

**30<sup>th</sup> KTBA CASE LAW UPDATE  
(February 13, 2024)**

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**Dear Members,**

A brief update on a recent judgment by the Supreme Court of Pakistan on **“Shifting of Onus or Burden of proof onto the taxpayer dismissed. Showcause without homework by the department dismissed.”** 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 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

**(M. Mehmood Bikiya)**  
Hon. General Secretary

**30<sup>th</sup> KTBA CASE LAW UPDATE  
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**SHIFTING OF ONUS OR BURDEN OF PROOF ONTO THE TAXPAYER DISMISSED.**

**SHOWCAUSE WITHOUT HOMEWORK BY THE DEPARTMENT DISMISSED.**

**Appellate Authority :** Supreme Court of Pakistan.

**Petitioner:** Commissioner IR , KHI

**Section:** 7 & 8 of the Sales Tax Act, 1990 (the Act).

Detailed judgment in Al Abid Silk Mills case was issued on May, 23 2023 reported as 2023 SCMR 1797.

**BACKGROUND:** The taxpayer who was a manufacturer cum exporter, received a show cause notice alleging involvement in issuance of fake/flying invoices. The notice claimed that eight entities had not deposited the output sales tax while the taxpayer claimed the same as his input, based on their invoices. The officer though relied merely on a report from the Directorate General, Intelligence and Investigation (DGIR), without conducting an inquiry or audit, the order-in-original and the first two appeals remained unfavourable to the taxpayer. The High Court, accepted his appeal whereafter the department filed this appeal in the Supreme Court.

**DECISION OF THE COURT:**

**First Ruling of the Court:**

The show cause notice issued to the taxpayer was solely based on a report from the Directorate of I & I. The department without any prior audit under 25 of the Act or proper inquiry seeking information under section 38 of the Act, showcaused the taxpayer. The notice relied on vague assumptions, linking the eight entities involvement in fake/flying invoices to the alleged inadmissible input tax claimed by the taxpayer. The department failed to establish that the eight suppliers did not make actual supplies and neglected to verify if they had deposited sales tax with the FBR.

The onus was on the Department to first establish that the eight suppliers had not made actual supplies and, thus, the invoices against which the input was claimed were fake/flying invoices.

The Department on the contrary, imposed a reverse onus on the taxpayer without verifying the authenticity of the invoices.

The Act places responsibility on sales tax authorities to establish that a person is liable for unpaid taxes. While reverse onus is recognized in some laws, the Act of 1990 does not include such provisions, indicating the legislature's intent to uphold the presumption of innocence. The proceedings under the Act are quasi-judicial, and when the department alleges tax liability, it bears the duty to prove the allegations are highly probable through proper evidence, following the standard of balance of probabilities. The appeals were consequently dismissed.

**Second Ruling of the Court:**

The show cause notice was issued mechanically, with vague allegations and unverified facts. The taxpayer was required to prove that its eight suppliers had not made supplies and had not deposited output tax in the treasury, leading to the presumption of fake/flying invoices. The department sought unnecessary documents, and the notice was vague, relying on a report without conducting a proper inquiry. The High Court correctly interpreted the Act of 1990, and its appreciation is deemed unimpeachable. The Department failed to justify leave, resulting in the dismissal of the petition.

**COMMENTS:** The judgment brings attention to two significant aspects:

Firstly, it critiques the tax authorities for issuing show-cause notices based on hearsay without supporting material evidence obtained from an audit.

Secondly, it discusses the practice of tax authorities attempting to shift the burden onto the taxpayer through reverse onus. This behavior is noted in various tax proceedings, including income tax and sales tax cases.

The judgment underscores the importance of fundamental principles like due process and fair trial, essential for the administration of justice and in line with constitutional values.

**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.

**Dear Members,**

A brief update on a recent judgment by the Supreme Court of Pakistan on “**Shifting of Onus or Burden of proof onto the taxpayer dismissed. Showcause without homework by the department dismissed.**” is being shared with you for your knowledge. The order has been attached herewith the update.

