

**14<sup>th</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
(SEPTEMBER 11, 2024)**

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**Dear Members,**

A brief update on a judgment by the High Court of Sindh on “**Subsequent Suspension & Blacklisting not to Disallow Input Adjustment; Blacklisting not to Apply Retroactively**” is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at [info@karachitaxbar.com](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

**(Syed Zafar Ahmed)**  
President

**(Asim Rizwani Sheikh)**  
Hon. General Secretary

**14<sup>th</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
(September 11, 2024)**

**SUBSEQUENT SUSPENSION & BLACKLISTING NOT TO  
DISALLOW INPUT ADJUSTMENT  
BLACKLISTING NOT TO APPLY RETROACTIVELY**

**Appellate Authority:** High Court of Sindh  
**Appellants:** Commissioner IR vs. Sadiq Textile  
**Section:** 21(3) of the Sales Tax Act, 1990

Detailed judgment was issued on November, 26 2020.

**Background:** The registered person was denied the adjustment of input tax related to supplies made to individuals who were later classified as "Blacklisted" or "Non-active." The response submitted to the show cause notice was rejected and an Order-in-Original was issued. The order was appealed before the Commissioner of Inland Revenue (Appeals), who set it aside. The department's appeal to the Appellate Tribunal was unsuccessful. The department filed a reference before the High Court of Sindh, which appointed the Amicus Curiae in the case and dismissed the departmental reference.

**Decision of the Court:**

**First Ruling of the Court:**

**SUPREME COURT JUDGMENT SUPPORTING TAXPAYER**

The court appointed Mr. Arshad Siraj as Amicus Curiae for assistance in absence of counsel for the respondent. The Amicus Curiae placed the judgement of the Supreme Court of Pakistan in Civil Petition No. 682 of 2017 dated 18-05-2018, wherein the question under consideration of the High Court was already decided in favor of the taxpayer. In the cited judgement it was ruled that a bare reading of section 21(3) of the Act shows that it can be inflicted only on purchases that take place after the event of suspension followed blacklisting. Consequently, only transaction which is undertaken either prior to or post blacklisting is liable to rejection provided that such transaction is taken place after suspension.

**Second Ruling of the Court:**

**SUPREME COURT BARS RETROSPECTIVE APPLICATION OF  
BLACKLISTING**

The transactions in question occurred before the suppliers were blacklisted and it was confirmed that the issue of fake invoices predates the relevant period. Since the suppliers were blacklisted in July and October 2013, the blacklisting cannot be applied retroactively to transactions from 2011-2012. The department's counsel could not provide any valid argument to distinguish the facts of these cases from the Supreme Court's decision.

**Conclusions**

Based on the Supreme Court's interpretation of Section 21(3) of the Act, it is clear that only transactions occurring after the suspension of a supplier are subject to rejection. Hence the Supreme High Court ruled that the transactions in question should not be disallowed.

The decision reinforces the importance of adhering to the timeline and effective dates of legal actions, particularly in matters of tax and compliance.

**DISCLAIMER:**

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

# HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan  
Mr. Justice Yousuf Ali Sayeed

Spl. STRA No.427 of 2017

Commissioner Inland Revenue .....Applicant  
Versus  
M/s M. Sadiq Textile .....Respondent

Spl. STRA No.428 of 2017

Commissioner Inland Revenue .....Applicant  
Versus  
M/s M. Sadiq Textile .....Respondent

Date of hearing: 26.11.2020

Applicant (in both) Through Mr. Kafeel Ahmed Abbasi, Advocate

Respondent:(in both) Through its proprietor's son, namely, Abdus Samad

Amicus Curiae : Mr. Arshad Siraj Memon, Advocate.

## JUDGMENT

IRFAN SAADAT KHAN, J. : Through the instant Special Sales Tax

Reference applications (STRAs) the following questions of law have been

raised, which were admitted for regular hearing vide order dated

17.9.2020:

1. *Whether in the fact and circumstances of the case, the Honourable Appellate Tribunal Inland Revenue was justified to allow the relief to taxpayer claiming input tax adjustment on supplies made by the blacklisted unit?*
2. *Whether in the facts and circumstances of the case, the order of the Honourable Appellate Tribunal Inland Revenue is not contrary to the provision of section 21(3) of the Sales Tax Act, 1990?*



3. *Whether in the facts and circumstances of the case, the order of the Honourable Appellate Tribunal Inland Revenue, is sustainable in the eyes of law?"*

2. Briefly stated the facts of the case are that during the analysis of data of the monthly sales tax returns filed by the respondent it revealed that tax credits had been made in respect of supplies to persons who were subsequently declared as "Blacklisted and Non-active". Show Cause Notices dated 20.09.2013 and 10.12.2013 were then issued to the respondents. In response thereto, reply was furnished by the respondent, which was found to be unsatisfactory. Thereafter vide Orders-in-Original (ONO) No.13 & 14 of 2014 dated 15.01.2014 tax liabilities of Rs.29,862,516/- and Rs.18,832,621/- were determined against the respondent. Being aggrieved with the said ONO, appeals were preferred before the Commissioner Inland Revenue Appeals (CIRA), who vide Orders dated 19.05.2014 and 20.05.2014 respectively set aside the ONO passed by the Deputy Commissioner Inland Revenue. Being aggrieved with the said orders of the CIRA, appeals were preferred before the Appellate Tribunal Inland Revenue(ATIR), bearing ITA No.65/KB of 2014 and ITA No.66/KB of 2014. The matters were heard on 06.04.2017 and the ATIR vide Order dated 15.05.2017 upheld the orders of the CIRA. It is against the said order of the learned ATIR that the present STRAs have been filed.

