwithstanding the provisions of this Act or the rules made there under, where a registered person pays the amount of duty less than the duty due as indicated in his return, the short paid amount of duty along with default surcharge shall be recovered from such person by stopping removal of any goods from his business premises and through attachment of his business bank accounts without prejudice to any other action under this Act or the rules made there under: Provided that no penalty under this Act or rules made there under shall be imposed unless a show cause notice is given to such person."

3. The Applicant's appeals before the learned Commissioner Inland Revenue (Appeals) were disposed of by a combined order dated 12.12.2014. The learned Commissioner (Appeals) found that section 14A was not the provision to be invoked for the purpose and that the Department ought to have proceeded after confronting the Applicant with the issue. He did not annul the notice, however, and held that the services acquired were in the nature of royalty or franchise, directing the Department to invoke the relevant provisions of law and confront the Applicant for recovery.

4. The Applicant appealed to the Tribunal, which disposed of the appeals by its order of 25.10.2016. The operative paragraphs read as follows:

> "16. We are of the view that in the presence of the above findings of the learned CIR(A), the notice/order of the DCIR was required to be annulled because firstly the correct legal procedure was not followed and secondly proper opportunity of being heard was not given to the taxpayer/appellant.
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> 17. In view of the above discussion, we hereby annul the orders of both forums below with the remarks that the department is at liberty to adopt the correct legal procedure after giving the fair opportunity of being heard to the taxpayer. This annulment would not affect the right of department to initiate fresh proceedings on the issue which is subject matter of this appeal looking to facts of the case and discussion by CIR(A) in his order because we have decided these appeals on specific grounds without discussing the applicability of FED on the taxpayer/appellant."

II. THE QUESTIONS PROPOSED

5. The Applicant has proposed the following questions of law:

A. Whether, in the facts and circumstances of the case, the Appellate Tribunal has exercised its jurisdiction in accordance with law?

B. Whether, in the facts and circumstances of the case, the Appellate Tribunal was justified to allow the department to conduct fresh proceeding without deciding the legal questions raised before the Appellate Tribunal?

C. Whether the Federation, after the Constitution (18th Amendment Act, 2010, has any jurisdiction to levy federal excise duty on services in general and franchise in particular?

D. Whether the services availed by the Applicant pursuant to Corporate Services Agreement dated December 29, 2010 and Intercompany Technical Services Agreement January, 2012 constitute "franchise" as defined in section 2(12a) of the Act?

E. Without prejudice to the question raised above, whether the Deputy Commissioner Inland Revenue could have determined the federal excise liability of the Applicant without that determining the "services" availed by the applicant falls under the heading Franchise under the Act?

III. SUBMISSIONS

6. Learned counsel for the Applicant submitted that a reference is maintainable against a remand order, and relied on *F.M.Y. Industries*, *Pramatha Nath Chowdhury*, *Shahida Zareen* and *Secretary Railways*.[2] Learned counsel for the Department submitted that it is settled that no reference lies against a remand order. We have heard learned counsel and perused the record.

IV. THE REFERENCE JURISDICTION

7. The jurisdiction of this Court in a reference under section 34A of the Act extends to a question of law arising out of the order of the Tribunal. The Supreme Court has explained that the source of the question must be the order of the Tribunal, and that what is meant is a "tangible and substantial question of law on the rights and obligations of the parties founded on the decision of the Tribunal".[3]

8. Learned counsel for the Applicant is right that a question argued before the Tribunal, on which the Tribunal gave no finding, may also be a question arising from its order.[4] Questions C to E correspond to grounds taken before the Tribunal, which left them undiscussed, and we proceed on the footing that they meet that requirement. But that decision identifies which questions may be raised in a reference. It does not hold that a reference is maintainable where the order, read as a whole, leaves no adverse order or finding against the applicant. There the Tribunal had vacated the order of the Commissioner (Appeals) and restored the additions, so that an adverse order remained in the field.[5]

V. THE ORDER OF THE TRIBUNAL

9. The Tribunal annulled the orders of both forums below. The consequence is that the notice and order under section 14A, and with them the finding that the payments were in the nature of royalty or franchise, no longer exist. The Tribunal was explicit that it decided the appeals on specific grounds, namely the procedure adopted and the absence of a hearing, without discussing the applicability of federal excise duty to the Applicant. There is thus no finding of the Tribunal, adverse or otherwise, on the questions of liability proposed in these references, and the Applicant has obtained the relief it sought on the grounds of procedure and hearing.

10. The liberty reserved to the Department does not alter this. The Tribunal has neither held the Applicant liable nor directed any outcome. If the Department

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[2] *F.M.Y. Industries*, [2014 SCMR 907]; *Pramatha Nath Chowdhury*, [PLD 1965 SC 434]; *Shahida Zareen*, [2010 SCMR 1119]; *Secretary Railways*, [2026 SCMR 807].
[3] *Qadbros Engineering*, [2023 SCMR 939], para 13, as reproduced in *Philip Morris*, [2026 PTD 1147], para 9.
[4] *F.M.Y. Industries*, [2014 SCMR 907], para 10.
[5] *F.M.Y. Industries*, [2014 SCMR 907], para 2.

proceeds afresh, it must do so by the correct legal procedure, which the Tribunal's discussion shows to be that under section 14 of the Act,[6] and after hearing the Applicant. The resulting order will be open to challenge before the appellate forums on every ground, including those proposed here, and, if the Applicant remains aggrieved by the final order of the Tribunal, in a reference to this Court.

