GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE
(Legal-IR Wing)
*****

Subject: **REQUEST FOR UPLOADING THE JUDGMENT OF THE HON'BLE SUPREME COURT OF PAKISTAN IN CIVIL APPEAL NO.939 OF 2018 DATED 17.07.2026 (COMMISSIONER INLAND REVENUE ZONE-II, LARGE TAXPAYERS UNIT, KARACHI VS. M/S BAWANY SUGAR MILLS LTD, KARACHI) ON FBR WEBSITE**

I am directed to enclose herewith a judgment dated 17.07.2026 of the Hon'ble Supreme Court of Pakistan in Civil Appeal No.939 of 2018 titled **Commissioner Inland Revenue Zone-II, Large Taxpayers Unit, Karachi Vs. M/S Bawany Sugar Mills Ltd, Karachi**.

2. It is requested that the said judgment be uploaded on the official FBR website under the relevant section for judgments and legal updates. The availability of the judgment on the website will assist field formations, tax practitioners, and taxpayers in understanding and complying with the law as interpreted by the Hon'ble Supreme Court.

Encls:-**(As Above)**

(Fahad Faizan Khan)
Second Secretary (Lit-SC-IR)

The Chief (Taxpayer Services), Federal Board of Revenue, Islamabad.
Legal-IR Wing's U.O. No.9/9/S/Lit-SC/2018/ /800 90-R dated 23rd July, 2026.

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Yahya Afridi, CJ
Justice Irfan Saadat Khan
Justice Shakeel Ahmed

Civil Appeal No.939 of 2018
Against the judgment dated 10.08.2017 passed by the High Court of Sindh, Karachi in Spl. STRA No.140 of 2016

The Commissioner Inland Revenue Zone-II, Large Taxpayer Unit, Karachi ...Appellant(s)

VERSUS

M/S Bawany Sugar Mills Ltd., Karachi ...Respondent(s)

For the Appellant(s):	Dr. Shah Nawaz, ASC (video-link, Karachi)
For the Respondent(s):	Mr. Farukh Usman, ASC Mr. K.A. Wahab, AOR (video-link, Karachi)
Date of Hearing:	07.07.2026

JUDGMENT

Irfan Saadat Khan, J.- This civil appeal, by way of grant of leave to appeal, is directed against the order passed by the Division Bench of the High Court of Sindh, Karachi, in Spl. STRA No. 140 of 2016 dated 10 August 2017, whereby the Tax Reference Application (hereinafter referred to as **TRA**) filed by the present appellant department was dismissed and the order of the Appellate Tribunal Inland Revenue (hereinafter referred to as **ATIR**) was maintained. Leave to appeal in the instant matter was granted by this Court via order dated 21.06.2018, which is reproduced verbatim below:

"The petitioner, the Commissioner Inland Revenue, seeks leave to appeal against the order dated 10.08.2017, whereby the learned

High Court dismissed the Tax Reference that had been filed by the petitioner against an order of the learned Appellate Tribunal. The Reference arose out of the Sales Tax Act, 1990 ("1990 Act"). The petitioner had proposed two questions as being the questions of law that arose out of the order of the learned Tribunal, but the learned High Court held that they were questions of fact and not questions of law as to which alone its jurisdiction extended in relation to a tax reference.

2. Learned counsel submitted that the High Court erred materially in coming to the foregoing conclusion. The questions raised were questions of law, involving substantial issues as to the interpretation of the relevant provisions of the 1990 Act and certain notifications issued in terms thereof. Referring to para 5 of the impugned order, learned counsel submitted that the learned High Court had erred in concluding that there were admissions on the part of the Department before the authorities below and other findings as would confine the matter entirely within the factual domain.

3. Having considered the matter, we are inclined to grant leave to consider the following questions:

1. *Whether the input tax claimed by the respondent on certain building material did not come within the ambit of sections 3 and 8 of the 1990 Act, read with the applicable notifications?*
2. *Whether any claim for input tax as above was even otherwise not admissible by reason of sections 8(1)(ca), 8A and 73 of the 1990 Act?"*

2. Briefly stated, the facts of the case are that the respondent is a public limited company involved in industrial operations. For the tax

periods spanning from July 2013 to December 2013, the respondent claimed an input tax adjustment on building materials, specifically cement and steel, which were utilized in construction activities. The Deputy Commissioner Inland Revenue (hereinafter referred to as **DCIR**) observed that through the amendment introduced via S.R.O. 450(I)/2013 (dated 27-05-2013), building materials had been explicitly excluded from the purview of input tax adjustments. Treating this omission as an error under the law, notices for the verification of documentation were issued. The respondent submitted its reply, which was found unsatisfactory by the DCIR as according to him the respondent has failed to produce purchase invoices, books of accounts, bank statements, etc., thereby violating the provisions of Section 8(1)(ca), 8A and Section 73 of the Sales Tax Act, 1990 (herein after referred to as the '**Act**'). Consequently, the assessment proceedings culminated in an order whereby the input tax adjustment was disallowed, and a tax demand of Rs. 22,758,773 along with a penalty of Rs. 6,82,761 were imposed against the respondent vide Order-In-Original No. 08/92/2015 dated 30.01.2015 (hereinafter referred to as '**O-N-O**').

