

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 6565 of 2020
Constitutional Petition No. D – 6566 of 2020
Constitutional Petition No. D – 245 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGES
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Present
Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

Qazi Umair Ali, Advocate for the Petitioners.
Mr. Muhammad Aqeel Qureshi, Advocate for Respondent in C.P. No.D-245/2017.
Mr. Shahid Ali Qureshi, Advocate for the Respondent in C.P. No.D-6565/2020.
M/S. Hafeezullah & Touqeer Ahmed, Advocates for the Respondent in C.P. No.D-6566/2020.
Syed Bashir Hussain Shah, Asstt. Attorney General.

Date of hearing: 22.08.2025.
Date of announcement: 02.09.2025.

ORDER

MUHAMMAD JAFFER RAZA – J: Through the instant petitions the Petitioners have impugned Show Cause Notices, details and periods of which are tabulated below: -

C.P.No.D	Show cause notice number with date	Tax period
6565/2020	AUDIT-02/UNIT-10/CTO/551 dated 15.12.2020. Show Cause Notice No.1	July 2014 to June 2015
6566/2020	DCIR/Plastiflex/U-2/Audit Zone-I/MTO/2020/492dated 19.11.2020. Show Cause Notice No.2	July 2014 to June 2015
245/2017	ADC/E&C/ZoneIV/CRTO/KHI/2016/157dated 13.12.2016. Show Cause Notice No.3	January 2011 to December 2011

2. Learned counsel for the Petitioners has contended that the Show Cause Notices tabulated above are unlawful, illegal and arbitrary as the same are barred by limitation under Section 11(5) of the Sales Tax Act, 1990 (**'Act'**). He has further argued that in terms of the noted section, that a show cause notice ought to be issued within five (05) years of the "relevant date". In this regard, he with reference to the aforementioned ShowCause Notices, invited our attention to the specific dates on which the said Show Cause Notices were

issued. According to him, the notices have been issued beyond the period prescribed under the noted provision. He has further contended that this Court has the jurisdiction to set aside the impugned Show Cause Notices as the same have been issued without lawful authority and are clearly beyond the prescribed period.

3. After hearing the arguments advanced by the learned counsel for the Petitioners, we specifically enquired from the learned counsels representing the Respondents, as to how the Show Cause Notices have been issued beyond the prescribed period. Learned counsels in this regard placed reliance on the notification dated 30.06.2020 issued under section 74 of the Act during the covid pandemic, whereby the FBRExtended the period for issuing notices under Section 11(5) of the Act by six months i.e. up till 31.12.2020.

4. We have heard all the learned counsels for the respective parties and perused the record. Prior to determining whether the Show Cause Notices as tabulated in paragraph No.1 above are liable to be set aside, it will be first expedient to examine whether this Court has the jurisdiction to entertain the instant petitions. The Hon'ble Supreme Court in the case of Commissioner *Inland Revenue v. Jahangir Khan Tareen*¹, has laid down the circumscribed parameters of interference in writ jurisdiction by the High Court where in paragraph No.11 it was held as under:-

“The court may take up writs to challenge the show cause notice if it is found to be barred by law or abuse of process of the court.” (Emphasis added)

5. Considering the parameters set hereinabove it will now be imperative to examine the relevant provision of the Act in reference to the impugned Show Cause Notices issued to the Petitioners. Section 11(5) of the Act, at all relevant times², read as under: -

¹ 2022 SCMR 92.

Similar views were expressed by Miangul Hassan Aurangzeb, J in the case of *Saeed Ahmed and Others versus O.G.D.C.L* reported at 2020 PLC 27 and by Jawad Hassan, J in the case of *Messers Sadiq Poultry (private) Limited versus Federation of Pakistan and others* reported at PLD 2025 Lahore 57.

²By means of the Finance Act, 2024 section 11 was omitted and largely its subject matter was dealt with in sections 11A to 11G. Section 11 G for all intents and purposes is akin to the omitted Section 11(5) and the same reads as under: -

“11. Assessment of Tax –

(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.

Provided that under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed ninety days:

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the Petitioner not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso.”(Emphasis added)

6. For the present deliberation, it is also necessary to examine the definition (as it was at all relevant times), ascribed to “relevant date”³ under the Act. The same are reproduced as hereinunder: -

“relevant date” means--

(a) the time of payment of tax or charge as provided under section 6; and

(b) in a case where tax or charge has been erroneously refunded, the date of its refund.”

7. The question before us is whether the issuance of the Show Cause Notices, beyond the period of limitation, was permissible under the scheme of the Act. In other words, whether the said limitation is to be read strictly, in the absence of any consequence for its non-compliance. The said question, in reference to provisions of the Act, came up for adjudication before a larger bench of the Hon’ble Supreme Court in the case of **Messrs Wak Limited Multan Road, Lahore and others Versus Collector Central Excise And**

11G. Limitation for assessment. — (1) The show cause notice under sections 11D to 11F shall be issued within five years, from the end of the financial year in which the relevant date falls.

(2) An order under sections 11D, 11E and 11F shall be made within one hundred and thirty [eighty days] of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded, in writing specify, provided that such extended period shall in no case exceed from ninety days:

Provided that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the registered person not exceeding sixty days shall be excluded from the computation of the period specified in this sub-section.

(3) For the purpose of sections 11D, 11E and 11F, the words “relevant date” means— (a) the time of payment of sales tax or charge as provided under section 6; (b) the time of payment for goods or services on which sales tax was to be withheld under sub-section (7) of section 3; and (c) in a case where sales tax or charge has been erroneously refunded, the date of its refund.]