11. The position in this Court is settled. In *Siddiq Traders* a Division Bench held that in the case of remand no question of law arises, particularly when the impugned orders have been set aside, as then "no adverse order remains in field, therefore, a party cannot be treated as an aggrieved party nor there remains anything to be decided by this court".[7] That view was applied in *Philip Morris*, where the Tribunal had set aside both orders below and directed adjudication afresh, and it was held that the Tribunal holds the power to do so and that a reference is not maintainable in such a case.[8] The present case falls squarely within that principle.

VI. THE REMAND AUTHORITIES RELIED UPON

12. The decisions cited by the Applicant on remand address a different matter. They state the restraint with which a court should order remand where the record is complete and the issues are purely legal.[9] They concern the exercise of that power in the appeal itself, not whether a reference lies from the resulting order. One of them recognises that a case may properly be remanded "where material facts remain undetermined, procedural fairness has been compromised, or essential evidence has not been duly examined".[10]

13. The principle bears, if at all, on the one question that can arise from an order of this kind, namely whether the Tribunal was justified in leaving the matter for fresh determination instead of deciding it itself.[11] Question B is directed to that, and we do not find a question of law in it. The Tribunal found that the correct legal procedure was not followed and that the Applicant was not heard. On that footing, an adjudication of liability by the procedure the law provides, and after hearing the Applicant, had not taken place, so that there was no determination on the merits before the Tribunal to affirm or set aside. Whether the payments

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[6] Section 14(1) and (2) of the Act: "14. Recovery of unpaid duty or of erroneously refunded duty or arrears of duty, etc.— (1) Where any person has not levied or paid any duty or has short levied or short paid such duty or where any amount of duty has been refunded erroneously, such person shall be serviced with notice requiring him to show cause for payment of such duty provided that such notice shall be issued within five years from the relevant date. (2) The officer of Inland Revenue, empowered in this behalf, shall after considering the objections of the person served with a notice to show cause under sub-section (1), determine the amount of duty payable by him and such person shall pay the amount so determined along with default surcharge and penalty as specified by such officer under the provisions of this Act." (provisos omitted)

[7] *Siddiq Traders*, [2015 PTD 134], para 5.

[8] *Philip Morris*, [2026 PTD 1147], paras 15 and 16. See also *E.M. Oil Mills*, [2011 PTD 2708], para 6; *Bank Al-Habib*, [2016 PTD 2548], paras 11 and 14; *RIY Metals*, [2026 PTD 86], para 4.

[9] *Secretary Railways*, [2026 SCMR 807], paras 6 and 7; *Shahida Zareen*, [2010 SCMR 1119], para 12; *Pramatha Nath Chowdhury*, [PLD 1965 SC 434], concluding paragraph on remand.

[10] *Secretary Railways*, [2026 SCMR 807], para 6.

[11] *Siddiq Traders*, [2015 PTD 134], para 5.

answer the definition of franchise[12] depends upon the terms of the agreements and the facts surrounding them, and the Supreme Court has held that a plea of this kind, being one of fact, cannot be raised in a reference.[13] It was for the Tribunal, as the last fact finding forum, to decide whether to undertake that exercise itself or to leave it to be undertaken after due process. The Applicant has not shown a legal flaw in that course.[14] The same is true of Question A, which asserts no flaw of its own.

14. Question C, concerning the competence of the Federation to levy federal excise duty on services after the Eighteenth Amendment, is a question of law of some importance, but it is not before us in a form that calls for an answer. No liability has been determined against the Applicant, and the Department may or may not proceed. To answer it now would be to answer in the abstract a question that may never arise out of an order affecting the Applicant. If the Department does proceed, the question remains open to the Applicant at every stage and will arise out of an order that finally affects it. We therefore say nothing on Questions C, D and E.

15. We cannot help observing that these references, filed in January 2017, have remained pending for nearly a decade against an order that, on the settled view of this Court noticed above, could not found a reference, as no adverse order was left in the field. Such references call for scrutiny of maintainability at the threshold, so that the parties are not kept away for years from the forum where the controversy can actually be decided.

VII. THE ANSWERS TO THE QUESTIONS

16. Questions A and B do not give rise to a question of law, as the order of the Tribunal discloses no legal flaw. Questions C, D and E do not arise at this stage from an order adverse to the Applicant. All the questions are declined at this stage and are left open.

VIII. ORDER

17. For these reasons, the references are not maintainable and are dismissed in limine. All questions are left open, and nothing in this judgment is an expression of opinion on their merits or shall prejudice the rights and contentions of either side before the competent forum in any proceedings that may be taken afresh.

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[12]Section 2(12a) of the Act: "(12a) 'franchise' means an authority given by a franchiser under which the franchisee is contractually or otherwise granted any right to produce, manufacture, sell or trade in or do any other business activity in respect of goods or to provide service or to undertake any process identified with franchiser against a fee or consideration including royalty or technical fee, whether or not a trade mark, service mark, trade name, logo, brand name or any such representation or symbol, as the case may be, is involved;"

[13]*C.M. Pak*, [2013 SCMR 749], para 7.

[14]*Philip Morris*, [2026 PTD 1147], paras 12 and 13.

18. Office shall place a copy of this judgment in the connected Special F.E.R.A. No. 54 of 2017.

19. A copy of this judgment may be sent under the seal of this Court and the signature of the Registrar to the learned Tribunal, as required by section 34A(2) of the Act read with section 133(5) of the Income Tax Ordinance, 2001.

J U D G E **J U D G E**

Karachi,
Dated: 3rd day of November 2026
Ayaz PS.