

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.

Sales Tax Reference No.04/2025
(CC-100107800226)

The Commissioner Inland Revenue, Zone-I
Regional Tax Office, Quetta.

v.

M/s. Malik Abdul Qayum Kakar, Office No.3-4,
Plot No.8, Shahbaz Town, Phase-IV, Samungli Road, Quetta
& another

Date of hearing 21.11.2025 Announced on 12.12.2025

Applicant by: Barrister Iftikhar Raza Khan, Advocate.

Respondent No.

1 by: Messrs Muhammad Hassham Khan and Imran Khan
Kakar, Advocates.

JUDGMENT

Muhammad Aamir Nawaz Rana, J.- The applicant has called in question the order dated 20.10.2024 passed by learned Appellate Tribunal, Inland Revenue, Quetta, whereby the appeal filed by the respondent/tax payer was allowed and the order-in-original No.05/2018-19 dated 10.10.2018 passed by Additional Commissioner, Inland Revenue, Quetta was set-aside.

2. Tersely, the relevant facts are that the respondent/taxpayer was issued a Show Cause Notice on 23.06.2018 by the Additional Commissioner, Inland Revenue, wherein it was alleged that the respondent/taxpayer was liable to pay Rs.50,900/- on account of a penalty for the late filing of sales tax returns under section 33(1) of the Sales Tax Act, 1990. It was further alleged in the Show Cause Notice that, during the course of an audit, it was found that the respondent/taxpayer failed to provide the requisite sales tax

records, as required to be maintained under sections 22 and 23 of the Sales Tax Act, 1990, despite the issuance of notices under section 33(9)(a), (b), and (c) of the Sales Tax Act, 1990, which amounted to a violation of section 25 of the Sales Tax Act, 1990; therefore, a penalty of Rs. 50,000/- was also required to be imposed. It was also alleged in the Show Cause Notice that the respondent/taxpayer had declared an amount of Rs. 20,823,487/- in the tax period of October, 2014 and Rs. 10,817,114/- in the tax period of June 2015 as carry forward, and it was further alleged that the respondent/taxpayer had sold the imported goods secretly without payment of sales tax. On the basis of these allegations, a total amount of Rs. 33,222,598/- on account of short payment of sales tax was mentioned in the Show Cause Notice as outstanding against the respondent/taxpayer.

3. The record reveals that, thereafter, the Additional Commissioner, Inland Revenue, passed Order-in-Original No. 05/2018-19 dated 10.10.2018. The operative portion thereof is reproduced:

*“13. Upon examination of the case record with documents available on record, the undersigned has come to conclude that the charges framed in the show cause notice mentioned at Para(i), (ii) & (iii) of the aforesaid show cause notice stands established. I therefore, order the R/P (M/s Malik Abdul Qayyum Kakar, Office No.3-4, Plot No.8, Shahbaz Town, Phase-4, Samungli Road, Quetta) to deposit the amount pointed out in Para (i), (ii) & (iii) of show cause notice amounting to Rs.33,323,498/- under section 11(1) & (2) of the Sales Tax Act, 1990 along with default surcharge (to be calculated at the time of final payment) under section 34 & penalty under section 33 of the *ibid* Act respectively, within thirty (30) days of the receipt of this order, failing which recovery action shall be initiated against the R/P under the law.”*

4. The respondent/taxpayer assailed the aforesaid order before the Appellate Tribunal, Inland Revenue, by filing an appeal, which, as noted above, was allowed, and the order-in-original dated 10.10.2018 was set aside.

5. The following questions of law have been raised by the applicant in this reference:

- “1. Whether on the fact and in the circumstances of the case the Learned Appellate Tribunal was justified in holding that the respondent No. 1 was not under legal obligation to discharge their liability to pay sales tax in accordance with section 3 & 3(1A) of the Sales Tax Act, 1990?*
- 2. Whether on the facts and circumstances of the case the Learned ATIR, Karachi, was justified in holding that the impugned order / judgment has not been framed within the four corners of law and the department has miserably failed to ascertain merits of the case, whereas the order was passed on the declarations made by the respondent No. 1 himself in their sales tax returns, and failed to pay the due tax liability in accordance with law.*
- 3. Whether on the facts and circumstances of the case, the Appellate Tribunal was justified to delete the whole tax demand on the basis of that on the basis of non-formation of valuation committee in terms of clause (e) of 2(46) of the Sales Tax Act, 1990 whereas, clause (d) of said section clarifies the value addition on imported good.*
- 4. Whether a major component of valuation committee relates to Inland Revenue Tax Authorities or not, in case of absence of "representatives of trade bodies."”*

Arguments heard. Record perused.

