

**APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE**

STA No.605/LB/2026
NTN:0698301-4

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M/s Ejaz Spinning Mills Ltd.,
Lahore.

...Appellant

Versus

The Commissioner Inland Revenue,
CIR, LTO, Lahore.

...Respondent

Appellant By: Malik Ahsan Mahmood, Adv
A/w Shabbir Hussain, Adv
Respondent By: Ms. Bushra Ranjha, DR.

Date of Hearing: 16.06.2026
Date of Order: 19.06.2026

Order



Nasir Mahmud (Member) :The instant appeal has been preferred against the order dated 20.04.2026 passed by the learned Commissioner Inland Revenue (Appeals), whereby the order passed by the assessing officer imposing penalty of Rs.13,518,919/- under section 33(5) of the Sales Tax Act, 1990 ("the Act") on account of delayed deposit of sales tax withheld under SRO 1087(1)/2019 dated 19.09.2019 was upheld.

2. The facts emerging from the record reveal that the appellant, a registered person engaged in the business of spinning, during an internal reconciliation of its record, detected short payment of sales tax withheld for the tax periods October 2023 to February 2024. Upon detection of the discrepancy, the appellant voluntarily deposited the entire amount of short-paid sales tax amounting to Rs.270,378,384/- along with default surcharge of Rs.50,329,241/- much before

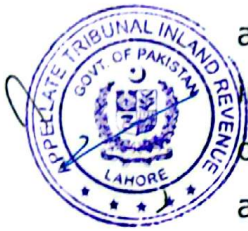
issuance of any audit notice or show cause notice by the department. Thereafter, the appellant approached the department by filing an application for revision of returns under sections 26(3) and 26(4) of the Act.

However, instead of extending the statutory benefit available under section 26(4) of the Act, the learned assessing officer proceeded to initiate penal proceedings and imposed penalty under section 33(5) of the Act. The learned CIR(A) upheld the penalty on the premise that since the appellant was aware of its withholding obligation at the time of purchase of goods, the benefit of section 26(4) was not available.

3. The learned Authorized Representative for the appellant contended that the entire basis of the impugned penalty is contrary to the express language of section 26(4) of the Act. It was argued that the appellant did not wait for any departmental intervention; rather, upon discovery of the omission, it voluntarily deposited the complete amount of tax along with default surcharge before issuance of even a show cause notice, and therefore the statutory immunity from penalty was automatically attracted. It was further argued that section 26(4) begins with a non-obstante clause and overrides the penalty provisions contained in section 33. Hence, once the conditions prescribed under section 26(4) stood fulfilled, no penalty could lawfully be recovered.

4. We have heard the learned AR and the learned DR at length and examined the available record.

5. The controversy revolves around the interpretation and applicability of section 26(4) of the Act. The said provision, notwithstanding the penalties prescribed



under section 33, provides that where a registered person voluntarily deposits the short-paid tax along with default surcharge before receipt of audit notice, no penalty shall be recovered.

6. The expression employed by the legislature is clear and leaves no room for ambiguity. The provision was incorporated to encourage voluntary compliance and to facilitate correction of omissions by taxpayers without unnecessary penal consequences, provided such correction is made before departmental detection through audit proceedings.

7. In the present case, it is not disputed that the appellant itself identified the discrepancy and, without waiting for any proceedings by the department, deposited the entire amount of short-paid tax along with default surcharge. More importantly, the deposit was made prior to issuance of show cause notice. Thus, the appellant had already discharged its tax liability along with the statutory default surcharge before the department initiated formal penal proceedings.

8. The subsequent issuance of show cause notice cannot take away the benefit which had already accrued to the appellant upon fulfillment of the conditions prescribed under section 26(4). The relevant point of consideration is not whether the appellant was aware of its obligation at the time of the original transaction, but whether it voluntarily rectified the omission by depositing the tax and surcharge before the statutory cut-off prescribed by law.