3. Aggrieved by this order, the respondent preferred an appeal before the Commissioner Inland Revenue (Appeals) (hereinafter referred to as **CIR(A)**), who maintained the order of the DCIR and dismissed the appeal vide order No. STA/100/LTU/2015 dated 28.02.2025. The respondent then approached the ATIR which accepted the appeal of the taxpayer and vacated the disallowance orders passed by the lower authorities, vide order No. STA 226/KB-2015 dated 01.07.2016. The appellant department then challenged the ATIR's decision by filing TRA under Section 47 of the Act, before the High Court of Sindh, Karachi, which too, through the impugned judgment, in Spl. STRA 140/2016 dated 10.08.2017 dismissed

the same and ruled against the revenue. Dissatisfied with the same, the appellant department has now filed the instant appeal.

4. Dr. Shah Nawaz, learned ASC appearing on behalf of the appellant Department, presented comprehensive written submissions arguing that the High Court erroneously dismissed the reference *in limine* by mischaracterizing pure or mixed questions of law as mere findings of fact by citing the decisions given in the cases of ***Naseer A. Sheikh,***[1] ***Oriental Investment Co. (P) Ltd.,***[2] ***Juggilal Kamlapat,***[3] ***Commissioner of Income-tax, West Bengal,***[4] and ***Rao Muhammad Rashid.***[5] He next contended that when a controversy hinges on legal consequences of admitted facts under specific statutory provisions, it inherently constitutes a question of law. He further emphasized that the concession of a departmental representative or counsel cannot oust the statutory jurisdiction of the High Court, under Section 47 of the Act. He next stated that on factual aspects also the ATIR as well as the High Court have not considered the comprehensive working given in O-N-O as well as the Appellate order passed by the CIR(A) with regard to the inadmissibility of the claim of input tax adjustment of the respondent. He laid stress on the fact that in the audit discrepancies were not only been highlighted but were also communicated to the taxpayer and when the department found the replies of the respondent unsatisfactory, only then O-N-O was passed by the DCIR, after fulfilling all the requirements of the law. To

---

[1] Naseer A. Sheikh and 4 others V. Commissioner of Income-Tax (Investigation), Lahore and others, 1992 PTD 621.
[2] Oriental Investment Co. Ltd. V. Commissioner of Income-tax, AIR 1957 SC 852.
[3] Juggilal Kamlapat V. Commissioner of Income-tax, AIR 1970 SC 529.
[4] Commissioner of Income Tax V. H. Holck Larsen, AIR 1986 SC 1695.
[5] Rao Muhammad Rashid and others V. Province of Sindh through Chief Secretary and others, 2024 SCMR 1864.

systematically dismantle the impugned decisions, the learned counsel addressed the four disputed components under audit as under:

- ***Building Material (Rs. 1,513,246):*** *S.R.O. 450(I)/2013, which explicitly excluded cement and steel from input tax eligibility, operated throughout the relevant tax period (July to December 2013). The lower fora fell into clear legal error by failing to advert to the timeline of this notification, mistakenly applying an untenable "direct nexus" or "plant and machinery" theory to override an express, unqualified statutory negative-list exclusion under Section 8(1)(b). He further clarified that the "Explanation" to S.R.O. 490(I)/2004 dictates that "stock-in-trade" means goods purchased for sale or manufacturing inputs; cement and steel consumed to construct a foundation are capital/construction consumption and remain strictly barred.*
- ***CREST Discrepancy/Supplier Non-Deposit (Rs. 2,756,937):*** *Under Section 8(1)(ca), input tax is strictly contingent upon actual deposit into the Government treasury by the supplier. The Tribunal's conclusion that the mere systemic removal of a CREST flag "itself proves" deposit constitutes a complete non-sequitur and an error of law. The mere disappearance of a flag is an internal system artefact and does not discharge the respondent's legal onus of showing treasury deposit.*
- ***Nil-Filer Input (Rs. 11,006,125):*** *The respondent adjusted input tax on invoices of M/s Raheel Plastic Industries (Pvt) Ltd for September 2013, a period during which that supplier was admittedly a nil-filer who declared no taxable supplies and*

deposited no output tax. Consequently, there is no output tax in the chain against which the claimed input can correspond, rendering it inadmissible under Sections 8(1)(ca) and 8A read with Section 73. Furthermore, Section 8A squarely fastens joint and several liability upon a registered person where the tax remains unpaid in the treasury. Despite repeated statutory notices under Section 25 dated 27.02.2014, 10.03.2014, and 24.04.2014, the respondent failed to produce records, and the fora below erred in shifting the burden onto the Department.

