

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Appeal No.1693 of 2021

*[On appeal against the order dated
26.01.2021 of the Lahore High Court,
Lahore passed in S.T.R. No.4925 of
2021]*

*Commissioner Inland Revenue, Legal Zone, Corporate Tax Office (CTO),
Lahore.*

... *Appellant*

Versus

M/s Makerwal Collieries Limited, 195-D/1 Moden Town, Lahore.

... *Respondent*

For the Appellant: Mr. Ahmed Pervaiz, ASC
[through video-link from Lahore]

For the Respondent: *Ex-parte.*

Date of Hearing: 18.08.2026.

ORDER

Muhammad Shafi Siddiqui, J.- This appeal is directed against the judgment dated 26.01.2021 passed by the Lahore High Court in Sales Tax Reference No.4925 of 2021, whereby the reference preferred by the appellant-Department against the order of the Appellate Tribunal Inland Revenue, Lahore ("Tribunal") was dismissed.

2. The respondent was proceeded against under the Sales Tax Act, 1990. An order-in-original was initially passed against it. The matter was taken in appeal before the Tribunal, which, by order dated 10.03.2001, set aside the impugned order and remanded the case to the adjudicating

authority. The Tribunal directed the authority to consider the evidence referred to by the respondent, determine its liability in respect of royalty and excise duty included in the total sale price, and re-decide the matter in accordance with law. Pursuant to the remand, Order-in-Original No.303/2005 was passed on 31.12.2005 by the Additional Collector Sales Tax and Federal Excise (Adjudication), Lahore. The order imposed sales tax together with default surcharge and penalties. The respondent challenged the order before the Collector (Appeals), principally, *inter alia*, on the ground that it had been made beyond the period and spirit prescribed by section 36(3). The departmental position was that the order was not time-barred because the Tribunal had remanded the matter and had not finally determined the issue of alleged undervaluation. The Collector (Appeals), however, upheld the adjudication on merits. The respondent thereafter approached the Tribunal. The Tribunal accepted the objection of limitation. It held that the show-cause notice stood reactivated upon remand, but the statutory period could not remain open indefinitely. Since the fresh order was made on 31.12.2005, whereas the remand order had been passed on 10.03.2001, the Tribunal found the order to have been made after an inordinate delay and in violation of the spirit of proviso to section 36(3). The orders of the authorities below were consequently cancelled without examining the remaining grounds on merits. The Department challenged the Tribunal's decision before the Lahore High Court. The High Court declined to interfere and dismissed the reference. Hence, the present proceedings.

3. Learned counsel for the appellant submits that the Tribunal as well as the High Court fell into error in applying section 36(3) of the Sales Tax Act, 1990 to a proceeding which had been remanded by the appellate forum.

According to learned counsel, the original order had ceased to exist upon remand and the adjudicating authority was required to pass a fresh order in terms of the directions issued by the Tribunal. Since the Act did not prescribe any separate period for re-adjudication following remand, it is contended that the period prescribed under section 36(3) could not mechanically be applied to the fresh order. Learned counsel further submits that the authorities relied upon by the Tribunal were concerned with the ordinary operation of limitation and did not directly determine the question whether remand creates a fresh period for adjudication.

4. We have heard the learned counsel and perused the material available on record.

5. At the outset, it is necessary to identify the statutory framework within which the controversy arises. Section 36(3) of the Sales Tax Act, 1990, as applicable at the relevant time, required the officer empowered in that behalf, after considering the objections of the person served with a show-cause notice, to determine the amount of tax payable. The proviso prescribed a definite period within which such determination was to be made, providing that the order under the section “shall” be made within forty-five days of the issuance of the show-cause notice, or within such extended period as the officer of Sales Tax might, for reasons recorded in writing, fix, subject to the express limitation that such extended period could in no case exceed ninety days. The statutory scheme thus attached the prescribed period to the issuance of the show-cause notice, while permitting extension only within the limits expressly sanctioned by the Act. The question whether this limitation is mandatory, and whether an order

made beyond the statutory period is thereby rendered invalid, is no longer open to debate.

6. In *Collector of Sales Tax*¹, this Court, upon examining the language and scheme of section 36(3), held that the prescribed period was mandatory and that an order made beyond the permissible period was invalid. The Court further declined to enlarge the statutory period by importing notions of “special circumstances” or “reasonable time”, holding, in substance, that the Court could not supply what the Legislature had deliberately omitted. The matter was subsequently placed before a five-member Larger Bench in *WAK Limited*², which expressly affirmed *Super Asia case* and held that its principles correctly state the law. The Larger Bench emphasised that the use of “shall”, coupled with the words “in no case” in relation to the permissible extension, prescribed a definite and unbreachable boundary, the crossing of which attracted the consequence of invalidity. It further recognised that these mandatory periods serve the legislative purpose of bringing proceedings to a time-bound close and protecting the taxpayer from an indefinite outstanding liability. Thus, the mandatory nature of the limitation prescribed under section 36(3), its computation with reference to the issuance of the show-cause notice, and the invalidity of an order made beyond the permissible period, subject to any lawful extension or exclusion, stand conclusively settled. The controversy before us, therefore, does not concern the nature of the limitation itself, which stands settled, but whether, after an order-in-original has been set aside in appellate proceedings and the matter remanded for re-adjudication, the fresh order must still be passed within the limitation prescribed under section 36(3)

¹ Collector of Sales Tax v. Super Asia Mohammad Din & Sons (2017 SCMR 1427).