9. The interpretation adopted by the authorities below, that the appellant's prior knowledge of the withholding obligation disentitled it from the benefit of section



26(4), does not find support from the plain wording of the provision. The phrase "whenever it comes to his notice" does not create a distinction between knowledge existing at the time of transaction and subsequent detection through reconciliation. The legislative intent is to grant protection where the taxpayer voluntarily corrects the omission before the department proceeds against it.

10. It is also significant that section 26(4) contains a non-obstante clause which gives overriding effect to the said provision over the general penalty provisions. Therefore, once the appellant satisfied the statutory requirements by depositing the tax and default surcharge before issuance of audit notice/show cause notice, the penal provisions could not be invoked in a manner which defeats the express protection granted by the legislature.



11. Furthermore, section 33(5) is attracted only in respect of specific violations enumerated therein. In the instant case, the alleged default relates to delayed deposit of withheld sales tax and subsequent revision of returns. Since the appellant had already voluntarily discharged the tax liability along with default surcharge before initiation of penal proceedings, imposition of penalty under section 33(5) is not sustainable.

12. Furthermore, section 33(5) of the Sales Tax Act, 1990 is attracted only in respect of the specific violations expressly enumerated therein. In the instant case, the alleged default pertains to delayed deposit of withheld sales tax and subsequent revision of returns. However, the appellant had voluntarily discharged the outstanding tax liability along with the applicable

default surcharge even before the initiation of penal proceedings. In such circumstances, the imposition of penalty under section 33(5) does not appear to be sustainable.

13. It is a settled principle of law, consistently recognized by the august Supreme Court and superior courts, that penalty cannot be imposed mechanically or as a matter of routine without proper application of mind and due consideration of the facts and circumstances of each case. The imposition of penalty is a discretionary exercise of statutory authority, which must be undertaken judiciously and on the basis of relevant considerations. A penalty cannot be levied merely because the law permits its imposition; rather, the nature of the default, the conduct of the taxpayer, and the surrounding circumstances must be examined to determine whether such penal action is warranted.



The purpose of a penalty is primarily deterrent and corrective in nature and not to serve as a source of revenue. The superior courts have repeatedly cautioned against the habitual or automatic imposition of maximum penalties, particularly where the default is technical, minor, or not shown to be deliberate or contumacious. It has further been held that additional tax or penalty imposed without establishing willful default, intent, or serious negligence lacks legal justification and cannot be sustained.

14. Therefore, the settled judicial principles require the statutory authorities to exercise discretion fairly, reasonably, and with due regard to the peculiar facts of each case. Since the appellant had already discharged the tax liability along with default surcharge prior to the

commencement of penal proceedings, the matter did not warrant the imposition of penalty in a mechanical manner. Consequently, the penalty imposed under section 33(5) cannot be upheld.

In view of the foregoing discussion, we are of the considered opinion that the appellant had voluntarily deposited the entire short-paid tax along with default surcharge before issuance of show cause notice and before any adverse departmental action, thereby fulfilling the conditions prescribed under section 26(4) of the Act. The denial of statutory immunity by the authorities below was, therefore, legally unsustainable.

Accordingly, the impugned order dated 20.04.2026 passed by the learned CIR(A) is set aside and the penalty of Rs.13,518,919/- imposed under section 33(5) of the Sales Tax Act, 1990 is deleted.



The appeal is allowed in the above terms.

This order consists of six (06) pages each page bears our signatures.

(NASIR MAHMUD)
Member

(RAO MUHAMMAD NASIR JAMIL)
Member

Appeal No.	STA No. 605/26
Date of Order.	19.6.26
TRUE COPY OF ORDER FORWARDED TO	
1. APPELLANT:	Efcs Spinning Ltd
2. RESPONDENT:	
 ASSISTANT INLAND REVENUE OFFICER Appellate Tribunal Inland Revenue Lahore	