6. The order-in-original No.05/2018-19 dated 10.10.2018 passed by the Additional Commissioner, Inland Revenue, is entirely founded upon the information disclosed by the respondent/taxpayer in his returns for the financial year 2014-15 as carry forward. The terms “supply” and “taxable activity” are required to be considered in the

context of the definitions provided under the Sales Tax Act, 1990. In terms of the provisions contained in section 3 of the Sales Tax Act, 1990, which is the charging section, the sales tax shall be charged, levied and paid on taxable supplies made in Pakistan by a Registered person in the course of furtherance of any taxable activity carried on by him and on the goods imported in Pakistan. The terms ‘taxable supply’ and ‘taxable activity’ are defined as follows:

“Section 2(41)

“Taxable supply” means a supply of taxable goods made by an importer, manufacturer, wholesaler (including dealer), distributor or retailer other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero per cent under section 4.

Section 2 (35)

“Taxable activity” means any economic activity carried on by a person whether or not for profit, and includes:

- (a) an activity carried on in the form of a business, trade or manufacture;*
- (b) an activity that involves the supply of goods, the rendering or providing of services, or both to another person;*
- (c) a one-off adventure or concern in the nature of a trade; and*
- (d) anything done or undertaken during the commencement or termination of the economic activity,*

But does not include---

- (a) the activities of an employee providing services in that capacity to an employer;*
- (b) an activity carried on by an individual as a private recreational pursuit or hobby; and*
- (c) an activity carried on by a person other than an individual which, if carried on by an individual, would fall within sub-clause (b).*

7. The term “supply” has been defined in section 2(33) as under:

“Section 2(33)

“supply” means a sale or other transfer of the right to dispose of goods as owner, including such sale or transfer under a hire purchase agreement, and also includes--

- (a) Putting to private, business or non-business use of goods produced or manufactured in the course of taxable activity for purposes other than those of making a taxable supply;*
- (b) Auction or disposal of goods to satisfy a debt owned by a person;*
- (c) Possession of taxable goods held immediately, before a person ceases to be a Registered person;*
- (d) in case of manufacture of goods belonging to another person, the transfer or delivery of such goods to the owner or to a person nominated by him; and*
- (e) * * **

Provided that the Board, with the approval of the Federal Minister-in-Charge, may by notification in the official Gazette, specify such other transactions which shall or shall not constitute supply;

8. In view of the above definitions, there is no provision in the Sales Tax Act, 1990 analogous to the provisions contained in the Income Tax Law, whereby the discovery of any cash-credits in the accounts of an assessee can be deemed to be supply, taxable supply or the amount received on account of taxable activity in furtherance of any business. It is established principle of law of taxation that an assessee can be subjected to tax under a provision of law, which is unambiguous and clear. There is no room for any intendment and there is no presumption as to tax. In the absence of any deeming provision the Revenue is required to establish that a transaction falls within the parameters of taxable supplies or in furtherance of any

taxable activity, failing which the sales tax imposed on the basis of some assumption or presumption not warranted in law, shall always be struck down. In the present case, the Additional Deputy Commissioner, Inland Revenue, misconstrued the nature of the tax demand against the respondent/taxpayer by equating it with short payment of sales tax on account of input tax adjustment on capital goods.

9. Under section 2(46) of the Sales Tax Act, 1990, it is provided that, where there is sufficient reason to believe that the value of a supply has not been correctly declared in the invoice, the value determined by the Valuation Committee, comprising representatives of trade and Inland Revenue and constituted by the Commissioner, shall determine the actual and correct value of the goods supplied by the taxpayer. No such Valuation Committee, as rightly noted by the Appellate Tribunal, Inland Revenue, was ever constituted by the Commissioner before resorting to presumptions on the basis of information that was, in fact, provided by the respondent/taxpayer in his tax returns.

10. Learned counsel for the respondent/taxpayer has also pointed out that the respondent/taxpayer never claimed any output tax; therefore, the order-in-original was, in fact, the outcome of highly misconceived presumptions.

11. Despite thorough scrutiny of the impugned order, no illegality or irregularity has been found therein. The questions of law framed by the applicant are also devoid of merit, as where the law

prescribes that a thing is to be done in a particular manner, it must be done in that manner or not at all.

For the foregoing reasons, the questions of law framed in this reference are answered in **negative**; consequently, the reference fails. Let a copy of this judgment be sent to the Appellate Tribunal, Inland Revenue, Quetta for information and compliance.

Announced in open Court
on 12th December, 2025.

JUDGE

JUDGE