³ Section 11(7) of the Sales Tax Act 1990

Sales Tax, Lahore (now Commissioner inland revenue, ITU, Lahore)

and others⁴ wherein in paragraph No.27 of the said judgment the Hon'ble

Court held as under:-

“27. The show cause notice that, in the present context, could result in an order-in-original was, and is, required to be issued within a specified period, being five years. All sides were as one that this was a limit that could not be breached. A show cause notice issued beyond this period was time-barred and any proceedings in respect thereof were liable to be quashed for that reason alone. However, learned counsel for the Department submitted that this was the only time bound limitation. That was all the protection accorded to the taxpayer in this regard. If the State did not act (i.e., issue the show cause notice) within time the liability of the taxpayer stood effectively extinguished since it could not thereafter be lawfully pursued..... That there ought to be a period of limitation can scarcely be contested and indeed, as noted, was not questioned by learned counsel for the Department as regards the absolute or limit of five years..... The double layer of protection accorded to the taxpayer shields him from unmeritorious claims and bogus show cause notices, which may be issued by the concerned officer to harass and intimidate the former and/or for ulterior motives and purposes. The conclusion that the relevant provisions are mandatory help in ensuring that it is only a genuine case, based on substance and having (objectively) a reasonable prospect of success, of alleged non- or short payment of tax that is opened against the taxpayer. It is a bogus and false claim that the concerned officer would wish to keep pending, for it to be as it were a Damocles sword hanging over the taxpayer. A time bound closure of cases would help in reducing cases being brought for non-genuine reasons and purposes.... Therefore, a multi-layered protection, by way of mandatory periods of limitation, is not just well within the legislative power; it is the intent that is expressed in the relevant provisions, as rightly held in Super Asia.”(Emphasis added)

8. In similar circumstances, a learned divisional bench of this court in the case of **Hascol Petroleum Limited Versus Federation of Pakistan**⁵ set aside show cause notices issued after the limitation period of five years and held as under: -

“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

⁴ 2025 SCMR 1280.

The larger bench of the Hon'ble Supreme Court in the instant case was constituted to consider whether the judgment of a learned three-member Bench of the Court given in Collector of Sales Tax, Gujranwala and others v. Super Asia Mohammad Din and others (2017 SCMR 1427), (2017 PTD 1756) (Super Asia;) is correct. The earlier decision pertained to certain sections of the Act which were held to be mandatory. The context of the constitution of the larger bench and its mandate is laid down in paragraphs No.1 and 2 of the noted judgment.

The “double layer of protection” referred to in the paragraph number 27 refers to the first limitation of 5 years, beyond which no show cause notice can be issued. The second layer refers to the timeline provided in the proviso for adjudication of the show cause notice issued. Both were held to be mandatory.

⁵C.P.No.D 6008/2017 disposed of vide order dated 26.10.2020. The defense of ‘tax fraud’ taken by the department was deprecated by the learned divisional bench and the provisions of Section 11(5) were strictly construed.

under Section 11(5) of the Sales Tax Act, 1990. 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.”

9. Moreover, in reference to the jurisdiction to entertain similar petitions, the learned bench held as under: -

“As to 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 which it is entitled under law.”

10. A learned Divisional Bench of the Lahore High Court in the case of ***Abdul Ghani versus Federation of Pakistan and others***⁶ adjudicating the limitation under Section 11(5), held that the same was “jurisdictional” in the following words: -

“The controversy before us does not extend to the determination of validity/legality of notice dated 29.02.2016 but whether time-limit can be condoned/extended for doing a thing or act after the time limit otherwise provided had already expired. The time-limit prescribed in terms of subsection (5) of section 11 or for that matter under sub-sections (1) and (2) of erstwhile section 36 of the Act - omitted through Finance Act, 2012 - are statutory time limits and must be treated as jurisdictional, as any act beyond time-limit specified, would take said matter out of jurisdiction of an authority or Court, as the case may be. The time limit provided in above-noted sections has to be treated as jurisdictional and not procedural.”

11. It is evident from the perusal of Show Cause Notice No.1 and 2 that the same were, largely (as will become apparent later), beyond the period of limitation as the relevant date (as defined in the proviso) was 15.07.2015 and the Show Cause Notices were issued after five years on 19.11.2020 and 15.12.2020 respectively. Ex facie, the notification under section 74 of the Act relied upon by the learned counsel for the Respondents dated 30.06.2020 only condoned the limitation that was expiring on the day of 30.06.2020, which could at most relate back to the tax period of June 2015 and not to tax periods

⁶2019 PTD 764

before said month for which limitation had already expired prior to the notification. In this regard, we are not inclined to direct the Petitioners to avail the alternate remedy as both the show cause notices are liable to be set aside, to the extent not covered by the notification dated 30.06.2020, being hopelessly time barred, without jurisdiction and barred by law. In this regard the CP No.D-6565/2020 and 6566/2020 are partly allowed and the Respondents are at liberty to proceed in accordance with law, only in respect of the tax period within the prescribed period of limitation as noted above.

12. With reference to Show Cause Notice No.3 it is evident that the same was issued on 13.12.2016 (prior to issuance of the notification dated 30.06.2020) for the tax periods of January 2011 to December 2011. It is further evident that the period mentioned in the above noted Show Cause Notice is not entirely barred by limitation and the same, as conceded by the learned counsel for the Petitioner, is only barred for tax period up till October 2011. In this regard the CP No.D-245/2017 is partly allowed and the Respondents are at liberty to proceed in accordance with law, only in respect of the tax period within the prescribed period of limitation as noted above.

13. All these petitions are disposed of in the above terms.

JUDGE

JUDGE

Nadeem Qureshi P.A.