

**IN THE HIGH COURT OF SINDH, KARACHI**  
CP No.D-7558 of 2021

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Zulfiqar Ahmed Khan, JJ*

M/s. Abid Nisar International  
Petitioner : through Mr. Muhammad Abbas,  
Advocate.

Vs.

Federation of Pakistan  
Respondent No.1 : through Mr. Kafeel Ahmed Abbasi,  
D.A.G.

The Collector of Customs  
Respondent No.2 : through Mr. Khalid Rajpar, Advocate.

Date of hearing : 08.03.2022

Date of decision : 08.03.2022

JUDGEMENT

**Irfan Saadat Khan, J.** This petition has been filed impugning the government dues demanded from the petitioner, being the arrears of the outstanding amounts of custom duty, sales tax and additional sales tax payable by the petitioner, vide demand notice dated 31.01.2020.

2. Briefly stated the facts of the case are that there were some outstanding demands against the petitioner, which were required to be paid by them, vide demand notice dated 31.01.2020.

3. Mr. Muhammad Abbas, counsel for the petitioner stated that the impugned demand was 09 years old, hence, the department has no authority under the law to claim the said amount from the petitioner as arrears. He stated that from Section 202(A) of the Customs Act, 1969 (the Customs Act) read with Section 11(5) of

the Sales Tax Act, 1990 (the Sales Tax Act) it is evident that the department could only claim/recover arrears pertaining to the last 05 years only and not beyond that. The learned counsel read out the above provisions of law to substantiate his claim and stated that since the demand is more than 05 years old hence the department legally cannot demand the same as government dues / arrears therefore, the demand notice dated 31.01.2020 is illegal and uncalled for which may kindly be vacated and the department may be restrained from recovering the said demand from the petitioner.

3. M/s. Kafeel Ahmed Abbasi, D.A.G. and Khalid Rajpar, Advocate have appeared on behalf of the Respondents and, at the very outset, stated that this petition is misconceived and not maintainable. They stated that the petitioner has not raised any objection with regard to the quantum of the demand but the only claim of the petitioner being that under Section 202(A) of the Customs Act, 1969 read with Section 11(5) of the Sales Tax Act, 1990 the department is not empowered to recover government dues / arrears prior to 05 years. They stated that the petitioner has totally ignored the provision of Section 202 of the Customs Act, 1969 which provides that a person who is obliged to pay government dues have to pay the same and the Customs Department being a government agency, is authorized under the law to recover the said government dues pertaining to other financial departments also in accordance with law.

4. They stated that so far the government dues are concerned no limitation runs against it and if there are some government dues/arrears outstanding the taxpayer is obliged / required to pay

the same in accordance with law. They stated that the only concession in this regard is to the fact that the demand is reduced in appeals etc. According to them it is not the case of the petitioner where quantum of the demand has been questioned but the claim of the petitioner is only with regard to the fact arrears/dues were more than 05 years old. They further submitted the question of limitation of 05 years pertains to reopening of the matter only and not with regard to recovery of any arrears/amounts. They stated that this is not a case of either reopening or reassessing any amount due against the petitioner rather this is a case of recovery of legally payable government dues / arrears outstanding against the petitioner. They stated that the petitioner is under legal obligation to pay the government dues in accordance with law and hence the Respondents were fully justified in asking the petitioner to pay the amount/arrears and were fully authorized to recover the same as per the relevant provisions of the law, if not timely paid. Learned counsel for the department in support thereof have relied upon the following decisions.

- i. K-Electric Limited ..Vs.. Federation of Pakistan*  
**(2019 SLD 2835)**
- ii. Messrs Paramount Spinning Mills Ltd., ..Vs.. Customs, Sales Tax and Central Excise Appellate Tribunal and another* **(2012 SCMR 1860)**

5. We have heard both the learned counsel at some length and have also perused the record and the decisions relied upon by the learned counsel appearing for the Respondent.

6. Before proceeding any further, we deem it appropriate to reproduce relevant provisions of law relied upon by the learned counsel for the petitioner as well as the Respondents:-

<sup>9</sup>**202. Recovery of Government dues.**- (1) *When, under this Act or under any other law for the time being in force, which provides for any tax, duty or other levy being collected in the same manner as customs-duties are collected, a penalty is adjudged against, or notice or demand is served upon, any person calling for the payment of any amount unpaid which may be payable by way of penalty or by way of duty, tax or other levy or under any bond <sup>10</sup>[,guarantee] or other instrument executed under this Act or such other law or the rules made there under, the appropriate officer-*

*(a) may deduct or require any other officer of Customs, <sup>49</sup>[or Inland Revenue] to deduct such amount from any money owing to such person which may be under the control of the Customs, <sup>49</sup>[or Inland Revenue] authorities; or*

*(b) if it cannot be so recovered, may recover, or may require any other officer of Customs, <sup>49</sup>[or Inland Revenue] to recover, such amount by detaining and selling any goods belonging to such person which are under the control of the Customs, <sup>49</sup>[or Inland Revenue] authorities <sup>10a</sup>[:]*

<sup>10a</sup>*[Provided that notwithstanding anything contained in any other law for the time being in force, if a defaulter sells or transfers ownership of his assets, the defaulted amount of duty and taxes shall be the first charge on the business so transferred.]*