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Best regards

**(Syed Zafar Ahmed)**  
President

**(M. Mehmood Bikiya)**  
Hon. General Secretary

**(Shams M. Ansari)**  
Convener: Case Law Update Committee

**Supreme Court of Pakistan**

**Civil Appeal No. 1032 of 2018, decided on 23rd May, 2023.  
(Against the judgment dated 27.03.2018 of the High Court of Sindh, Karachi  
passed in STRA No. 737 of 2015) Date of hearing: 14th February, 2023.**

**Present: Umar Ata Bandial, C.J., Ayesha A. Malik and Athar Minallah, JJ**

**COMMISSIONER INLAND REVENUE ZONE-IV, LARGE TAXPAYER UNIT, KARACHI---  
Appellant  
Versus  
Messrs AL-ABID SILK MILLS LTD., A-39, MANGHOPIR ROAD, SITE, KARACHI---  
Respondent**

**Mrs. Asma Hamid, Advocate Supreme Court for Appellant.  
Ghulam Rasool Mangi, Advocate Supreme Court/Advocate-on-Record (via video-  
link, Karachi) for Respondent.**

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**Law:** Sales Tax Act, 1990

Section: 25,8(1)(c)(a)

**Law:** Constitution of Pakistan, 1973

Section: 10A

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(a) Sales Tax Act (VII of 1990)---

----Ss. 25 & 8(1)(c)(a)---Constitution of Pakistan, Art. 10A---Allegation of issuing fake/flying invoices and claiming input tax against such invoices---Liability raised against tax payer based on presumptions---No attempt made by the Department to verify the invoices---In the present case the show cause notice was issued in a mechanical manner---Allegations were vague and the facts had not been verified---Moreover, the taxpayer was asked to establish that its suppliers i.e. the eight distinct entities had not made supplies and that they had not deposited the output tax in the government treasury---It was on this basis that it was presumed that the invoices were fake/flying and thus the input tax adjusted against such invoices was alleged to be inadmissible---Taxpayer was further asked to produce documents which were not required to be maintained under the Sales Tax Act, 1990 ('Act of 1990') at the relevant time---Department had issued a vague show cause notice pursuant to a report, without first making an inquiry of its own to verify the facts relating to the eight entities i.e whether they had deposited the tax in relation to the supply made to the taxpayer.

Before the issuance of the show cause notice no meaningful effort was made by the sales tax officials to conduct an audit nor was a proper inquiry made by exercising powers conferred under the Sales Tax Act, 1990 ('Act of 1990') in order to verify the allegations made in the report. The show cause notice was based on vague allegations and an assumption that, since some of the supplies were made by the eight entities which were involved in the issuance of fake/flying invoices, therefore, the invoices relating to such supplies must also have been of the same status. It was not the case of the Department that the eight entities were never engaged in business nor had made supplies. The taxpayer was asked by the sales tax authorities to provide documents which, at the relevant time, were not required to be maintained by a registered person.

When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful. The duty to establish facts on the standard of balance of probabilities is on the department under the Act of 1990. In the present case the onus was on the Department to

first establish that the eight suppliers had not made actual supplies and, thus, the invoices against which the input was claimed were fake/flying invoices. Moreover, it was the Department's responsibility to verify whether or not the eight entities had deposited the sales tax in the government treasury relating to the invoices against which the taxpayer had claimed input tax. It is evident from the record that the Department had made no attempt to verify whether the invoices relatable to the claim of input tax were fake/flying or otherwise. Appeal filed by Commissioner Inland Revenue was dismissed.

(b) Interpretation of statutes---

----Fiscal statute---While interpreting fiscal statutes, the court looks to what is clearly said and there is no room for any intendment nor is there any equity about a tax---There is no presumption as to tax and nothing was to be read in or implied and one could only look fairly at the language used.

Messrs Mirpurkhas Sugar Mills Ltd. v. Government of Sindh and others 1993 SCMR 920; Muhammad Younus v. Central Board of Revenue and others PLD 1964 SC 113; Commissioner of Income Tax v. Mst. Khatija Begum PLD 1965 SC 472; Government of West Pakistan and others v. Messrs Jabees Ltd. PLD 1991 SC 870 and Government of Pakistan and others v. Messrs Hashwani Hotels Ltd. PLD 1990 SC 68 ref.

(c) Constitution of Pakistan---

----Art. 10A---Right to fair trial---Reverse onus on accused---Scope---Concept of reverse onus i.e. placing the burden on the person against whom an allegation has been made runs contrary to the established principle of presumption of innocence---It is therefore, for this reason that Courts lean in favour of interpreting or reading down such provision in an effort to safeguard the fundamental principles of fair trial.

