

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
C.P No. D- 4102 of 2021**

Date	Order with signature of Judge
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**Priority.**

1. For hearing of CMA No. 16902/21.
2. For hearing of main case.

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**15.08.2024.**

Mr. Abdul Raheem Lakhani along with Mr. Atta Muhammad Qureshi and Mr. Suneel Memon, Advocates for Petitioner.

Mr. Ayaz Sarwar Jamali, Advocate for Respondents.

Mr. Kashif Nazeer, Assistant Attorney General.

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Through this petition, the Petitioner has impugned Show Cause Notice dated 28.05.2021 on sole ground that the same is time barred under Section 11(5) of the Sales Tax Act, 1990 as the period alleged in the Show Cause Notice is from October, 2014 to September, 2015.

Heard learned Counsel for the parties and perused the record. Notice was ordered and in the para-wise comments, the relevant response of the Respondents is as under:-

“Notwithstanding the above, the show cause notice dated 28-05-2021 has been issued after obtaining condonation of time limit u/s 74 of the Sales Tax Act, 1990 and Section 32 of the Federal Excise Act, 2005 from the FBR vide order C.No.3(13)ST&FE/Cond/2014/59895-R dated 05-05-2021. Hence show cause notice is not barred by time.  
Copy of order C.No. 3(13)ST&FE/Cond/2014/59895-R Annexure “A” dated 05-05-2021.”

We are afraid the reason assigned for extension of time cannot extend limitation as provided under Section 11 (ibid); whereas the other argument that matter was under consideration in audit also does not entitle the Respondents to seek extension in the limitation either on the excuse of audit or delay in any other manner. No other ground has been urged; rather the delay in issuance of show cause notice is admitted, otherwise there wasn't any need for an extension as above.

In view of the above it appears to be an admitted position that show cause notice is time barred; 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>1</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>2</sup>. Reliance may also be placed on<sup>3</sup>.

In view of hereinabove facts and circumstances, since it is not in dispute that Show Cause Notice is hopelessly 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 Notice is hereby set-aside / quashed. Petition stands allowed.

**Judge**

**Judge**

Ayaz P.S.

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<sup>1</sup> Federation of Pakistan v Ibrahim Textile Mills Limited (1992 SCMR 1898)

<sup>2</sup> 1992 SCMR 1898

<sup>3</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)