

**FEDERAL CONSTITUTIONAL COURT OF PAKISTAN**  
**(Appellate Jurisdiction)**

**PRESENT:**

**Justice AAMER FAROOQ**

**Justice ROZI KHAN BARRECH**

**C.P.L.As No.4293, 4590, 4834 and 4930 of 2025 along with  
FCPLAs No. 217 & 218 of 2026**

*(Against judgment dated 13.05.2025, passed by the Peshawar High Court,  
Peshawar, in Tax Reference No.18/2023 and Writ Petitions No.4788-P,  
715-P, 2777-P, 4579-P and 4578-P of 2023)*

M/s Matracon Pakistan (Private) Limited, Islamabad and others	in C.P.L.A.4293/2025
Anwar Khan and another	in C.P.L.A.4590/2025
Khawaja Muhammad Khan and others	in C.P.L.A.4834/2025
Zhongmel-Al Mehreen Joint Venture (ZMEG-ALM JV), Swabi	in C.P.L.A.4930/2025
M/s. Merryland Housing Society, Mardan	in F.C.P.L.A.217/2026
M/s. Subhan Smart City Society, Mardan	in F.C.P.L.A.218/2026
	...Petitioner(s)

***Versus***

Appellate Tribunal for Sales Tax on Services, Khyber Pakhtunkhwa through Chairman, Peshawar and others	in C.P.L.A.4293/2025
Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others	in C.P.L.A.4590, 4834 and 4930 of 2025
Khyber Pakhtunkhwa Revenue Authority and others	in F.C.P.L.As. No.217 and 218 of 2026
	...Respondent(s)

For Petitioners:

Mr. Babbar Ali Khan, ASC

Mr. Syed Rifaqat Hussain Shah, AOR

*(in CPLA Nos.4293 & 4834 of 2025)*

Mian Naveed Gul Kaka Kheil, ASC

*(in CPLA No.4590/2025)*

Mr. Sikandar Rashid, ASC

*(in CPLA No.4930/2025, FCPLA Nos.217 & 218 of  
2026)*

For Respondent:

Mr. Rehmaullah, ASC along with Mr.

Fazal Amin Shah, Legal Advisor KPRA

*(in all cases)*

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Assisted by: Barrister Zarrar Haider Bhatti, Law  
Clerk

Date of Hearing: 02.02.2026

**JUDGMENT OF THE COURT**

**JUSTICE AAMER FAROOQ:**

1. This judgment shall decide the captioned petitions as common question of law arises, from these petitions, for us to decide i.e., whether Serial No. 14 of Schedule 2 to the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 (“**the impugned law**”) is *ultra vires* the Constitution of the Islamic Republic of Pakistan (“**Constitution**”). We hold that it is not.
2. Learned counsel for the Petitioners have contended before us that Serial No. 14 of Schedule 2 to the impugned law, when read in conjunction with Entry 49 of the Constitution, is *ultra vires* because tax on services, after passage of Constitution (Eighteenth-Amendment) Act, 2010 is a provincial subject and the tax being sought from the petitioners by Khyber Pakhtunkhuwa Revenue Authority (“**KPRA**”) as “Construction Services” includes tax on goods which could only be levied by the Federation under Entry 49 of the Constitution. The relevant provision of the impugned law is reproduced hereinbelow:

<b>Schedule 2</b>			
14	Services provided by construction contractors, architects, civil engineers, land or property surveyors, construction consultants, designing and supervision consultants, town or real estate or property promoters, developers or planners including	9815.0000 9815.1000 9815.2000 9815.3000 9815.4000 9815.9000 9819.5000	Five Percent (5%) except Government Funded construction projects including ADP/PSDP funded projects and construction of hydropower projects on which the rate of tax shall

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	<p>interior decorators or allied or ancillary professions:</p> <p>(a) Construction services rendered or provided in respect of the construction of structures, buildings, roads, bridges, under passes or flyovers (and other civil works), electro-mechanical works, turn-key and Engineering, Procurement and Construction (EPC) Projects and similar other works involving construction activity.</p> <p>(b) Architects and civil engineers or town promoters, developers, planners.</p> <p>(c) Town, real estate or property promoters, developers or planners.</p> <p>(d) Services of contractors of allied works such as electrical, mechanical, gas fittings, plumbing, water boring, wood work, plastering, flooring, steel work, paint and other finishing work or works.</p> <p>(e) Interior decorators.</p> <p>(f) Landscaping or land development designers including land surveyors.</p> <p>(g) Other similar, allied or ancillary services.</p>		<p>be Two Percent (2%).</p>
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3. The effect of the impugned law is to impose a tax on services within the categories listed at Serial 14. It is well-settled that following the enactment of the Constitution (Eighteenth Amendment) Act, 2010,