*(2) If the amount cannot be recovered from such person in the manner provided in sub-section (1), the appropriate officer may serve upon the defaulter a notice in the prescribed form requiring him to pay the amount specified in the notice within such time as may be so specified.*

*(3) If the amount referred to in the notice under sub-section (2) is not paid within the time specified therein or within the further time, if any, allowed by the appropriate officer, the appropriate officer may proceed to recover from the defaulter the said amount by one or more the following modes, namely:-*

*(a) attachment and sale of any movable or immovable property of the defaulter; and*

<sup>11</sup> *[(b) may recover, or may require any other officer of Customs, <sup>49</sup>[or Inland Revenue] to recover, if it cannot be so re-covered, such amount by detaining and selling an goods belonging to such person which are under the control of the Customs, <sup>49</sup>[or Inland Revenue] authorities; or*

*(a) may recover such amount by attachment and sale of any movable and immovable property of the guarantor, person, company, bank or financial institution, where a guarantor or any other person, company, bank or financial*

*institution fails to make payment under such guarantee, bond or instrument <sup>12</sup>[; or]*

<sup>13</sup>*[d] arrest of the defaulter and his detention in the prison for a period not exceeding fifteen days:*

*Provided that this mode shall not be applied unless the period of limitation prescribed for filing appeal has expired, or an appeal is pending.]*

<sup>14</sup>*[(3A)A warrant of arrest issued against a defaulter in sub-section (3)(d) shall not be executed if the arrears due from him are paid or the defaulter furnished security to the satisfaction of appropriate officer.*

*(3B) Any defaulter who under sub-section (3) is being kept under detention shall forthwith be set at liberty on the arrears due from him being paid.]*

*(4) For the purposes of recovery of duty, or other levy under <sup>15</sup>[subsections (1) and (3)], the appropriate officer shall have the same powers which, under the Code of Civil Procedure, 1908 (Act V of 1908), a civil court has for the purpose of the recovery of an amount due under a decree.*

*(5) The Board may make rules regulating the procedure for recovery of duty, tax or other levy under this section and any other matter connected with or incidental to the operation of this section 14a[:]*

<sup>14a</sup>*[Provided that if any arrears which may be payable by way of duty, surcharge, fee, service charges, fine or penalty or any other amount which is adjudged or payable under any bond, guarantee or other instrument executed under this Act or the rules made thereunder, cannot be recovered, the Board or any officer not below the rank of Collector authorized by the Board, may for reasons to be recorded, write off the arrears in the manner as may be prescribed by rules.]*

<sup>16</sup>**[202A. Levy of surcharge.-** *Notwithstanding anything contained in this Act and without prejudice to any other action that may be taken thereunder, if any person fails to pay the arrears within the prescribed time, he shall, in addition to the arrears, be liable to pay surcharge at the rate of <sup>40</sup>[KIBOR plus three per cent per annum], of the total amount of arrears.*

**Section 11 of the Sales Tax Act, 1990**

**Section 11. Assessment of Tax & Recovery of Tax not levied or short levied or erroneously refunded]**

*(1).....*

(2).....

(3).....

(4).....

*(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.*

7. It is noted that the petitioner is not aggrieved with the quantum of the amounts / demanded from him but his only grievance is that since the amounts required from him were quite old hence the department cannot ask or recover the same from the petitioner. Perusal of the above provisions of law clearly reveals that the Customs Department has the authority, under the law being, a collecting agency, to require from any person any amount of tax duty and other levies as which includes penalty also. The various clauses of Section 202 of the Customs Act clearly defines a mechanism for the recovery of the government dues. The reliance of the counsel of the petitioner on Section 202-A of the Customs Act is found to be misplaced as this section, which starts with a non-obstante clause, provides that if any person fails to pay arrears within the prescribed time that person in addition to the arrears be liable to pay surcharge at the rate of KIBOR plus three percent of the total amount of the arrears. Hence in our view if a person fails to pay any amount of government dues / arrears, surcharge, as prescribed under Section 202-A, surcharge would be leviable upon the said person.

8. Now if the facts of the present case are examined, it would be seen that the government arrears / dues were admitted by the

petitioner to the extent of their quantum but the only ground raised being that since they are more than 05 years old, hence are not recoverable from the petitioner. The provisions of Section 11(5) of the Sales Tax Act as relied upon by the counsel for the petitioner is not applicable as it talks about passing of an order beyond 05 years old and not with regard to recovery of arrears, hence reliance of the petitioner on this Section appears to be wholly misconceived.

9. Perusal of the record further reveals that the petitioner vide letter dated 30.06.2021 addressed to Assistant Collector of Customs, MCC Port Qasim, Custom House Karachi stated that he wants to pay the outstanding amounts but since he is passing through some rough time, installments may be granted to him and he will pay the amounts in due time. In our view nothing now is left in this case which is to be decided, as the petitioner himself has sought time from the Department for payment of outstanding amounts in installments, hence the stance now taken that the amounts were not recoverable from him being old amounts or were not legally payable by him are nothing but an afterthought on his part and is not sustainable under the law. This petition therefore was found to be bereft of any merit and same was dismissed vide our short order dated **08.03.2022** and these are the reasons for the same.

JUDGE

JUDGE