

**IN THE COURT OF SPECIAL JUDGE  
(CUSTOMS, TAXATION & ANTI-SMUGGLING-I) KARACHI**

CASE NO.05 of 2019

The State

... v/s ...

1. Saif ul Mulk son of Muhammad Asif Raaj
2. Muhammad Amir son of Muhammad Siddiq
3. Jawwad son of Muhammad
4. Muhammad Nabi  
Son of Sur Gul ..... Applicant/ accused

*FIR No.01/2018*

*U/s 2 (37), 2(9), 2(14)(a), 3, 3(1A), 6(1), 6(2), 7(1),  
7(2)(i)(ii), 8(1)(a), 8(1)(ca), 8(1)(d), 8A, 14, 21,  
22(1), 23(1), 25, 26(1) and 73 of the Sales Tax Act,  
1990 punishable under Section 33(11c) and  
33(13) of the Act ibid.*

*PS: Corporate Regional Tax Office, Zone VI,  
Karachi.*

Mr. Muzammil Hussain and Mr. Inayatullah Soomro, learned counsel for applicant/ accused Saif ul Mulk.

Mr. Aqil Ahmed, learned counsel for applicant/ accused Muhammad Amir.

Mr. Nisar Khoso advocate, associate of Mr. Ghulamullah Shaikh, learned counsel for applicants/ accused Jawwad and Muhammad Nabi.

Mr. Ashiq Ali Anwar Rana, learned SPP for the State.

Caretaker I/O Amir Masood is also present.

**ORDER**  
**22-10-2025**

By this order, I intend to dispose of four (04) separate applications filed by learned counsel for the applicants/ accused under Section 265-K Cr.P.C for acquittal of the above named applicants/ accused.

2. Heard learned counsel for applicants/ accused, learned SPP for the State, IO of the case and perused the record.

3. Learned counsel for the applicants/ accused contended that the criminal proceedings initiated against the applicants/ accused under the Sales Tax Act, 1990 are illegal and without jurisdiction, as there has been no prior assessment or adjudication of tax liability in accordance with Section 11 of the said Act. They further contended that the Hon'ble Supreme Court of Pakistan, in its consolidated judgment dated 04-12-2024 passed in Civil Appeals Nos.350 to 698 of 2016 and connected matters, has held that the initiation of criminal proceedings, including registration of FIR and arrest of a registered person under the Sales Tax Act, 1990, is not permissible unless there is a prior determination of tax liability through due process of assessment or adjudication. They also contended that the said judgment emphasizes that penal provisions under Sections 33, 37A and 37B of the Act ibid cannot be invoked on the basis of mere allegations of tax fraud or presumed default. They further contended that in the present case, there is no document on record showing that any assessment or adjudication of tax

liability under the Sales Tax Act, 1990 was ever made against the applicants/ accused prior to registration of the FIR or initiation of criminal proceedings. They further contended that even the IO has admitted in his comments filed in the shape of submissions against these applications that the specific assessment order finalizing the tax liability is not readily available in the investigation file. They further contended that the challan is also completely silent as to whether any determination of tax liability was made prior to the registration of the FIR. They further contended that continuing with the trial would be a futile exercise and there remains no probability of the applicants' conviction. They further contended that under Section 265-K Cr.P.C., this Honorable Court is empowered to acquit an accused at any stage of the trial if there appears no likelihood of conviction based on the evidence. They also argued that in the circumstances, there is no likelihood of applicants/ accused being convicted in this case. They lastly prayed that the applicants/ accused may kindly be acquitted under Section 265-K of the Cr.P.C. and this application may kindly be allowed. Learned counsel for the applicants/ accused placed their reliance upon unreported judgment dated 04-12-2024 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeals Nos.350 to 698 of 2016 and connected matters.

4. Learned SPP for the State and the IO of the case, on the other hand, submitted that in view of the binding judgment of the Hon'ble Supreme Court of Pakistan, criminal proceedings cannot be initiated without prior determination of tax liability through adjudication and assessment. They further submitted that the case may be disposed of in accordance with law.