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the power to levy tax on services vests exclusively in the Provinces, whereas the Federal Government retains competence to impose tax on goods, as provided under Entry 49 of the Constitution, which is reproduced below for reference:

**“Entry 49.** *Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services”.*

4. Upon examining Serial No. 14 of Schedule 2 *ibid*, the relevant provision for the purposes of this case is Serial 14(a) thereof. When read harmoniously, we find no inconsistency or contradiction between the impugned law and the Constitution. Entry 49 clearly stipulates that taxes on services cannot be imposed by the Federation, and the impugned law conforms to this mandate by imposing sales tax exclusively on “Construction Services,” as elaborated in Serial No. 14(a). This situation was also placed before the learned counsel for the petitioners by us, who fairly conceded that Serial No. 14 is confined to services and does not extend to goods. In view of this concession, we see no reason to further examine the question of *vires*. Even otherwise, when the relevant constitutional and statutory provisions are read together, there is no inconsistency whatsoever. Consequently, no ground is made out for striking down the impugned law.
5. However, it has been contended before us, and the primary issue that seems to us is that, the show cause notices issued by the KPRA demand tax for the period from July 2021 to April 2022 on the amounts received by the Petitioners during this period pursuant to the contracts in question which include price of goods to be provided by the contractors/petitioners. Upon submissions made by the

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learned counsels for the Petitioners, we find that the tax so demanded is calculated on the entire consideration received under the contract, which includes both the charges for rendering services as well as the cost incurred in the utilization of goods for the execution of such services. It is, therefore, argued that the KPRA has exceeded its statutory authority by levying tax on the entire contractual amount, as the Province is empowered to levy tax only on “services” and not on goods (this would in essence create a double-taxation situation).

6. In response to that, our attention is drawn to various provisions of the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022, whereunder a registered person can “claim adjustments” including refunds arising as a result thereof, in respect of the tax paid under any other law in respect of any taxable service or goods or class of taxable services or goods, received or acquired and used in the provision of taxable service or services by him<sup>1</sup>. Furthermore, our attention has been drawn towards a Memorandum of Understanding between Revenue Division/FBR and KPRA signed on November 23<sup>rd</sup>, 2016, that also allows cross-adjustment of tax in such a situation to avoid double tax burden. Therefore, the situation is clearly governed by the law and Memorandum of Understanding, thus not warranting our interference. However, we expect KPRA to make mechanism for charging sales tax on service as the present system though allows

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<sup>1</sup> Input tax under s.2(a) of Khyber Pakhtunkhwa Sales Tax on Services Act, 2022 is defined as **“input tax”**, in relation to a registered person, means-

(i) tax levied under this Act on the services received by the person; and  
(ii) tax levied under the Sales Tax Act, 1990, on the goods whether imported or procured locally by the person:

Provided that Government may, by a notification in the official Gazette, specify and declare any other sales tax on services, levied and paid under any other law, to be an input tax for the purposes of this Act: Provided further that Government may, by rules or notification in the official Gazette, specify that any or all of the aforesaid tax shall not be treated as input tax for the purposes of this Act, subject to such conditions and limitations as may be prescribed in rules or by notification. (emphasis supplied)

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adjustments but is not clear. KPRA should, if it has not already been done, seek bifurcation/division of contractual consideration into the consideration received by taxpayer for services and the contract amount providing for procurement of goods pursuant to the services contract. In this behalf, it would be appropriate that KPRA should formulate rules/Standard Operating Procedures.

7. At this juncture, we deem it appropriate to pause and consider the confusion that has arisen in the present case. The show cause notice dated June 09<sup>th</sup>, 2022 seeks to levy tax on the entire amount received by the Petitioners, as noted above. It would have been more appropriate for the KPRA to first call upon the Petitioners to submit a representation specifying the portion of the consideration attributable to the rendering of services and the portion incurred towards the use of goods. Such an approach would have enabled the KPRA to levy tax strictly on services, while leaving the component relating to goods to be governed under the federal regime of the Sales Tax Act, 1990. In light of the foregoing, we reiterate it would be better that the revenue authorities streamline their processes in this regard so as to avoid unnecessary difficulty and to facilitate taxpayers.
8. We also address an ancillary matter arising out of our adjudication of CPLA No. 4293 of 2025 that arises from Peshawar High Court's adjudication of Tax Reference No. 18 of 2023 from which these appeals arise. Although tax references are not expressly enumerated within our jurisdiction under the Constitution, this omission does not divest this Court of jurisdiction in the present case. This is so because Tax Reference No. 18 of 2023 raises substantial question of constitutional interpretation (vires of the Provincial law). The Supreme Court of Pakistan ("**Supreme Court**") does not exercise any

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jurisdiction in matters requiring examination of vires of the law. A collective and harmonious reading of the constitutional scheme governing both Courts establishes that this Court is the sole apex forum competent to adjudicate upon questions involving substantial question of law as to the interpretation of the Constitution, including the *vires* of legislation. While such jurisdiction may previously have been exercised by the Supreme Court under an earlier constitutional framework, under the present constitutional scheme, this authority vests exclusively in this Court.

