

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

**Justice AAMER FAROOQ
Justice MUHAMMAD KARIM KHAN AGHA**

F.C.P.L.A. Nos.202 TO 204, 442 & 587 OF 2026

(Against judgment dated 24.12.2025, passed by the Lahore High Court, Lahore
in W.P.Nos.63902, 66040, 63902 of 2024, 34473 and 28794 of 2025)

Shahzor Feeds (Pvt.) Ltd. & another	in F.C.P.L.A.202/2026
Rai Mansab Ali & another	in F.C.P.L.A.203/2026
Lahore Feeds Limited & others	in F.C.P.L.A.204/2026
S.S. Feed Mills Pvt. Ltd.	in F.C.P.L.A.442/2026
Chairman Feeds	in F.C.P.L.A.587/2026
	...Petitioner(s)

Versus

Federation of Pakistan & others	...Respondent(s) (in all cases)
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For the Petitioner(s)	: Mr. Saad Mumtaz Hashmi, ASC Assisted by Yawar Mukhtar, AHC (in FPCLA No.202, 203 and 204 of 2026) Mr. Muhammad Usman Shaukat, ASC Syed Rifaqat Hussain Shah, AOR
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For the Respondent(s)	: Mr. Sarfraz Ahmad Cheema, ASC Mr. Shahzad Ahmed Cheema, ASC
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Date of Hearing	: 04.05.2026
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JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ:

1. The above-captioned petitions are being decided through this common judgment, as common question of law is involved.

2. The petitioners are aggrieved by the order dated 11.09.2024, passed by the Commissioner (Inland) Revenue, LTU, Lahore, whereby it was held that manufacturers of the poultry feed supplying products to the farmers were liable to pay additional tax under section 3(1A) of the Sales Tax Act, 1990 (**the Act**) inasmuch as the recipients of the supply were not registered. For redressal of the grievance, the petitioners

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approached the Lahore High Court by way of petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**), but the same were dismissed through the consolidated impugned judgment on 04.12.2025.

3. Learned counsel for the petitioners, *inter alia*, contended that the petitioners before this Court fall in two categories, one manufacturer of the poultry feed and the other poultry farmers. It was submitted that the latter category is exempted from payment of tax under the Act by virtue of section 13 read with Serial Nos. 40 and 48 in Table-II of the Sixth Schedule to the Act. It was contended that even the suppliers of the poultry feed were exempted from payment of sales tax under the Act prior to the Finance Act, 2024, however, post 2024, second category became taxable and the sales tax was charged and paid. Learned counsel contended that manufacturers of the poultry feed did get themselves registered with the sales tax department and are paying sales tax in accordance with law, however, they have been asked to pay additional tax under section 3(1A) of the Act for the simple reason that they are making supplies to the non-registered entities. Learned counsel took the Court through the referred section of the Act and argued that neither of the categories are liable to pay additional tax, as the poultry farmers are exempted under the law and poultry feed manufacturers are making supplies to the buyers (poultry farmers) who are not required to be registered under the law. Learned counsel submitted that section 14 of the Act is very clear that where a person is exempted from payment of sales tax, he is not required to be registered. Learned counsel also argued that similar controversy once arose and was settled

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by the Supreme Court. In this behalf, the High Court handed down the judgment on the law in question in case reported as *Muhammad Arif Ice Factory and others v. Federation of Pakistan and others*, 2021 PTD 1608, which was upheld by the Supreme Court in C.P. No.2272-L/2021 (*Commissioner Inland Revenue, Lahore v. Muhammad Arif Ice Factory, Lahore etc.*).

4. Learned counsel for the respondents *inter alia* contended that the liability to pay additional tax is on poultry feed manufacturers because they are making supplies to non-registered entities. It was contended that under the law, no exception has been created, hence under the plain reading of section 3(1A) of the Act, it is abundantly clear that sales tax liability vests upon supplies of taxable goods to non-registered persons. It was submitted that even under proviso to section 3(1A) of the Act, exceptions can be created, however, poultry industry is not in one of those exceptions.

5. Heard.

7. The sole question for the Court to adjudicate in the matter is whether additional tax is liable to be paid by the petitioners, either in their capacity as poultry farmers or poultry feed manufacturers.

8. For the ease of convenience, relevant provision of law i.e. section 3(1A) is reproduced below: -

“3(1A) Subject to the provision of subsection (6) of section 8 or any notification issued thereunder, where taxable supplies are made to a person who has not obtained registration or he is not an active taxpayer, there shall be charged, levied and paid a further tax at the rate of four percent of the value in addition to the rate specified in subsections (1), (1B), (2), (5), (6) and section 4:

Provided that the Federal Government may, by notification in the official Gazette, specify the taxable supplies in respect of which the further tax shall not be charged, levied and paid”.