JUDGMENT

ATHAR MINALLAH, J.---The Commissioner Inland Revenue had sought leave against judgment, dated 27.03.2018, of the High Court whereby questions of law proposed in a sales tax reference application, filed under section 47 of the Sales Tax Act 1990 ('Act of 1990'), were answered and leave was granted by this Court vide order dated 20.07.2018.

2. The respondent, Messrs Al-Abid Silk Mills Ltd. ('taxpayer'), is registered under the Act of 1990 and is engaged in the business of manufacturing and export. Pursuant to a report of the Directorate General, Intelligence and Investigation ('Directorate of I I'), the Deputy Commissioner Inland Revenue served a show cause notice upon the tax payer, dated 31.01.2014. It was alleged that eight distinct entities, described in the show cause notice, were allegedly involved in the issuance of fake/flying invoices and they had not deposited the tax in the treasury. It was further alleged that the taxpayer had claimed input tax against invoices issued by the said eight distinct suppliers. It was, therefore, assumed that the invoices relating to supplies made by the eight entities were fake/flying. The taxpayer was, therefore, called upon, through the show cause notice, to explain why the input tax claimed against the alleged fake/flying invoices should not be recovered along with the default surcharge and additional tax. It is noted that the Directorate of I I had not conducted an audit under section 25 of the Act of 1990 nor was it vested with jurisdiction to do so. The Deputy Commissioner Inland Revenue had also mechanically proceeded on the basis of the report of the Director General, Directorate of I I, because neither an audit was conducted under section 25 nor information was sought to have been obtained from the taxpayer under section 38 of the Act of 1990. The show cause notice was adjudicated against the taxpayer vide Order-in-Original No.30/2013, dated 28.05.2014. The appeal preferred by the taxpayer was dismissed by the Commissioner Inland Revenue (Appeals) vide Order-in-Appeal dated 26.08.2014. The appeal preferred before the Appellate Tribunal Inland Revenue ('Tribunal') also did not succeed and it was dismissed vide judgment, dated 05.05.2015. The taxpayer invoked the jurisdiction of the High Court under section 47 of the

Act of 1990, by proposing questions of law stated to have arisen from the judgment of the Tribunal. The High Court answered the proposed questions against the Department.

3. We have heard the learned counsel for the parties.

4. It is an admitted position that the show cause notice was issued pursuant to the report received from the Directorate of I I. Before the issuance of the show cause notice no meaningful effort was made by the sales tax officials to conduct an audit nor was a proper inquiry made by exercising powers conferred under the Act of 1990 in order to verify the allegations made in the report. The show cause notice was based on vague allegations and an assumption that, since some of the supplies were made by the eight entities which were involved in the issuance of fake/flying invoices, therefore, the invoices relating to such supplies must also have been of the same status. It was not the case of the Department that the eight entities were never engaged in business nor had made supplies. The taxpayer was asked by the sales tax authorities to provide documents which, at the relevant time, were not required to be maintained by a registered person under section 22 of the Act of 1990 e.g. gate passes, goods inward inventory record and transportation challans. These documents were inserted in section 22 of the Act of 1990 through the Finance Act 2013, dated 29.06.2013, while the alleged transactions had taken place prior thereto. The Department, in a nutshell, had alleged that since the eight distinct suppliers were allegedly involved in issuance of fake/flying invoices, therefore, the presumption was that the supplies relating to the invoices against which input was claimed had not been made. On this assumption it was alleged that the input claimed was inadmissible under section 8(1)(c) (a) of the Act of 1969. The said provision contemplates that input cannot be claimed on goods or services in respect of which sales tax has not been deposited in the government treasury by the respective supplier. In essence, the onus was on the Department to first establish that the eight suppliers had not made actual supplies and, thus, the invoices against which the input was claimed were fake/flying invoices. Moreover, it was the Department's responsibility to verify whether or not the eight entities had deposited the sales tax in the government treasury relating to the invoices against which the taxpayer had claimed input tax. It is evident from the record that the Department had made no attempt to verify whether the invoices relatable to the claim of input tax were fake/flying or otherwise. The expression input tax and output tax have been defined under clauses 14 and 20 of section 2 of the Act of 1990, respectively. The liability raised against the taxpayer, vide the Order-in-Original, was based on mere presumptions while the sale tax authorities had failed in their duty to establish the allegations before the adjudicating authorities. The appeals were dismissed by the Commissioner Inland Revenue (Appeals) and the Tribunal on the ground that though the record sought from the taxpayer was not required to be maintained under section 22 of the Act of 1969, yet it was the latter's obligation to prove that supplies were actually made to it. After issuing a show cause notice without conducting an audit or making a proper inquiry a reverse onus was placed on the taxpayer.