5. Brief facts of the case as alleged in the FIR are that M/s Mind Challenge, NTN 4357348-7, STRN 3277876136199, engaged in tax fraud by misusing the status of "manufacturer" to illegally avail the benefits of SRO 1125(1)/2011 dated 31-12-2011. Acting upon credible information, a team duly authorized by the Commissioner Inland Revenue, Zone-VI, Corporate Regional Tax Office, Karachi, conducted physical verification of the declared manufacturing premises situated at Plot No.117 & 118, Muhammad Khan Road, Block-M, Ittehad Town, Karachi, wherein the registered person was found non-existent at the declared address. It is further alleged that as per the information received from the Local Registration Office, CRTO Karachi, the sole proprietor, namely Saif-ul-Mulk (CNIC No.42301-7669509-5), obtained sales tax registration as a manufacturer for weaving of grey fabric (gents boski and ladies lawn) by declaring Polyester Yarn as input material and declaring 46 power looms installed at the said premises. However, upon physical verification conducted under Section 38 of the Sales Tax Act, 1990, it was revealed that although 46 looms were found installed, they were not in use of M/s Mind Challenge. It is further alleged that at the time of visit, one Muhammad Abid, who was found present at the premises, stated that he was the tenant and user of the looms and paid rent to the owner. He further admitted that he himself had installed 22 power looms and was not registered in sales tax or income tax. He categorically denied knowing any person named Saif-ul-Mulk or having rented the premises or looms to him. It is further alleged that another person, Muhammad Siddique

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S/o Abdul Jalil (CNIC No. 42401-8377145-1), was also found present at the premises. He stated that he was also a tenant and had installed 11 power looms belonging to him. He too was not registered in sales tax or income tax and denied any knowledge of Saif-ul-Mulk or M/s Mind Challenge. It is further alleged that as per monthly sales tax returns, import data and other records available in the database, M/s Mind Challenge imported various kinds of finished fabrics amounting to Rs.152,391,691/- during the tax period August 2018, under the garb of "manufacturer" for in-house consumption at zero percent tax under SRO 1125(1)/2011. However, the registered person was found non-existent at the declared address and had imported finished fabrics instead of yarn, which clearly reflects a fraudulent intent to misuse the manufacturer status to evade payment of sales tax. It is further alleged that since M/s Mind Challenge was not a genuine manufacturing concern, the sales tax not paid at the import stage became recoverable from the registered person. The record reveals that the accused imported finished fabrics worth Rs.176,669,306/- (including customs duty of Rs.24,277,615/-), against which the accused became liable to pay sales tax of Rs.15,900,238/- and value added tax (VAT) of Rs.3,533,386/-, under SRO 1125(1)/2011. It is further alleged that at the time of verification, no stock of imported goods was found at the declared premises, nor the accused had declared any other business address in the registration profile, which indicates that the imported goods were sold in the local market to unregistered persons, thereby evaded further tax of Rs.3,876,917/- under Section 3(1A) of the Sales Tax Act, 1990. It is further alleged that the registered person also declared fake supplies amounting to Rs.47,438,745/- to M/s Pearl Enterprises (NTN 8969851-1) and M/s Universal Enterprises (NTN 8006846-2), both registered at RTO Islamabad, who were found to be non-filers. Hence, these sales were fictitious, made to avoid further tax of Rs.1,423,162/- under Section 3(1A) of the Sales Tax Act, 1990. It is further alleged that Saif-ul-Mulk (Accused No.1), being the proprietor of M/s Mind Challenge, in connivance with Muhammad Amir S/o Muhammad Siddique (CNIC No.42301-6681197-1), Clearing Agent (Accused No.2), Muhammad Sohail S/o Abdul Majeed (CNIC No. 42301-7837033-9), Customs Broker (Accused No.3), Obaid Jamshid S/o Jamshaid Khan (CNIC No. 42301-8734574-5), Tax Consultant (Accused No.4), and others, committed tax fraud by obtaining sales tax registration under fake manufacturing status, importing fabric instead of yarn and issuing fake/flying invoices to inactive buyers. It is further alleged that through these fraudulent acts, the accused persons evaded total sales tax amounting to Rs.24,733,705/- (inclusive of Sales Tax, VAT, and Further Tax), thereby caused loss to the national exchequer and violated the provisions of the Sales Tax Act, 1990, as well as SRO 1125(1)/2011 dated 31-12-2011.