9. Article 175E(5)<sup>2</sup> provides that the Federal Constitutional Court “may” call for the record of a case, thereby vesting a discretionary, but constitutionally structured power in this Court. The discretion is further expanded by the opening words, which permits this Court to act either on its own motion or otherwise, signifying that the jurisdiction may be triggered *suo sponte* or upon an application made before it. This power, however, is not unstructured, for the provision itself circumscribes its exercise by a substantive condition, namely, that the case must involve a “substantial question of law as to the interpretation of the Constitution”. While we do not delineate exhaustively the contours of when such a question arises<sup>3</sup>, it is self-evident that a challenge to the *vires* of a law inherently raises a substantial question of constitutional interpretation, as the invalidation of legislation can rest only upon its inconsistency with a constitutional provision or command. The provision then authorizes the Court to call for the record of “any case,” language that is

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<sup>2</sup> Article 175E(5) of the Constitution of the Islamic Republic of Pakistan, 1973.

<sup>3</sup> It seems that a substantial question on interpretation of Constitution arises when the case involves a dispute concerning the meaning, scope, or application of a constitutional provision and the resolution of the question has consequences extending beyond the immediate parties, affecting the broader constitutional and/or legal framework of our Country.

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unqualified and admits of no distinction as to the nature, form, or classification of proceedings, thereby extending to cases of every description, including, but not limited to, tax references. The breadth of this authority is further reinforced by the expression “any court,” from which the record may be called. The Constitution neither defines nor limits this phrase, and it must therefore be read to encompass all courts and tribunals within the judicial hierarchy of this Country, without exception. Notably, the provision contains no negative or exclusionary language suggesting that the power so conferred is confined to cases otherwise within the express jurisdiction of this Court. The use of the unqualified expression “any case” thus necessarily includes cases in which this Court may not otherwise have jurisdiction, provided that the jurisdictional trigger, namely, the involvement of a substantial question of constitutional interpretation, is satisfied.

10. Some constitutional provisions are “character-conferring” and also “competence-enumerating”; Article 175E (5) is of this kind. Article 175E (5) is not merely a procedural clause conferring a power to transfer cases before this Court. Rather, it encapsulates the very character and *raison d’être* of this Court, namely, to adjudicate cases involving substantial questions of law as to the interpretation of the Constitution. By removing jurisdictional or subject-matter limits, Article 175E (5) enables the Court to intervene wherever substantial constitutional meaning is at stake. Historically, the Supreme Court exercised comparable authority, including the power to interpret the Constitution and to examine the validity of legislation. However, the Constitution (Twenty-Seventh) Amendment Act, 2025 has restructured the constitutional distribution of judicial power. As a

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consequence, the jurisdiction of the Supreme Court has been correspondingly curtailed in this regard, and the authority to strike down legislation on constitutional grounds no longer vests in it under the present constitutional scheme.

11. In view of the foregoing, we have adjudicated upon Tax Reference No. 18 of 2023 solely because it raises a question concerning the *vires* of the impugned law.
12. Thus, we hold that, Article 175E (5) authorizes this Court to call for the record of “any case,” and the invocation of this provision, by itself, confers jurisdiction upon this Court to adjudicate a matter in which it might otherwise lack express jurisdiction. Viewed conversely, as this Court is the ultimate forum for determining the *vires* of legislation, it possesses the authority to entertain cases even in the absence of express jurisdiction, provided a substantial question of constitutional interpretation is involved. In the present case, such a question squarely arises in the form of a challenge to the *vires* of the impugned law.
13. In view of the foregoing discussion, leave to appeal is refused and the instant petitions are hereby dismissed. The impugned judgment of the Peshawar High Court dated May 13<sup>th</sup>, 2025 is affirmed. No order as to costs is made.

*Judgment is hereby entered.*

**JUDGE**

**JUDGE**

**Islamabad**

02.02.2026

Misal Shah/\*

**Approved for Reporting**