

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Munib Akhtar  
Justice Aqeel Ahmed Abbasi

**Civil Petition No.2336 of 2025**

*(Against the order dated 26.03.2025 passed by the Lahore High Court, Rawalpindi Bench in STR No. 8/2024)*

Commissioner Inland Revenue

***...Petitioner***

***Versus***

M/S Mustafa Enterprises and another

***...Respondents***

For the Petitioners: Malik Itaat Hussain Shah, ASC  
Syed Rafaqat Hussain Shah, AOR  
a/w Kamran Ullah Addl. Commissioner  
a/w Yousaf Khan, S.O

For the Respondents: N.R.

Date of Hearing: 30.06.2025.

**JUDGMENT**

**AQEEL AHMED ABBASI, J.-** Through instant civil petition for leave to appeal the petitioner department has assailed the order dated 26.03.2025 passed by the Lahore High Court, Rawalpindi bench, Rawalpindi in STR no. 8/2024 in the case of *Commissioner inland revenue v Mustafa enterprises etc.* whereby, reference application filed under section 47 of the Sales tax 1990 ( the “**Act**”) by the petitioner against the order dated 4.01.2024 passed by the Appellate Tribunal Inland Revenue (Headquarter Bench Islamabad) in MA(G) S.T.A. No.44/IB/2023, STA No.413/IB/2023 (Tax Period July 2019 to June 2020) has been dismissed.

2. It has been contended by learned counsel for the petitioner that the learned Division Bench of Lahore High Court was not justified to dismiss the appeal filed by the petitioner against the order passed by the Appellate Tribunal Inland Revenue (“**ATIR**”) in instant case, as according to learned counsel the respondents couldn’t discharge the onus to proof that the input adjustment claimed during the tax period under dispute was not based on fake/flying invoices issued by the suppliers who were blacklisted whereas, according to learned counsel the respondents also failed to



furnish relevant record including the invoices and proof of purchases made by the respondents during the relevant tax period, thus failed to comply with the requirements of Section 73 of the Act. According to learned counsel, since the ATIR did not record any finding with regard to non-compliance of the above provisions of the act therefore, the learned Division Bench of the Lahore High Court was not justified to concur with the decision of the ATIR in instant case. It has been prayed by the learned counsel that the impugned order passed by the ATIR and the Division Bench of Lahore High Court may be set aside and the questions proposed may be answered in favour of the petitioner and against the respondents.

3. We have heard the learned counsel for the petitioner and perused the impugned order passed by the Division Bench Lahore High Court, Rawalpindi Bench, Rawalpindi in STR No.8/2024. The proceedings in the instant matter were initiated by Deputy Commissioner Inland Revenue Unit-IV Cantt Zone RTO, Rawalpindi vide show cause notice dated 10.08.2021 whereby, the respondents were required to submit the record to prove as to whether the purchases made for the (Tax Period July 2019 to June 2020) amounting to Rs. 323,722,601/- against which an amount of Rs. 55,032,846/- was claimed as input tax, were actually made by them. It was further alleged in the show cause notice that the record submitted by the respondents does not prove as to whether such purchases were actually made by the respondents during subject tax period, therefore, they have also failed to comply with the requirements of Section 73 of the Act. It was concluded that respondents did not purchase any coal from the local suppliers and unlawfully claimed input tax on the basis of fake/ flying invoices issued by the dubious suppliers, therefore, caused loss to the national exchequer to the tune of Rs. 55,032,846/- by violating the provisions 6,7,8,22,23,26 and 73 read with Section 2(37) of the Act. In addition to hereinabove, respondents were also confronted as to why the default surcharge under Section 34, the penalty under Section 33 of the Act should not be recovered from the respondents. As per record, the aforesaid show cause notice was duly responded by the respondents however, the reply furnished by the respondents was not found satisfactory, and the Order-in-Original No. 33/100 of 2023 dated 31.10.2022 was passed by the Assistant Commissioner Inland Revenue Unit-IV Cantt Zone RTO, Rawalpindi whereby, the



respondents were held liable to deposit an amount of Rs. 55,032,846/- being inadmissible input tax, adjusted on the basis of fake/flying invoices, along with default surcharge and penalties in term of Section 34 and 33 of the Act.