Accordingly FIR was lodged against the accused persons.

6. Subsequently, the final challan against the accused persons including the applicants/ accused, were filed by the I.O. before this Court. The allegations against the applicants/ accused in the challan pertain to the commission of tax fraud by way of fake and flying tax invoices. It is further alleged that applicant/ accused Saif-ul-Mulk, being the prime accused and proprietor of M/s Mind Challenge, fraudulently obtained sales tax registration as a manufacturer despite having no genuine manufacturing activity. It

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is further alleged that he inserted fake and fictitious sales in the sales tax returns of M/s Mind Challenge in order to inflate input/ output tax figures and thereby evade payment of due taxes. It is further alleged that the accused concealed various bank accounts operated in the name of M/s Mind Challenge from the Federal Board of Revenue (FBR) and mischievously misrepresented his business particulars at every stage to mislead the authorities. It is further alleged that the said accused, in connivance with other co-accused persons, committed organized tax fraud involving huge sums of money, by misusing the manufacturing status under SRO 1125(1)/2011 dated 31-12-2011, thereby caused substantial loss to the national exchequer.

According to challan accused Muhammad Aamir, a Customs Clearing Agent, managed and operated the affairs of his father's clearing agency, M/s Patanwala Traders, and also ran another unregistered agency under the name Emaan Enterprises, in violation of Customs regulations. It is further alleged that the accused handled the customs clearance of imported consignments of M/s Mind Challenge, including GD No.KPPI-HC-9465, wherein clearance was effected through Patanwala Traders under his supervision, as his father was unable to manage operations due to old age. It is further alleged that scrutiny of records revealed that accused Muhammad Aamir had close connections with several units, including M/s Faizan Enterprises (suspended), M/s Al-Rehan Textile (blacklisted), and M/s Anam Textile (suspended), which are known to be involved in fraudulent tax activities, thereby showed his active association with a network engaged in tax fraud. It is further alleged that through his clearing activities, the accused facilitated and abetted fraudulent imports and tax evasion by M/s Mind Challenge and other non-genuine units, rendering himself liable under the penal provisions of the Sales Tax Act, 1990 and Customs laws.

It is alleged in the challan that accused Muhammad Nabi, a businessman operating from Green-II Tower, Tariq Road, Karachi, maintained multiple bank accounts that were directly linked to the accounts of M/s Mind Challenge, reflecting large-scale financial transactions amounting to hundreds of millions of rupees. It is further alleged that one of his accounts titled M/s MN Traders held at Habib Metropolitan Bank, KBWR Branch, showed total credits of Rs.208.6 million, while his Meezan Bank account reflected credits of Rs.140.65 million, and his Bank Al Habib account, linked with M. Ayub and M/s Mind Challenge, showed credits of Rs.530.9 million. It is further alleged that all these substantial transactions remained undeclared before FBR.

According to challan accused Jawad, also a businessman at Green-II Tower, Tariq Road, Karachi, maintained banking connections with M/s Mind Challenge through his account titled M/s JM Traders at Habib Metropolitan Bank, KBWR Branch, showing total credits of Rs.348.01 million, all of which remained undeclared before FBR. It is further alleged that as per the statement of one Imran Ahmed, Operational Manager, HMB KBWR Branch, the accounts of Muhammad Nabi and Jawad were interlinked with several other suspicious business units, including M/s Al-Nasser, M/s

Shahab Industries, M/s ABC Industries, and M/s Imran Industries, which are either suspended or blacklisted by FBR. It is further alleged that the said accused Jawad, in collusion with Muhammad Nabi, deposited cash amounts in millions into various accounts, including those of M/s Mind Challenge.

