

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Naeem Akhter Afghan
Justice Muhammad Shafi Siddiqui
Justice Miangul Hassan Aurangzeb

C.P.L.A. No.1990 of 2025

(Against order dated 10.03.2025 of the Lahore High Court, Rawalpindi Bench, Rawalpindi, passed in S.T.R No.49 of 2024)

Assistant Commissioner Inland Revenue Unit III
Zone-Cantt, RTO, Rawalpindi and others ...Petitioners

Versus

Umer Tariq Khan
...Respondent

For the Petitioners: Syed Rifaqat Hussain Shah, AOR
Malik Itaat Hussain Awan, ASC
a/w Ms. Romana Alam, Addl.
Commissioner I.R (FBR) and Mr. Yousaf
Khan, S.O. Legal, FBR.

For the Respondent: Mr. Waheed Butter, ASC

Date of Hearing: 15.01.2026

ORDER

MIANGUL HASSAN AURANGZEB, J. – Through the present petition, the petitioners challenge the order dated 10.03.2025 passed by the Lahore High Court, whereby Sales Tax Reference No. 49 of 2024 filed by the respondent was decided in light of the ratio laid down by the Lahore High Court in Sales Tax Reference No. 12 of 2017, titled "*Commissioner Inland Revenue vs. POF Welfare Packages, Sanjwal, Attock.*"

2. The record reflects that on 15.11.2023, the Regional Tax Office, Rawalpindi issued a show-cause notice calling upon the respondent to explain why inadmissible input tax amounting to Rs. 4,012,513/- should not be assessed and recovered under section 11(3) of the Sales Tax Act, 1990 ("**the 1990 Act**"), on account of alleged violations of sections 2(14), 3, 6, 7, 8(1)(ca), (d), (f), and (i),

8A, 23, 25, 26, and 73 read with 2(33A) and 2(37) of the Act *ibid* along with default surcharge to be calculated at the time of payment under section 34(1)(c), and a 100% penalty under serial No. 13 of the table to section 33 of the 1990 Act. The respondent submitted a reply to the said notice on 22.01.2024.

3. It was not until 20.03.2024 that the proceedings pursuant to the said show cause notice culminated in an Order-in-Original burdening the respondent with a tax liability of Rs.4,012,513/- along with default surcharge to be calculated at the time of payment and 100% penalty of Rs.4,012,513/-.

4. The appeal preferred by the respondent against the said order dated 20.03.2024 was dismissed by the Commissioner Inland Revenue (Appeals-III) vide order dated 31.05.2024. The respondent filed a reference under section 47 of the 1990 Act calling in question the Order-in-Original as well as the appellate order. One of the grounds taken in the said reference was that the Order-in-Original was barred by time having been issued after a period of 120 days from the date of the issuance of the show cause notice. Vide impugned order dated 10.03.2025, the High Court disposed of the said reference in terms of the law laid down by the said Court in STR No.12/2013 titled "Commissioner Inland Revenue Vs. POF Welfare Packages, Sanjwal, Attock". The ratio of the said judgment is based on the law laid down by this Court in the cases of The Collector of Sales Tax, Gujranwala Vs. Messrs Super Asia Muhammad Din & Sons (2017 PTD 1756), Messrs WAK Ltd. Vs. Collector, Central Excise & Sales Tax (2018 SCMR 1474), and Abbasi Enterprises Unilever Distributors Vs. Collector of Sales Tax & Federal Excise (2020 (121) TAX 109). The law laid down by this Court in the case of Super Asia (*supra*) in terms whereof the

High Court passed the impugned judgment is reproduced herein below:-

"7. From the plain language of the first proviso, it is clear that the officer was bound to pass an order within the stipulated time period of forty-five days, and any extension of time by the Collector could not in any case exceed ninety days. The Collector could not extend the time according to his own choice and whim, as a matter of course, routine or right, without any limit or constraint; he could only do so by applying his mind and after recording reasons for such extension in writing. Thus the language of the first proviso was meant to restrict the officer from passing an order under section 36(3) supra whenever he wanted. It also restricted the Collector from granting unlimited extension. The curtailing of the powers of the officer and the Collector and the negative character of the language employed in the first proviso point towards its mandatory nature. This is further supported by the fact that the first proviso was inserted into section 36(3) supra through an amendment (note:- the current section 11 of the Act, on the other hand, was enacted with the proviso from its very inception in 2012). Prior to such insertion, undoubtedly there was no time limit within which the officer was required to pass orders under the said section. The insertion of the first proviso reflects the clear intention of the legislature to curb this earlier latitude conferred on the officer for passing an order under the section supra. When the legislature makes an amendment in an existing law by providing a specific procedure or time frame for performing a certain act, such provision cannot be interpreted in a way which would render it redundant or nugatory. Thus, we hold that the first proviso to section 36(3) of the Act [and the first proviso to the erstwhile section 11(4) and the current section 11(5) of the Act] is/was mandatory in nature." (Emphasis added)

5. The law laid down by this Court in the case of Super Asia (*supra*) has been reiterated and reaffirmed by the Full Bench of this Court in the case of Messrs WAK Ltd. Vs. Collector, Central Excise & Sales Tax (2025 SCMR 1280). This Court in no uncertain terms held that the principles enunciated by this Court in the case of Super Asia (*supra*) "are affirmed as correctly stating the law on all points."

