

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special STRA 261 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.8.
2. For orders on CMA No.2263/2018.
3. For hearing of main case.

06.10.2025

Mr. Muhammad Aqeel Qureshi, advocate for the applicant.

Counsel states that the only issue in this case is of a time barred show cause notice. He draws attention to paragraph 15 of the impugned judgment, which reads as follows:

“15. So far issue of issuance of time bar Show Cause Notice is concerned, in this context it has come record that the notice was issued by the Officer to the taxpayer on 31-10-2014 for tax period from September 2006 to November 2008. In this context Section 11 of Sales Tax Act, 1990 in clause (5) says that 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 as in the instant case as we mentioned above that the tax period was September 2006 to November 2008 and the Show Cause Notice issued by the Officer to the taxpayer on 31-01-2014 which is beyond the limits as prescribed in law. So in such situation we are in agreement with Commissioner, so we hold impugned order does not require any interference therefore the same is u[held, in the result appeal of the department is dismissed.”

He further states that under identical circumstances, the following order dated 18.10.2021 in Special SCRA 94 of 2021 and connected matters, was passed by a Division Bench of this court

“Dated: 18.10.2021

Mr. Imtiaz Mansoor Solangi for applicants.

Heard.

These three References involve common questions as three time-barred notices under section 11(2) of Sales Tax Act, 1990 were issued to the assessee/respondent being a limited company engaged in business of import and manufacturing of artificial filaments. It was reported by the Assistant Director (Audit) that the respondent had not charged and discharged the collection of sales tax at the requisite rate during the periods 2011-2012, December 2011 and January 2012 to June 2012, which resulted into short payment of the amount, as mentioned therein. The respondent company was then called upon to show-cause under section 11(2) of Sales Tax Act, 1990 to explain as to above three periods for short payment of sales tax.

The explanation forwarded by the respondent was two-fold; first that these (show-causes notices) were time barred and secondly the assessment was correctly made and the respondents were required to

be charged at the rate of 5%, which they did. The explanation however was found unsatisfactory by the respondents which resulted in passing of Order-in-Original. Against the same the respondent preferred appeals before Commissioner Inland Revenue but failed hence ultimately it filed appeals under section 46 of Sales Tax Act, 1990 before the Appellate Tribunal, which passed impugned order in favour of respondent and against department, hence the applicant has approached this Court by filing these reference applications.

It appears that for the aforesaid period three show-cause notices were issued on 21.08.2017 under subsection 2 and 3 of Section 11 of the Sales Tax Act, 1990. No order could have been passed by any officer of the Inland Revenue unless a show-cause notice is issued within the time frame provided by the law. The relevant time frame for the purposes of above alleged liability for the period disclosed in the show cause notice in relation to monthly returns for tax year 2011-2012 would be June, 2017. The term "relevant date" specified in sub-section 5 of section 11 is crucial which is explained in sub-section 7 of section 11 of Sales Tax, 1990.

11(7) for the purpose of this section, the expression "relevant date" means (a) the time of payment of tax or charge as provided under section 6.

(6) Time and manner of payment. – (1) The tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969 1 [and the provisions of the said Act [including section 31A thereof], shall, so far as they relate to collection, payment and enforcement [including recovery] of tax under this Act on such goods where no specific provision exists in this Act, apply].

[(1A) Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms Act, 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or court whether passed, before or after the promulgation of the Finance Act, 1998 (III of 1998), the provisions of section 31-A of the Customs Act, 1969 (IV of 1969), referred to in sub-section (1) shall be incorporated in and shall be deemed to have always been so incorporated in this Act and no person shall be entitled to any exemption from or adjustment of or refund of tax on account of the absence of such a provision in this Act, or in consequence of any decision or judgment of any forum, authority or court passed on that ground or on the basis of the doctrine of promissory estoppel or on account of any promise or commitment made or understanding given whether in writing or otherwise, by any government department or authority.]

(2) The tax in respect of taxable supplies made 5 [***] during a tax period shall be paid by the registered person 6 [by the date as prescribed in this respect].

[Provided that the Board may, by a notification in the Official Gazette, direct that the tax in respect of all or such classes of supplies (other than zero-rated supplies) of all or such taxable goods, as may be specified in the aforesaid notification, shall be charged, collected and paid in any other way, mode, manner or at time as may be specified therein.]

[(3) The tax due on taxable supplies 2 [***] shall be paid by any of the following modes, namely:-

(i) through deposit in a bank designated by the Board; and

(ii) through such other mode and manner as may be specified by the Board.] [4. ***]

Section 6 is pari materia to provisions for recovery of sale tax in respect of goods imported into Pakistan and time and manner shall be similar to that of recovery made under Customs Act, 1969. For the instant matter, for determining tax liability for the period 2011-12 limitation would perish by 30 June, 2017. Show cause notice was issued

on 21.08.2017, after requisite period. Hence, any notice that was issued belatedly i.e. beyond the statutory requirement would have no bearing.

The consequential point that arises is whether a timeframe prescribed under Section 11(5) of the Sales Tax Act, 1990 for issuance of show-cause notice and after the expiry of timeframe prescribed, could be extended and/or resurrected a time barred cause under SRO 394(I)/2001 dated 21.05.2009 read with Section 74 of the Act, 1990. The powers referred above are exercisable in the matter where proceedings are pending and/or the notice has been initiated, means actin has already triggered not at the belated stage when the time has already lapsed. As in the instant case Commissioner reportedly extended and condoned time for the issuance of show-cause notice alone through a letter dated 10.11.2017, whereas the notices were issued earlier on 21.08.2017. It was thus a past and closed transaction and rights were undoubtedly accrued in favour of the assessee/ respondent.

We are thus of the view that no interference is required in the impugned order which is well-reasoned and hence all these three References are dismissed. The question No.1 reproduced as under is answered in affirmative:-

i) Whether under the facts and circumstances of the case, the learned ATIR was justified to annul the orders issued by both the authorities below on the basis of time limit as prescribed under section 11(5) of the Sales Tax Act, 1990 despite the fact that the Commissioner IR condoned the time limit under section 74 of the Sales Tax Act, 1990 read with SRO 394(1)/2009 dated 21 May, 2005.”

Whereas question No.2 reproduced as under is answered in negative in favour of the respondent and against the applicant:-

ii) Whether under the facts and circumstances of the case, the extension in time limit could be allowed/ granted after the statutory time limit had expired.

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 (Pakistan), Karachi, as required by section 47(5) of Sales Tax Act, 1990.”

In view hereof he states that the aforementioned judgment is squarely applicable on all fours in the present facts and circumstances, therefore, this reference may be dismissed as withdrawn. Order accordingly.

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, as required per section 47(5) of the Sales Tax Act, 1990.

Judge

Judge