5. The Act of 1990 is a complete comprehensive statute dealing with the levy, charge and payment of sales tax on taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by such registered person. The levy, charge or payment of sales tax is attracted when there is taxable supply and such taxable supply must have been made in the course or furtherance of any taxable activity carried out by a registered person. The expression 'taxable supply', 'value' and 'taxable activity' have been defined in sections 2(41), (46) and 35 respectively. The expression 'output tax' has been defined in section 2(20) in relation to a registered person as, inter alia, meaning tax levied under the Act of 1990 on the supply of goods made by the person. The liability to pay the output tax is, therefore, that of a supplier which in this case were the eight distinct entities. Section 7 describes the mechanism for determination of the tax liability and provides that, subject to the provisions of section 8, a registered person shall be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made or to be made from the out put tax. The expression 'input tax' has been defined under section 2(14) in relation to a registered person as, inter alia, meaning the tax levied under the Act of 1990 on supply of goods to the person. As a corollary, a person who receives a supply of

taxable goods is entitled and eligible to deduct tax paid on the supply of goods received by the latter. The input tax in this case was adjusted by the taxpayer.

6. It is settled law that, while interpreting fiscal statutes, the court looks to what is clearly said and there is no room for any intendment nor is there any equity about a tax. There is no presumption as to tax and nothing was to be read in or implied and one could only look fairly at the language used.<sup>12345</sup>

7. The scheme of the Act of 1990 clearly envisages that the obligation to establish that a person was liable to pay any tax or charge and the same has not been levied or paid or has been short-levied is essentially that of the sales tax authorities. The burden to prove that the tax has not been paid is on the sales tax authorities. In order to discharge this obligation they have been vested with wide powers under the Act of 1990. It is well settled that whoever asserts a fact is also burdened with the duty to establish that it is highly probable to be true. In some exceptional cases, the legislature, in its wisdom, has provided for what is known as reverse onus, by placing the burden on the person against whom an allegation has been made. Section 187 of the Customs Act, 1969 and section 14 of the National Accountability Ordinance, 1999 are such illustrations. The concept of reverse onus i.e. placing the burden on the person against whom an allegation has been made runs contrary to the established principle of presumption of innocence. It is therefore, for this reason that Courts lean in favour of interpreting or reading down such provision in an effort to safeguard the fundamental principles of fair trial. There is no provision *pari materia* with section 187 of the Customs Act 1969 or section 14 of the National Accountability Ordinance, 1999, in the Act of 1990. The legislature, therefore, did not intend to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Act of 1990. The proceedings before the adjudicating authority or the statutory appellate forum under the Act of 1990 are quasi judicial in nature. When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful. The duty to establish facts on the standard of balance of probabilities is on the department under the Act of 1990.

8. In the case in hand, the show cause notice was issued in a mechanical manner. The allegations were vague and the facts had not been verified. Moreover, the taxpayer was asked to establish that its suppliers i.e. the eight distinct entities had not made supplies and that they had not deposited the output tax in the government treasury. It was on this basis that it was presumed that the invoices were fake/flying and thus the input tax adjusted against such invoices was alleged to be inadmissible. The taxpayer was further asked to produce documents which were not required to be maintained under the Act of 1990 at the relevant time. The department had issued a vague show cause notice pursuant to a report, without first making an inquiry of its own to verify the facts relating to the eight entities i.e. whether they had deposited the tax in relation to the supply made to the taxpayer. The High Court has correctly interpreted the provisions of the Act of 1990 in the context of the facts and circumstances of the case before us. The appreciation of the provisions of the Act of 1990 by the High Court have been found to be unimpeachable. The Department has not been able to make out a case for grant of leave and, therefore, the petition is accordingly dismissed.

These are the reasons for our short order dated 14.02.2023.