

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Special STRA No.279 of 2018

Date	Order with signature of Judge(s)
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1. For orders on office objection No.19
2. For hearing of Main case.

12.10.2021

Mr. Ameer Bux Metlo, Advocate for the Applicant

Briefly stated, a belated show cause notice was issued to the respondent in 2017, in respect of the tax period 2004 to 2008. The notice culminated in an assessment order, which was over turned in appeal by the Commissioner Appeals on account of being time-barred. The department filed an appeal there against before the Appellate Tribunal Inland Revenue and vide order dated 08.01.2018 ('Impugned Order') the appeal was dismissed, hence, this reference.

It is considered appropriate to reproduce the operative constituent of the Impugned Order herein below:

"Further, the CIR (Appeals) has rightly held that the demand relates to periods 2004 to 2008, which are barred by time limitation under section 11(5) of the Sales Tax Act, 1990. The Section 11(5) of the Act prescribed limitation of five years, which cannot be violated by the departmental authorities. According to show cause notice dated 30.06.2017, the period involved in the case in hand i.e., 2004 to 2008 being time barred cannot be touched by the department in the light of provisions contained in section 11(5) of the Act, which reads as under:-

"No order under this section shall be made by an Officer of Inland Revenue unless a notice to show cause is given within five years, of the relevant date, to the person in default specifying the grounds on which it is intended to proceed against him and the officer of Sales Tax shall take into consideration and representation made by such person and prove him with an opportunity of being heard".

---Furthermore, the issue of limitation already stands resolved in favour of the registered person at the level of Apex Court of Pakistan vide its reported judgment cited as 217 PTCL 736 recorded in the case of M/s. super Asia Muhammad Din & Sons etc.

The act of learned Commissioner of Appeals when seen in its true prospective particularly on the issue of time limitation, it is found in line with the established principles of appeal proceedings in revenue matters as laid down by the Full Bench of Honourable Supreme Court of Pakistan in Civil Appeal Nos. 682 of 2008 etc. by holding as under:-

"9. Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. But if such provision is directory, the act done in breach thereof would not be void, even though non-compliance may entail penal consequences. However, non-compliance of a mandatory provision would invalidate such act. In this context, reference may be made to the case of Rubber House Vs. Excellsior Needle Industries Pvt. Ltd., (AIR 1989 SC 1160). Thus, having held the first proviso to Section 36(3) supra to be mandatory, the natural corollary of non-compliance with its terms

would be that any order passed beyond the stipulated time period would be invalid”.

Therefore, by respectfully following the above mentioned ratio settled by the Apex Court of Pakistan, the ONO passed in the case in hand being barred by time is hereby set aside by way of acceptance of appeal of the registered person. We order accordingly.

The applicant has proposed a question of law which we, respectfully, consider answered, on the basis of the record, in the Impugned Order and no law was identified before us to assail such findings. Upon being confronted with the relevant dates / periods mentioned in the Impugned Order, the applicant's counsel confirmed the veracity thereof. In summation, no cavil was articulated in respect of the proceedings being time barred and no case was articulated to merit any interference in the Impugned Order. The learned Appellate Tribunal has already appraised the evidence and concurred with the Commissioner Appeals that the impugned proceedings were in fact barred by limitation.

In view hereof, we are of the considered view that the applicant has failed to raise any question of law arising out of the Impugned Order meriting the consideration of this court, therefore, the present reference is hereby dismissed *in limine*.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 47(5) of the Sales Tax Act, 1990.

JUDGE

JUDGE

Amjad/PA