- ***Section 73 Banking Channel (Rs. 7,482,465):*** *Section 73 makes input tax conditional upon payment of the gross amount of the invoice being made through a prescribed banking channel from the registered person's declared business bank account. It is an undisputed fact that no copies of cheques, pay orders, or bank statements were furnished despite specific requisitions. Section 73 is mandatory and admits of no exception save limited condonation, which was never invoked here; the allocation of this onus under Sections 7, 8, 25, and 73 is a pure question of law.*

5. The learned counsel next contended that where there is an interpretation of any provision of law, the same becomes a question of law and ought to be answered accordingly, which according to him is lacking in the decisions given by the ATIR as well as by the High Court. In support

of his contention the learned counsel relied upon the case of ***Pakistan Steel Mills.***[6]

6. The learned counsel further urged that the lower fora's reliance on *D.G. Khan Cement Company Ltd v. Federation of Pakistan* (PLD 2013 Lahore 693) was entirely misplaced as the inadmissibility of the input tax in the present case, according to him, rests independently on the interpretation of Sections 8(1)(ca), 8A and 73 of the Act as well as SROs 490(1)/2004 and 450(1)/2013. He next contended that the attitude of the respondent toward the department had remained non-cooperative as, despite calling for records a number of times, the same were not produced. He finally contended that, in view of these facts, which have been brushed aside by the ATIR as well as the High Court, the answer to the questions, on which leave was granted by this Court, may be answered in favour of the department and against the respondent.

7. Mr. Farukh Usman, learned ASC, has appeared on behalf of the respondent and supported the orders of the High Court as well as the ATIR. He submitted that the ATIR and the High Court after thrashing out all the legal and factual aspects have rightly come to the conclusion that the respondent was entitled to input adjustment on the cement and steel (building materials used) in the construction of the plant and machinery of the respondent which were an integral part of the business of the company, as without proper plant and machinery there can be no question of production or business activity. He argued that the observation of the department with regard to the applicability of sections 8(1)(ca), 8A and 73 of the Act, as well as the SRO, is misplaced, since the petitioner has claimed the input adjustment in respect of an asset which ultimately

[6] Pakistan Steel Mills Corporation (Pvt.) Ltd., Karachi V. Commissioner Inland Revenue (Legal Division), Karachi and another, 2012 PTD 723.

would be used by the company in its production and hence the respondent company was legally and factually justified in its claim for input adjustment on those materials used exclusively for the business purposes of the respondent company. The learned counsel next pointed out that the A.R. appearing before the ATIR, as well as the High Court conceded that the interpretation of the department with regard to the non-availability of input tax adjustment was not correct. Hence, according to him, concession made before both the ATIR and the High Court amply proves that the view taken by the department was incorrect and that the input tax adjustment claimed by the respondent company was in accordance with the law and as per the provisions of the Act. He finally submitted that since the concurrent findings of the ATIR and the High Court are in his favour, the questions on which leave was granted vide order dated 21.06.2018, may be given in favour of the respondent and against the department.

8. We have heard both the learned counsel at considerable length and have perused the record with their able assistance.

9. The core controversy lies within a narrow compass: whether the input tax claimed by the respondent company on construction items (cement and steel) used in immovable structures stands statutorily excluded under the Act and whether independent disallowances under the mandatory banking and treasury deposit mandates could be bypassed. To properly evaluate this, it is necessary to examine the foundational legal principles alongside the relevant statutory provisions governing input tax admissibility.

10. The examination of the Sales Tax Act, 1990 reveals that Section 3 acts as the primary charging provision, levying sales tax strictly on "goods." Immovable property, such as industrial infrastructure, factory

offices, or corporate warehouses, in our view falls outside the scope and purview of this charging section as an immovable structure does not constitute a "taxable supply" capable of generating output sales tax since there is no corresponding taxable output against which input tax suffered during construction can legally be set off. This clear statutory structure is reinforced by the absolute bar contained in Section 8(1)(h) of the Act which expressly dictates that input tax adjustments shall be inadmissible on goods permanently attached to or used in immovable property, specifically highlighting building and construction materials, paints, electrical fittings, and wiring etc.

11. In the instant matter, the tax period spans from July 2013 to December 2013, an interval that wholly post-dates the restrictive statutory regime reinforced via S.R.O. 450(I)/2013. As per *Sheikh Spinning Mills Ltd. v. Federation of Pakistan* (2002 PTD 2959) that the Federal Government is fully competent through delegate notifications to narrow or modify eligibility parameters, establishing that input tax on building materials acquired otherwise than as stock-in-trade which is strictly barred and legally un-adjustable.