3. Mr. Kafeel Ahmed Abbasi, advocate has appeared on behalf of the applicant/department and stated that the tax credit in respect of the blacklisted and non-active persons were claimed by the respondent, which is not permissible under the provisions of Section 21(3) of the Sales Tax Act 1990, therefore according to him, the orders of the CIRA and ATIR may be set aside by answering the questions No.1&3 raised in the instant



STRAs in "Negative" and that of question No.2 in "Affirmative" i.e. all in favour of the department and against the respondent.

4. In response to the Notice issued by this Court Mr. Abdul Samad son of the proprietor/respondent concern had appeared. Since he did not seem to be well conversant with the legal issue involved in the instant matters, Mr. Arshad Siraj Memon, advocate was appointed as Amicus Curiae, vide order dated 17.09.2020, to assist the Court.

5. The learned Amicus Curiae, at the very outset, stated that the issue under discussion has already been laid to rest by the Hon'ble Supreme Court of Pakistan in the case of *Commissioner Inland Revenue, Zone-II Vs. M/s Sky Pak Enterprises, Faisalabad in Civil Petition No.682 of 2017* vide order dated 18.05.2018. He has also placed a copy of the said order on record for our perusal and a copy whereof has also been supplied to Mr. Kafeel Ahmed Abbasi, advocate. The relevant extract of the order passed by the Hon'ble Supreme Court of Pakistan is reproduced hereunder:

*"Before us, the learned counsel has read from the provision of Section 21(3) of the Act which is reproduced as follows:*

*"(3). During the period of suspension of registration, the invoices issued by such person shall not be entertained for purposes of sales tax refund or input tax credit, and once such person is blacklisted, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such blacklisting shall be rejected through a self-speaking appealable order and after affording an opportunity of being heard to such person."*

*(emphasis supplied)*

*A bare reading of the said provision shows that it is attracted to transactions that take place after the event of suspension of a supplier of goods under alleged fake invoices. The event of blacklisting follows suspension. Consequently any transaction which is either prior to or after blacklisting of the supplier is liable to rejection provided that such transaction has taken place after the date of suspension of the supplier. In the present case, the petitioner has not been able to make out before any of the three fora below a case that the suspension of the alleged issue of fake invoices took place prior to the relevant period July, 2008-Sempter, 2009."*



6. We have heard the learned counsel for the applicant at some length and have also perused the record as well as the decision of the Hon'ble Supreme Court of Pakistan referred by the learned Amicus Curiae in the instant matters.

7. In our view, the decision given by the Honourable Supreme Court is the complete answer to the questions raised in the instant matters as the Apex Court while interpreting the provision of Section 21(3) of the Act has clearly observed that the said section is attracted to the transactions which took place after the event of the suspension of a supplier of goods under alleged fake invoices. In the instant matters, it is an admitted fact that the transactions in-question took place during the period prior to the blacklisting of the suppliers. It is also an admitted position that the issue of fake invoices took place prior to the period under discussion in the instant two STRAs, when the supplier was neither blacklisted nor suspended as only those transactions are liable for rejection which took place after the date of suspension of the supplier whereas in the instant matters from the facts it is evident that the transactions were of the period January 2012 and September 2011 to June 2012 whereas the suppliers were blacklisted on 03.07.2013 and 09.10.2013 respectively and hence the said blacklisting could not be applied retrospectively to whose suppliers. Mr. Kafeel Ahmed Abbasi, advocate could not controvert that under the facts and circumstances of the instant matters, the decision of the Hon'ble Supreme Court of Pakistan either is not applicable to the present case or that the facts obtaining in the instant matters are different and distinguishable in any manner.



7. We, therefore by respectfully following the decision of the Hon'ble Supreme Court of Pakistan as referred *supra* answer the questions No.1 and 3 raised in the instant Spl. STRAs in "Affirmative" whereas answer the question No.2 in "Negative" i.e. all the three questions are decided in favour of the respondent and against the department.

With these observations both the Spl. STRAs stand disposed of. The assistance provided by Mr. Arshad Siraj, Memon, the "Amicus Curiae, is appreciated.

Sdr Imran Saadul Khan  
Judge  
Sdr Yousuf Ali Saheed  
Judge

11/12/2020  
JUDGE



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