² WAK Limited Multan Road, Lahore v. Collector Central Excise and Sales Tax, Lahore (2025 SCMR 1280).

with reference to the original show-cause notice, or whether the order of remand gives rise to a fresh period within which such re-adjudication may lawfully be undertaken.

7. To appreciate the effect of remand upon the limitation applicable to the subsequent adjudication, it is first necessary to understand the nature and significance of remand proceedings. In *The Secretary/Chairman Railways*³, this Court reiterated that remand is not an automatic judicial reflex and that its purpose is corrective rather than dilatory. The Court emphasised that the power of remand must be exercised with circumspection and restraint, having regard to judicial economy, avoidance of duplication, promotion of finality and conservation of judicial time, in furtherance of the constitutional command of expeditious justice. In *Muhammad Zubair*⁴, this Court similarly described remand as a corrective and exceptional jurisdiction, to be exercised where a material issue remains undecided, essential evidence has not been considered, or a party has been denied a fair and meaningful opportunity of presenting its case. The same principle was reiterated in *Messrs Shah Nawaz Khan*⁵, wherein this Court observed that remand should be resorted to only where absolutely necessary for fair and proper adjudication, as unnecessary remand causes undue delay and prolongs litigation, contrary to the constitutional imperative of inexpensive and expeditious justice.

8. A remand, therefore, is not a mere procedural direction for transmission of the record to the forum below. It is an exercise of appellate jurisdiction by which the earlier adjudication is displaced to the extent

³ The Secretary/Chairman Railways, Government of Pakistan, Ministry of Railways, Islamabad and others v. Tariq Mansoor and others (2026 SCMR 807).

⁴ Muhammad Zubair v. Mst. Raheela Gul and others (PLJ 2026 SC 495).

⁵ Messrs Shah Nawaz Khan and Sons v. Government of N.-W.F.P. and others (2015 SCMR 945).

directed by the appellate forum and the matter is restored to the competent authority for a further adjudication in accordance with law. Where the earlier order has been set aside and the matter is directed to be decided afresh, the authority is no longer called upon merely to give effect to the order previously made; it is required to undertake the adjudicatory exercise anew in accordance with the directions contained in the order of remand. The legal consequences of such remand must accordingly be examined not merely from the perspective of procedural continuity, but also in light of the statutory period governing the exercise of the adjudicatory power.

9. The significance of remand becomes apparent where, as in the present case, the order-in-original has been set aside and the matter is remitted for re-adjudication. The earlier adjudication having ceased to operate, the authority is required to undertake the adjudicatory exercise afresh in accordance with the directions of the appellate forum which indeed cannot exceed statutory frame. The statutory period cannot, in such circumstances, continue to run against an adjudication which no longer subsists. The limitation prescribed under section 36(3) regulates the exercise of the adjudicating authority's power and must therefore remain attached to the fresh exercise of that power following remand. Accordingly, where an order-in-original is set aside and the matter is remanded for fresh adjudication, the period prescribed under section 36(3) is to be reckoned afresh from the date of remand, subject to any extension or exclusion lawfully available under the statute. We cannot conceive a situation where the time frame after remand for adjudication would exceed the time originally available to the officer.

10. In the present case, the original order-in-original was set aside by the learned Appellate Tribunal, which remanded the matter vide order dated 10.03.2001 to the Collector (Adjudication), Multan/Faisalabad, for re-adjudication. Pursuant thereto, the order-in-original No. 303/2005 was passed on 31.12.2005. Thus, notwithstanding the remand, the fresh adjudication was undertaken after a period of 4 years, 9 months and 21 days from the date on which the matter was remanded. The record further shows that no extension of time for adjudication was sought or obtained under the applicable statutory provision. It ought to have been adjudicated within 45 days of the remand order dated 10.03.2001.

11. The contention that no period of limitation applies to a matter after remand cannot, therefore, be accepted. Such an interpretation would render the statutory limitation nugatory in every case where an order is set aside and the matter is remanded, leaving the adjudicating authority without any temporal constraint upon the exercise of its renewed jurisdiction. This would be contrary not only to the mandatory character of section 36(3), as settled by this Court in *Super Asia* and affirmed by the Larger Bench in *WAK Limited*, but also to the principle of finality and expeditious adjudication which underlies the law of limitation. The setting aside of the earlier order does not create an unlimited period for re-adjudication; rather, it gives rise to a fresh period within which the renewed adjudicatory exercise must be completed in accordance with section 36(3).

12. Once the period is reckoned from 10.03.2001, the date of remand, the order-in-original dated 31.12.2005 was plainly beyond the period prescribed by section 36(3). There is nothing on record to establish any lawful extension or exclusion which could save the order from the bar of

limitation. The learned Appellate Tribunal, therefore, was justified in holding the order-in-original to be time-barred. The High Court, while answering the questions of law against the Department, reached the same conclusion, and no legal infirmity has been demonstrated in that determination. The appeal is accordingly dismissed.

Chief Justice

Judge

Judge

Islamabad:
18.08.2026

Approved for reporting
[Simra Sohail, L.C]