12. Turning to the second question of law, the Act prescribes a multi-layered compliance standard where independent statutory bars operate concurrently. Even if a transaction survives the substantive test of commercial genuineness, it remains independently inadmissible under Section 73 of the Act if it bypasses the mandatory banking channel requirements. Section 73 of the Act, in our view is structured as a rigid, non-negotiable condition precedent, a failure to channel transactions through prescribed business bank accounts or crossed cheques

completely invalidates the eligibility of an input tax claim, entirely irrespective of the commercial reality of the underlying trade.

13. Apropos the submissions made by the learned counsel for the respondent that since the A.R. appearing before the ATIR and the High Court had conceded the point, the matter may be decided in favour of the respondent, suffice it to state that it is a settled proposition of law that there is no estoppel against the law. Even if a representative appearing in a case concedes an issue, which is a question of law, the same may be agitated and argued before the higher authority. Reference in this regard may be made to the decision given in the case of ***Muhammad Ikhlaq Memon,***[7] wherein the Bench categorically observed that there cannot be any estoppel against a statute. Mere concession on a question of law by a party would not operate as an estoppel as it is the duty of the Court to interpret and apply the law correctly, regardless of any concession made by the party or its counsel. It was observed that:

> *"Now coming to the question of concession made by the learned counsel for the appellant before the High Court for applicability of the Rule 84, Order XXI, C.P.C, we may observe that there can be no estoppel against a statute. Mere concession on a question of law by a party would not operate as an estoppel. It is the duty of the Court to interpret and apply the law correctly regardless of any concession made by a party or its counsel. Reference may usefully be made to the cases of Imtiaz Ahmad v. Ghulam Ali (PLD 1963 SC 382), Ikram Bus Service and others v. Board of Revenue, West Pakistan (PLD 1963 SC 564), Shahul Hameed v. Tahir Ali (1980 SCMR 469), Haji Abdullah Khan and*

[7] Muhammad Ikhlaq Memon V. Zakaria Ghani and others, PLD 2005 Supreme Court 819.

others v. Nisar Muhammad Khan and others (PLD 1965 SC 690) and Pir Sabir Shah (supra). In the case of Government of West Pakistan through Secretary, P.W.D (Production Branch), Lahore v. Mian Muhammad Hayat (PLD 1976 SC 203), it was observed that the question involving interpretation of law fell within the duty and function of the Court, and it was for the Court to say whether a particular rule applied to the respondent irrespective of the concession made by the counsel. Such a concession was not contemplated under the law, nor it had in any way bound a particular party or the Court, and prevented the Court from doing its duty according to law."[8]

Reference may also be made to a decision delivered by the Privy Council, as far back as that of 1940 in *Rao Girdhari Lal Chaudhary*,[9] wherein it was observed by Lord Atkin that an admission on a question of law cannot be binding upon a Court: "...and their Lordships do not consider themselves precluded from deciding the rights of the parties on a true view of the law." It may be noted that it is an admitted position, in the instant matter, that questions of law do arise with regard to the interpretation of sections 3, 8(1)(ca), 8A, and 73 of the Act, upon which leave was granted by this Court on 21.06.2018. This, in our view, amply clarifies that even if there was a concession by the A.R. either before the ATIR or the High Court, the same cannot be considered binding under the law, as there is no estoppel against a statute.

14. Furthermore, while this Court in *CIR v. Messrs Chenab Textile Mills Ltd.* (2023 SCMR 1797) clarified that the Department must act upon objective evidentiary parameters rather than bare suspicion when

---

[8] *Ibid.*, para 18.

[9] Societe Belge de Banque S.A. v. Rao Girdhari Lal Chaudhary, AIR 1940 Privy Council 90.

asserting a supply-chain default, the respondent's outright failure to cooperate or produce statutory records under Section 25 of the Act made the tax authorities unable to verify compliance, effectively adjudicating and verifying the basis of the claim made by the respondent.

15. Thus, when the facts of the present case are measured on these established tests, it becomes abundantly clear that the High Court as well as the ATIR were not justified in dismissing the matter as a mere question of fact. The proper application of statutory exclusions under Section 8, application of amending S.R.O.s, and the enforcement of the banking mandate under Section 73 of the Act are in fact questions of law which required proper adjudication.

16. Consequently, this appeal is allowed, the impugned order of the High Court, dated 10.08.2017, and the order of the ATIR, dated 01.7.2016, are hereby set aside, and the O-N-O disallowing the input tax adjustment is hereby restored. Both the questions of law are therefore answered in the affirmative i.e. in favour of the Department (Appellant) and against the Taxpayer (Respondent). No order as to costs.

Announced in open Court on 17|7|2026

ISLAMABAD
07.07.2026
Arshed/Zainab Qazi, Judicial LC
"~~Not~~ Approved for Reporting"