4. Perusal of the Order-in-Original as referred to herein above shows that the Assistant Commissioner Inland Revenue has duly acknowledged that respondents have produced record of sales tax withholding certificates, and the bank statement in respect of the supplies made during the subject tax period, however, Assistant Commissioner Inland Revenue while discarding the aforesaid evidence, observed that since no evidence on purchases, physical transfer book, delivery challan, bilty or payment proofs, except register of payments to suppliers, were produced and most of the payments made to the supplier were over and above Rs. 50,000/- therefore, on account of non-compliance of Section 73 of the Act, and in view of the fact that claim of input tax was based on fake/flying invoices issued by the blacklisted units, therefore respondents committed tax fraud as defined under section 2 (37) of the Act. The above Order-in-Original passed by the Assistant Commissioner Inland Revenue was assailed by the respondents by filing an appeal under Section 46 of the Act before the Commissioner Inland Revenue (Appeals-III, Islamabad) vide Sales Tax Order-In-Appeal No.380/2022-2023 dated 05.05.2023 was pleased to reject the said appeal for being devoid of any merits. The respondents, feeling aggrieved assailed the said order by filing an appeal under Section 46 of the Act before the ATIR who vide order dated 04.01.2024 after hearing both learned counsel for the parties, and through proper scrutiny of the relevant facts and the law applicable, has been pleased to set aside the order of both the authorities below for being devoid of legal substance. However, the said order was assailed by the petitioner department before the Lahore High Court, Rawalpindi Bench, Rawalpindi through STR No.8/2024 filed under Section 47 of the Act who vide impugned order dated 26.03.2025 has been pleased to decide the reference application against the petitioner which has been assailed by the petitioner through above civil petition for leave to appeal in terms of Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973.



5. It is pertinent to note that the proceedings in the instant matter were initiated pursuant to issuance of show cause notice dated 10.08.2021 wherein the respondents were not confronted with any invoices, the value of which was above Rs. 50,000/- whereas, the main allegation of the petitioner was that respondents did not purchase any coal from the local suppliers and unlawfully claimed input tax to the tune of Rs. 55,032,846/- on the strength of fake/flying invoices issued by the suppliers who were blacklisted. However, no material or evidence whatsoever was provided to substantiate the allegation to the effect that the suppliers as mentioned in the show cause notice were blacklisted during the tax period under consideration, on the contrary, it has been recorded by the ATIR that *"it has not been established by the department that the transaction in question were executed during the period of suspension or blacklisting of the suppliers"*. The Division Bench of Lahore High Court, Rawalpindi Bench, Rawalpindi has concurred with aforesaid finding of fact which could not be controverted by the petitioner department. The Division Bench of the High Court has placed reliance in the case of Commissioner Inland Revenue Zone-IV, Large Taxpayer Unit, Karachi vs. M/s Al-Abid Silk Mills Limited A-39, Manghopir Road, Site Karachi (2023 SCMR 1797) wherein, under similar facts and circumstances of the case, it has been held as under:

*"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."*

6. The un-disputed facts and circumstances of the instant case and the ratio of the cited judgment of this Court reflect that the show cause notice and the Order-in-Original passed in the instant



case, are based on vague and frivolous allegations and certain conclusions have been made on mere presumptions only, whereas, no material or evidence has been produced to substantiate the same. We have further noted that while passing the Order-in-Original, the Assistant Commissioner Inland Revenue exceeded his jurisdiction while traveling beyond the very premises and the allegations made in the show cause notice whereas, the respondents were never confronted with any such allegations or entries as reflected in the bank statement which were subsequently furnished by the respondents, showing the details of the total amount and the particulars of suppliers from whom purchases were made. It has been observed that while initiating the proceedings against the respondents, there was no material or evidence available on record to make out a case against the respondents of illegal or inadmissible claim of input tax adjustment, whereas, the entire proceedings and the Order-in-Original passed in the instant case was based on presumptions, whereas, no inquiry or verification was made by the department in respect of alleged fake/flying invoices. The ATIR and the learned Division Bench of Lahore High Court, were justified to set aside both the Order-in-Original and the Order-in-Appeal, while recording concurrent findings on facts which does not suffer from any illegality or error. We are of the considered opinion that the impugned order does not give rise to any substantial question of law, and the order passed by the learned Division Bench of Lahore High Court, Rawalpindi Bench, Rawalpindi does not suffer from any factual error or legal infirmity, hence does not require any interference by this Court. Accordingly, leave is refused and this petition is dismissed.

Islamabad:

30.06.2025

**~~Not~~ Approved for Reporting**

Tanveer Ahmed