

**IN THE HIGH COURT OF SINDH, KARACHI**

**C. P. NO. D-6008 / 2017 a/w  
C. P. NO. D-5941, 6527, 8399/2017  
C. P. NO. D-1960, 2222, 2609/2018  
C. P. NO. D- 7606/2019**

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**26.10.2020.**

**Mr. Arshad Siraj Advocate for Petitioner  
in CP No. D-6008 of 2017.  
Mr. Hyder Ali Khan a/w Mr. Samiur Rehman  
Advocates the Petitioners in C. P. No. D-5941/2017  
D-2222/2018 and D-2609/2018.  
Mr. Taimur Ahmed Qureshi Advocate for Petitioner  
in CP No.D-6527/2017.  
Mr. Emad ul Hassan Advocate a/w Mr. Rizwan Ahmed  
Advocates for Petitioner in CP No. D-8399/2017 and  
D-1960 of 2018.  
Mr. Ali Almani Advocate for Petitioner  
in CP No.D-7606 of 2019.  
Mr. Kafeel Ahmed Abbasi Deputy Attorney General.  
Mr. Aqeel Ahmed Qureshi Advocate for Respondent.  
Mr. Ameer Bakhsh Metlo Advocate for Respondent.  
Mr. Kashif Nazeer Advocate for Respondent.**

All these listed Petitions have been filed before this Court under Article 199 of the Constitution impugning respective Show Cause Notices issued to the Petitioners on the ground that the same are time barred; hence, the officer concerned had no jurisdiction to issue such notices.

Mr. Arshad Siraj<sup>1</sup> has contended that the Petitioner has been issued a Show Cause Notice on 16.8.2017 for Tax Year(s) 2005-2008 for alleged short payment and recovery thereof under Section 11 of the Sales Tax Act, 1990 which admittedly, is time barred in terms of Section 11(5) of the Act. According to him, the maximum limitation is 5 years, whereas, the Petitioner has been asked to make good the alleged short payment pertaining to the years 2005-2008 and therefore, the impugned Show Cause Notice is time barred. He has relied upon<sup>2</sup>.

Mr. Hyder Ali Khan<sup>3</sup> in addition to adopting the legal submissions of Mr. Arshad Siraj has further added that even on merits the Respondent Department has no case inasmuch as they are demanding

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<sup>1</sup> in C.P. No. D-6008/2017

<sup>2</sup> Federation of Pakistan V. Ibrahim Textile Mills Ltd. (1992 S C M R 1898).

<sup>3</sup> appearing for the Petitioners in C. P. No. D-5941/2017, 2222/2018 and 2609/2018

Sales Tax on the amount of subsidy received by the Petitioner from Government of Pakistan which cannot be included in the values at the time of making supply. He has relied upon<sup>4</sup>.

Mr. Ali Almani<sup>5</sup> has also adopted these arguments and further submits that the Petitioner in this case was earlier issued a Show Cause Notice which was replied but no order was passed; and then to overcome the expiry of limitation in passing the Order-in-Original, a second Show Cause Notice was issued which is apparently time barred. According to him, by now it is settled law that an Order in Original has to be passed within the specified period and has relied upon<sup>6</sup>.

On the other hand, both the learned Counsel appearing on behalf of Department have argued that since this is a case of tax fraud in terms of Section 2(37) of the Act, and therefore, no limitation runs against such tax fraud; therefore, they have prayed for dismissal of these Petitions.

We have heard all the learned Counsel and perused the record. On facts, it has not been disputed that the impugned Show Cause Notices have been admittedly issued after the statutory period of five years provided under Section 11(5) of the Sales Tax Act, 1990<sup>7</sup>. Though the tax period in all cases are different; however, it is an admitted position that the Show Cause Notices issued are beyond the period of 5 years as above; hence, the proceedings of recovery are apparently time barred and cannot be allowed to be acted upon. Moreover, the argument that it is a case of tax fraud in terms of Section 2(37) *ibid* also appears to be misconceived on two grounds. First, even if we were to accept the allegation that there is an element of tax fraud involved, it would not *ipso facto* enhance the limitation as provided in Section 11(5) of the Act as contended. It would still remain the same. The Principle that no limitation runs against a void order (tax fraud here) is of no relevance; rather an attempt on the part of the respondent to cover their inefficiency by asking this Court to condone the limitation. It is not a question of exercising any discretion in the matter.

Secondly, with utmost respect the present case on perusal of the Show Cause Notice does not even otherwise seems to be a case of tax

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<sup>4</sup> Collector of Customs V. K & A Industries (2006 P T D 537) and Assistant Collector Customs V. Khyber Electric Lamps (2001 S C M R 838)

<sup>5</sup> appearing on behalf of Petitioner in C. P. No. D-7606/2019

<sup>6</sup> The Collector of Sales Tax, V. Super Asia Mohammad Din & Sons (2017 SCMR 1427) & Abbasi Enterprises V. Collector of Sales Tax (2020 PTD 147).

<sup>7</sup> "11.(5) 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 the representation made by such person and provide him with an opportunity of being heard:

fraud per se. In Show Cause Notice<sup>8</sup> the only allegation is that *Sales Tax has not been charged on Price Differential Claims received from the Government of Pakistan against supplies of oil products*. We are unable to understand as to how could such a transaction be a case of tax fraud. Nonetheless, all short payment(s) of Sales Tax would not ipso facto fall under Section 2(37) of the Sales Tax Act, 1990. At least in the present case, we are unable to agree with this proposition as raised on behalf of the Department.

In view of the above it appears to be an admitted position that show cause notices are time barred in all petitions; whereas, the law as to limitation is settled and the cardinal principle of law is that all are equal before law, whether a citizen or State, and if a law prescribes period of time for recovery of money, after its lapse recovery is not enforceable through Courts<sup>9</sup>. As to the exercise of jurisdiction in these matters wherein show cause notice(s) have been challenged directly, we may observe that in cases wherein on the face of it, if it is time barred, then asking the aggrieved party to avail alternate remedy would amount to refusal of exercise of discretion which in the given facts ought to be exercised; and it is not proper exercise of discretion to refuse relief to a party to which it is entitled under law<sup>10</sup>. Reliance may also be placed on<sup>11</sup>.

In view of hereinabove facts and circumstances of these cases, since it is not in dispute that Show Cause Notices in these petitions are hopelessly being time barred; hence without jurisdiction, and therefore, we while exercising our Constitutional Jurisdiction can take notice of the same, and by doing so, the impugned Show Cause Notices are hereby set-aside / quashed. All Petitions are allowed. On 26.10.2020 by means of a short order, we had allowed these petitions and above are the reasons thereof.

Office is directed to place copy of this order in all above connected Petitions.

**J U D G E**

**J U D G E**

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<sup>8</sup> in C. P. No. D-6008/2017

<sup>9</sup> Federation of Pakistan v Ibrahim Textile Mills Limited (1992 SCMR 1898)

<sup>10</sup> 1992 SCMR 1898

<sup>11</sup> Collector of Customs V. K & A Industries (2006 P T D 537) and Assistant Collector Customs V. Khyber Electric Lamps (2001 S C M R 838)

Arshad/