ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special STRA 665 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objections No.25 & 26.
2. For orders on CMA No.314/2023.
3. For hearing of main case.

03.08.2026

Syed Shohrat Hussain Rizvi, advocate for the applicant.

Matter is pending since 2023 without any progress and even notice has not been sought / issued till date. The impugned order observes as follows:

> "5. We have gone through the record made available before us and have given due consideration to the submissions of both the learned representatives. The brief facts of the case, as discerned from the record before us and as narrated by the learned representatives, are that the respondent is a private limited company, engaged in the business of printing and packaging. It is a registered person bearing STRN 02-06-4820-010-19. The respondent received Show Cause Notice dated 19.08.2020, which was issued by the Deputy Commissioner Inland Revenue Unit II, Zone III, Large Taxpayers Unit-II, Karachi for the tax periods April, May and June 2008, alleging that the appellant had not paid sales tax and special excise duty amounting to Rs. 18,908,028/- for the impugned tax periods. Reference was made to the Director General Revenue Audit (South)'s PDP / audit para, without specifically giving party-wise details of the transactions in respect of which the sales tax and special excise duty was payable, but was not paid, as per the record available before us. The respondent furnished its reply that the impugned action was barred by limitation in terms under section 11 of the Sales Tax Act, 1990. The Department was further informed that the respondent was not obliged to retain the record of the impugned tax periods under section 24 of the Sales Tax Act, 1990. This reply was statedly submitted at the Taxpayers' Facilitation Centre within the assigned time period. The respondent's contention was not accepted and a hearing notice dated 03.09.2020 was issued from the same unit for compliance on 10.09.2020. However the order of assessment was passed under section 11(2) of the Sales Tax Act, 1990 in the matter on 25.11.2020, i.e. on the date for which the respondent had not received any notice of hearing. This order was passed by the Deputy Commissioner-IR, Unit-01, Enforcement-I, Medium Taxpayers Office, Karachi, from whom the respondent had neither received the Show Cause Notice nor a notice of hearing. The order was passed allegedly on the basis of the observation allegedly contained in the Director General Revenue Audit (South)'s PDP/Audit Para, without forming any independent opinion and without confronting the appellant regarding the contents of the PDP/Audit Para, during the impugned proceedings, as is discerned from the record that is available before us. The respondent's contention regarding the matter having become barred by limitation was not accepted on the basis that the Board had condoned the time limit. Reference was made to the Chief Commissioner, Large Taxpayer's Unit-II, Karachi's

circular-letter dated 15.08.2020, which was itself admittedly issued seven years after the end of the period of limitation. As a result of this order, the sales tax, default surcharge, penalty and special excise duty amounting to Rs. 18,908,028/- was charged and the matter was agitated by the present respondent before the Commissioner (Appeals), who an nulled the order, with the observations that the order had not identified even a single transaction on which the Sales Tax was payable, but was not paid, the onus of proof regarding which was upon the present appellant. It was further observed that the appellant/Department had not formed any independent opinion of its own and had merely relied upon the audit report of the Director General Revenue Audit (South)'s PDP. which had not been communicated to the present respondent under the principle of audi alteram partem and hence the order was unsustainable due to these incurable defects in the order.

6. Although the matter regarding limitation is not specifically impugned before this forum, it is an accepted principle of law that a jurisdictional defect that goes to the heart of the case can be agitated before any forum. If the limitation runs out against one of the parties, it creates a vested right in favour of the other party and that other party cannot be divested with ease. It is also a settled law that an executive order or notification, which adversely affects the vested right cannot be made applicable retrospectively and the learned. authorized representative of the respondent has himself referred to the judgment in case of Commissioner Inland Revenue vs Bridge Engineering Company, reported as 2020 PTD (H.C. Lah) 1994 in this regard. The learned authorized representative has also rightly relied upon the case of Abdul Ghani vs Federation of Pakistan and others reported as 2019 PTD (H.C.Lah) 764, to the effect that the past and closed transaction could not be revived through order of executive in garb of powers under section 74 and that the application of time limit under taxing statutes was construed strictly as lapse thereof created right in favour of taxpayer. It is submitted that these two judgments of the honourable Lahore High Court are binding upon us, in the absence of any conflicting judgment of the honourable Sindh High Court. Besides this, subsection (5) of section 11 of the Act, which prescribes the period of limitation for issuance of a show cause notice is couched in negativity and hence the provision is a mandatory, rather than a directory provision. It hence follows that the period of limitation prescribed thereunder has to be strictly adhered to.

7. The current Sales Tax law is based upon a system of self-assessment and before passing an order of assessment, the Department has to discharge its burden of proof that any of the conditions stipulated under subsections (1), (2), (3), (4) or (4A) of section 11 is fulfilled. The Sales Tax is an indirect tax and is charged in the VAT mode under the current Act. The tax is thus recovered from the buyer, in addition to the sales price and is hence payable on a transactional basis. It is collected in the form of value added tax (referred to as the VAT mode) and hence the entire amount of tax (i.e. the output tax) is not paid by the taxpayer, but the taxpayer is entitled to deduct the amount of tax paid on his / its purchases (i.e. the input tax) from the gross amount. The amount of tax payable therefore cannot be determined accurately unless not only the main return is scrutinized, but its annexures, giving the summary of sales, the summary of purchases, the sales tax invoices etc. are also examined. Out of the four grounds of appeal agitated before us by the appellant, the only specific ground that has been taken up is the Ground No. 3, wherein the appellant has stated that the learned Commissioner-IR (Appeals) had annulled the order u/s 11(2) of the Sales Tax Act, 1990 on ground that officer concerned had not specified the nature of transaction when the amount of nature of supplies had been clearly mentioned in the order (sic).

> We have perused the order passed under section 11(2) of the Sales Tax Act, 1990. We have perused the Order-in-Original No. 02 dated 25.01.2020, which was impugned before the learned Commissioner-IR (Appeals) The order has right at its onset referred to the report of the Director General Revenue Audit (South)'s PDP No. 447/STK Audit Report 2008, without giving any specific findings related to the veracity of this claim or the details of the record examined for the purpose of verification. It gives the month-wise figures of the sales tax, default surcharge, penalty and special excise duty, which is allegedly payable, but neither gives any details of the transactions where the tax was chargeable / payable, but was not charged/paid nor does it make any specific reference to any source other than the audit report from which such inference was drawn. The appellant /Department has not furnished any such details even before us to substantiate its claim that amount of nature of supplies had been clearly mentioned in the order (sic), as alleged in the Ground No. 3. The Department has not brought any evidence before us to substantiate the claim made in this regard. Neither the Sales Tax returns, nor any of the prescribed annexures, such as the summary of sales, summary of purchases etc, have been brought before us by the appellant, in the absence of which this claim cannot be accepted, being a mere assertion. Besides this, the order suffers from two fatal defects, ie. the order has been passed by an officer who had not issued the show cause notice and has been passed on the date for which no notice had been issued to the respondent. The order therefore has no legs to stand due to its multiple defects and hence the contention of the appellant cannot be heeded to.
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> 8. The appeal filed by the department is hereby dismissed being devoid of any merit."

Learned counsel remains unable to demonstrate any infirmity arising from the impugned order and as not been able to articulate any question of law arising here from, therefore, the reference application is dismissed in limine.

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 subsection 5 of Sales Tax Act, 1990.

Judge

Judge

Khuhro/PS