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The plain reading of above provision shows that where taxable supplies are made to a person who has not obtained registration number or he is not an active taxpayer, there shall be charged, levied and paid a further tax @4% of the value in addition to the rate specified in sub-sections (1), (1B), (2), (5), (6) and section 4. Under the proviso to section 3(1A) *ibid*, the Federal Government, by a notification in the official gazette, can exclude taxable supplies from the application of section 3(1A). Needless to observe that section 3 in the Act, is the charging section, hence (1A) was inserted as part of charging provision for levy and payment of additional tax with respect to taxable supplies to persons who have not obtained registration number or by a person who is not an active taxpayer. There is no cavil or dispute of any kind that the poultry farmers are exempted from payment of sales tax under the Act, however, factually this is also correct that poultry feed manufacturers are making supplies to the non-registered persons. The referred position has created anomaly and, in order to resolve the same, it is to be seen that what mischief the legislature sought to cover by way of imposition of additional tax. It seems that the very purpose of levy of additional tax, under section 3(1A), was to encourage and promote concerned business persons to get themselves registered and become active taxpayers. Now, if a person is not required to be registered because his produce is exempt from the sale tax, would he still be required to be registered for the purpose of section 3(1A)? The answer to this query is provided in section 14 of the Act, which for brevity, is reproduced hereinbelow: -

[14. Registration. - (1) Every person engaged in making taxable supplies in Pakistan, including zero-rated supplies, in the course or furtherance of any taxable activity carried on by him, falling in any of the

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following categories, if not already registered, is required to be registered under this Act, namely:-

- (a) a manufacturer who is not running a cottage industry;
- (b) a retailer who is liable to pay sales tax under the Act or rules made thereunder, excluding such retailer required to pay sales tax through his electricity bill under sub-section (9) of section 3;
- (c) an importer;
- (d) an exporter who intends to obtain sales tax refund against his zero-rated supplies;
- (e) a wholesaler, dealer or distributor; and
- (f) a person who is required, under any other Federal law or Provincial law, to be registered for the purpose of any duty or tax or paid as if it were a levy of sales tax to be collected under the Act;

[(1A) Every person including a non-resident person except who is running a cottage industry and the retailers who are required to pay sales tax through electricity bills under sub-section (9) of section 3, selling digitally ordered goods from within Pakistan through online marketplace, website or software application as the case may be, shall apply in the prescribed form and in the prescribed manner for registration.

(1B) Every online marketplace or a courier, involved in e-commerce by supplying digitally ordered goods from within Pakistan shall not allow any person to use their services to carry out e-commerce transactions unless it holds NTN and in case sub-section (1A) of this section applies also holds sales tax registration.]

(2) Persons not engaged in making of taxable supplies in Pakistan, if required to be registered for making imports or exports, or under any provisions of the Act, or any other Federal law, may apply for registration.

[(2A) If a person, who is required to be registered under the Act, does not apply for registration and the Commissioner Inland Revenue or any other officer, as may be authorized by the Board, after such inquiry as deemed appropriate, having reason to believe that a person is liable to register, he shall compulsorily register such person after providing an opportunity of being heard.]

(3) The registration under this Act shall be regulated in such manner as the Board may, be notification in the official Gazette, prescribe.]

The plain reading of section 14(1) shows that every person, who is engaged in making taxable supplies in Pakistan, including zero-rated supplies, in the course or in furtherance of any taxable activity carried on by him, falling in any of the categories mentioned in the section, is required to be registered if not already registered. The concept of 'taxable supplies' is defined in section 2 (41) of the Act and means a supply of taxable goods made by an importer, manufacturer, wholesaler (including dealer), distributor or retailer other than a supply of goods

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which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero percent under section 4. Section 14 read with section 2(41) of the Act makes it abundantly clear that a person, who is exempted from payment of sales tax or in other words, making taxable supplies, is not required to pay sales tax and even register himself.

9. As noted above, anomaly exists in section 3(1A) inasmuch as on the plain reading of the provision, no exception has been created except as provided in the proviso to the subsection. It is an admitted position that poultry industry has not been exempted from payment of additional tax by the Federal Government though we were informed that time to time, various notifications have been issued by the Federal Government. Since, the plain reading of the provision is leading to absurdity or anomaly, we, as mentioned hereinabove, in order to reconcile the position, have resorted to look into the mischief that was sought to be cured by the legislature and, as already mentioned, it was to encourage and promote registration with the sales tax authority to become active taxpayers. The law does not require the exempted person from registration of the sales tax. Therefore, the petitioners, who are poultry farmers, are not required to be registered, but to make poultry feed manufacturers liable to payment of further tax (which eventually would be passed on poultry farmers), would not only be unjust but also against the system of payment of sales tax under the Act. Synchronising the provisions including sections 3(1A), 13, 14 and 2(41) of the Act, it would only be fair to come to the conclusion that in the present case, poultry farmers are exempted from payment of sale tax on account of

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exemption under the law, thus, they are not required to be registered. Since, the requirement of non-registration is mandated by law (section 14 of the Act), no penal consequences would fall upon either of the categories of petitioners before us by way of payment of additional tax. In somewhat similar circumstances, the question arose before Lahore High Court, Lahore which was resolved in favour of the taxpayers in the judgment reported as *Muhammad Arif Ice Factory and others v. Federation of Pakistan and others*, 2021 PTD 1608. The view expressed therein was upheld by the Supreme Court of Pakistan and it was observed that further tax under section 3(1A) could not have been imposed on the taxpayers since they were ice manufactures and were exempted. In view of above position of law, the judgment impugned before us, is not sustainable, as it does not reflect the correct interpretation of law and the High Court erred in upholding the order passed by the tax authorities.

10. In view of above, instant petitions are allowed and are converted in appeals, which are accepted; consequently, the impugned judgment dated 04.12.2025 is set aside and writ petitions filed by the petitioners are allowed as prayed for by way of setting aside orders passed by the tax authorities.

The Judgment is hereby entered.

JUDGE

JUDGE

Islamabad
04.05.2026
Zawar

APPROVED FOR REPORTING