7. During the pendency of instant proceedings, the Hon'ble Supreme Court of Pakistan passed a consolidated judgment on 04-12-2024 in Civil Appeals Nos.350 to 698 of 2016, 424, 511, 512, 673, 1183 and 1184 of 2020, Civil Petition No.1066 of 2018, Criminal Appeal No.177 of 2019 and C.M.A. No.12231 of 2021 in Civil Appeal No.673 of 2020. In this judgment, the Hon'ble Supreme Court of Pakistan thoroughly examined the legality of initiating criminal proceedings under the provisions of the Sales Tax Act, 1990, such as registration of FIRs and arrest of a registered person. The Hon'ble Supreme Court of Pakistan categorically held that no criminal action can be taken against a taxpayer unless and until the tax liability has first been determined through proper assessment or adjudication under Section 11 of the Act *ibid*. The August Court further held that taxation is essentially a civil liability, meant to regulate economic activity and ensure compliance and that penal provision such as FIRs and arrests cannot be invoked merely on presumptions or allegations of fraud. Unless the due process of assessment of tax liability is completed, any such criminal proceedings are without jurisdiction and contrary to law. The Hon'ble Supreme Court of Pakistan further emphasized that reading the penal provisions of Sections 33, 37A and 37B in isolation would disturb the entire scheme of the Act *ibid* and create uncertainty in the taxation system, which is against the spirit of law. For the sake of brevity, relevant paragraphs of the said judgment are reproduced as under:-

***"19. ....Perusal of the provision of Section 37A of the Act corresponding provisions of the Act, and invoked as per scheme of the law after assessment/adjudication of the amount of sales tax due, it can be abused by initiating criminal proceedings, including arrest of a registered person, on the mere allegation of tax fraud and default in payment of presumed tax liability which is yet to be determined through process of assessment or adjudication. Such interpretation of the provisions of Section 37A, would bring uncertainty of taxation, which is against the very spirit and purpose of imposition of any tax.***

***20. Invariably, imposition of any tax either direct or indirect, including Sales Tax, is regarded as a civil liability to be recovered from the tax payer, not only to collect tax but also to regulate the economy and to facilitate the business activity, however, in order to ensure tax compliance and the recovery of the amount of tax due, the penal provisions including imposition of surcharge and penalty are also incorporated in the taxing statutes. However, before invoking such provisions or adopting coercive measures for the recovery of the amount of tax due, the determination of tax liability through process of assessment or adjudication has to precede before initiating criminal proceedings, which otherwise depend upon willful default, mens-rea and commission of an offence of tax fraud with an intent to cause loss of tax involved or due. Admittedly in all aforesaid cases, without determination of sales tax liability and the amount of tax allegedly evaded or short paid, through process of assessment/adjudication, recourse to initiation of criminal proceedings on the allegation of tax fraud, including registration of FIR and arrest of a registered person or any person within the supply***

*chain, amounts to, pre-empting the assessment of tax liability, whereas, in the absence of lawful demand of Sales tax pursuant to Assessment of tax due, the penal provisions including Section 33 read with Sections 37A and 37B cannot be invoked. Therefore, the penal provisions including registration of FIR and arrest of any person on the above allegations is without jurisdiction and lawful authority. It is settled principle of interpretation of taxing statute that any provision of statute cannot be read in isolation, particularly, when it is dependent upon or complimentary to other provision of the law. In law may not render the other provisions as redundant or nugatory...*

21. Similarly.....

22. *In view of hereinabove facts and circumstances of the aforesaid cases, we have no hesitation to conclude that without investigate audit or issuance of show cause notice or providing opportunity to explain the matters, registration of FIR, initiation of criminal proceeding and arrest of registered person is without prosecution follows adjudication and assessment of tax under Section 11 of the Act, therefore, pre-trial steps including arrest and detention cannot be given effect to unless the tax liability of the taxpayer is determined in accordance with law. Accordingly, all the judgments/ orders, under challenge, allowing the writ petitions are hereby maintained, however, for the reasons recorded by us hereinabove. Above are the reasons of our short order of even date, which reads as under:*