6. Despite the law laid down by this Court in the aforementioned judgments, which are binding on the Federal Board of Revenue ("F.B.R.") in terms of Article 189 of the Constitution, the petitioners attempted to reinvent the wheel by agitating the ground that the time limit of 120 days prescribed in the first proviso to section 11(5) substituted and replaced by section 11G(2) of the 1990 Act for passing an order is directory and

not mandatory. Since this Court has time and again held the requirement of passing an order within a period of 120 days from the issuance of the show cause notice to be mandatory and not directory, and since in the case at hand the show cause notice was issued on 15.11.2023 whereas the Order-in-Original was passed on 20.03.2024 (which is beyond the prescribed period of 120 days), this petition merits dismissal.

7. In the instant petition, the petitioners did not take the ground that the delay in passing of the Order-in-Original was due to the frequent adjournments taken by the respondents. The petitioners attempted to introduce this ground by filing an application (CMA No.1023/2023) wherein it was pleaded *inter alia* that the respondent had sought multiple adjournments from 27.11.2023 to 04.01.2024 in the proceedings before the Assessment Officer. The petitioners have not bothered to file a copy of the order sheet of the proceedings before the Assessment Officer. Additionally, this assertion of the petitioners is belied by the petitioners' stance before the High Court which is reproduced herein below:-

"2. We when confronted the above aspect to the former, he has fairly conceded the legal position. In view of consensus amongst all in attendance that the ratio settled in the above referred case is squarely applicable to the case at hand, we thus dispose of the instant reference application accordingly."

8. When government departments routinely file appeals/petitions (often up to the High Courts and the Supreme Court) on questions of law that have already been authoritatively settled, the practice results in serious institutional harms. The most immediate consequence is the clogging of court dockets. Courts are compelled to spend scarce judicial time revisiting issues that are no longer *res integra* at the cost of undecided legal and

constitutional questions, criminal appeals involving personal liberty, and civil disputes pending for years. This undermines the constitutional mandate of speedy justice. Repeated appeals/petitions on settled law weaken respect for Article 189 of the Constitution, the doctrine of *stare decisis*, and judicial discipline within the executive branch. When the State itself disregards binding precedents, it sends the wrong signals to subordinate courts, tribunals, and litigants. Such appeals/petitions result in unavoidable litigation costs, consumption of public funds for counsel, court fees and administrative processing.

9. The State is expected to act as a responsible and fair litigant, not as a compulsive appellant/petitioner. The practice and tendency within government departments to file appeals/petitions mechanically, particularly when the outcome is foreseeable in light of settled law, has already been deprecated by this Court in the judgments reported as Federal Public Service Commission through Secretary, Islamabad Vs. Kashif Mustafa (PLJ 2025 SC 386), Director General, Rawalpindi Development Authority Vs. Mian Muhammad Sadiq (PLD 2006 SC 142), Regional Manager, NADRA RHO, Hayatabad, Peshawar Vs. Mst. Hajira (2024 SCMR 197), State Life Insurance Corporation of Pakistan Vs. Mst. Zubeda Bibi (2024 SCMR 426) and Amjad Ali Vs. Board of Intermediate and Secondary Education (2001 PLC (CS) 280).

10. Courts already possess both constitutional authority and jurisprudential tools to address the problem of repeated appeals/petitions by government departments on settled questions of law. Not just can the courts dismiss such appeals/petitions *in limine*, one of the most effective tools is the imposition of costs. In egregious cases, courts may require identification of the officer for

authorizing the appeals/petitions. It is imperative for there to be internal accountability by government departments and careful legal scrutiny before filing appeals/petitions. Had such scrutiny taken place before the filing of the instant petition, it would have been realized that the primary question of law sought to be agitated by the petitioners already stands authoritatively settled by a number of judgments of this Court referred to herein above. In the case of order to address this problem it is imperative for the Chairman, F.B.R. to consider constituting committees which function with the highest degree of independence and includes a retired Judge of the superior judiciary, an experienced tax practitioner, and senior serving or retired officers of the F.B.R. with distinguished record and impeccable credentials with the mandate to timely examine each case before a decision is made to file a reference before the High Court or a petition before this Court. The F.B.R. may also consider undertaking review of all pending cases in order to determine whether the questions of law sought to be agitated therein already stand settled by judgments of superior courts.

11. In view of the above, leave to appeal is declined and consequently the instant petition is dismissed.

Judge

Judge

Judge

Announced in open Court on _____ at Islamabad.

Judge

Approved for reporting
M. Azhar Malik/*