*“These appeals/ petition are dismissed for reasons that will be elaborated upon later. Parties may file their written submissions within two weeks.”*

A bare perusal of the above paragraphs makes it abundantly clear that the august Court of the land has settled the principle that criminal proceedings under the Sales Tax Act, 1990, including the registration of FIRs and the arrest of registered persons, can only be initiated once civil liability has first been determined. Initiating criminal proceedings without assessment of tax liability not only undermines the statutory framework but also deprives the taxpayer of the right to due process, thereby violating fundamental guarantees of a fair trial. Therefore, the law as settled by the Hon'ble Supreme Court of Pakistan acts as a binding precedent and all courts and authorities are under a legal duty to ensure strict compliance with these principles.

8. In the light of the law laid down by the Hon'ble Supreme Court of Pakistan in the above-cited judgment, this Court is under a legal duty to examine whether the condition precedent for invoking penal provisions under the Sales Tax Act, 1990, particularly the registration of FIR, initiation of criminal proceedings or taking coercive action such as arrest, has been satisfied in the instant case. As stated above, the allegations against the applicants/ accused in this case pertain to the commission of tax fraud by way of fake/ flying tax invoices. It appears from the record that neither the FIR nor the challan shows any determination of tax liability under Section 11 of the Sales Tax Act, 1990 by the tax authorities prior to the registration of the FIR/ case. Furthermore, the IO has also filed comments/ submission on present applications

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submitting that the specific assessment order finalizing the tax liability is not readily available in the investigation file.

This clearly shows that the legal foundation for invoking the criminal machinery is absent in this case. The mandatory condition of assessment/ adjudication of tax liability prior to the FIR is totally missing in the present case. Without such determination of tax liability, the prosecution has no legal footing. It is a settled principle of law that where the foundational legal requirement is missing, all subsequent proceedings are vitiated. The requirement of prior determination of tax liability is not a mere procedural prerequisite/ formality, but also a substantive requirement for establishing the grounds for criminal proceedings and an essential safeguard to prevent premature prosecution. The Hon'ble Supreme Court of Pakistan in its above said judgment has categorically held that criminal proceedings under the Sales Tax Act, 1990 cannot be initiated on the basis of mere allegations or presumptions of tax fraud. It was further held that unless tax liability is first determined through the process of assessment under Section 11 of the Act, 1990 provisions relating to punishment and arrest under Sections 33, 37A and 37B cannot be lawfully invoked. The Apex Court further held that taxation is primarily a matter of civil liability and until the actual liability is ascertained, no element of criminality can be attributed to a taxpayer. In light of this binding precedent, it is clear that proceeding with the present case without any prior adjudication/ assessment of tax liability would directly violate the ratio laid down by the Hon'ble Supreme Court of Pakistan and would amount to bypassing the safeguards provided in the statute.

9. In light of the above discussion, it is crystal clear that the prosecution's case against the present applicants/ accused is procedurally flawed and this leads the Court to the conclusion that there is no probability of conviction of the applicants/ accused, even if a full-fledged trial is commenced. The material and evidence collected is not only insufficient but also legally defective, as it fails to meet the threshold set by the Hon'ble Supreme Court of Pakistan regarding the prerequisites of criminal liability under the Sales Tax Act, 1990. The continuation of criminal trial in such a legally untenable scenario would not serve the ends of justice.

10. Accordingly, the present applications under Section 265-K Cr.P.C are allowed. Consequently, applicants/ accused are acquitted. They are present on bail. Their bail bonds stand cancelled and sureties are discharged.

**Announced in open Court.**

**Given under my hand and seal of this Court on this 22<sup>nd</sup> day of October, 2025.**

(JAHANGIR AHMED) DAYO  
Special Judge  
(Customs, Taxation & Anti-Smuggling-I)  
Karachi