

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

W.P No.15793 of 2022

M/s. Mehr Dastgir Leather and Footwear
Industries (Pvt) Limited

Versus

Federation of Pakistan through Secretary Ministry
of Finance & others

JUDGMENT

Date of Hearing:	11.09.2024
PETITIONERS BY:	Mr. M. Sohail Iqbal Bhatti, Advocate.
RESPONDENTS BY:	Mr. Mohammad Sulaman Bhatti, Advocate.

Shahid Karim, J:-. This constitutional petition challenges different show cause notices which are attached as Annexures “T”, “T/1” to “T/5” (“**Impugned Notices**”). These show cause notices have been issued under section 10(3) and 11(2) of the Sales Tax Act, 1990 (“**Act, 1990**”) read with rule 37 of the Sales Tax Rules, 2006 notified by SRO 555(1)/2006.

2. The historical background has been stated in the petition which refers to certain orders passed by the Appellate Tribunal Inland Revenue (“**ATIR**”) in Sales Tax Reference Nos.23 of 2010, 30 of 2011 and 06 of 2017 which were filed before this Court and which were decided with the observation that no questions of law arise for determination by this Court and the

reference applications against orders of ATIR have been dismissed. An appeal was filed to the Supreme Court of Pakistan and through an order dated 27.12.2017, the Civil Petition No.3-L of 2014 was dismissed. Similarly, in C.P. Nos.2-L and 41-L of 2014, similar observations were made by the Supreme Court of Pakistan and as a result, orders of this Court were held to be in consonance with law. It is case of the petitioner that despite orders by the Supreme Court of Pakistan on 27.12.2017, the department neither paid the approved claims nor processed the refunds of claim which constrained the company to file a complaint before Federal Tax Ombudsman. On 07.02.2022, petitioner-company addressed a letter to the Deputy Commissioner (Refund) bringing to his notice the fact that the matter had already been settled finally by the Supreme Court of Pakistan. Subsequently, another complaint was filed with the Federal Tax Ombudsman where the department took a new plea to the fact that the suppliers were suspended and blacklisted and so the amount of refund of Rs.78.828 million could not be sanctioned. Obviously, this is contrary to what was decided by the courts as stated above. According to the learned counsel for the petitioner as a counterblast, petitioner-company has now been served with a show

cause notice impugned herein after 15 years and 08 months. This has been done pursuant to a permission granted by the Federal Board of Revenue under section 74 of the Act, 1990. The Federal Board of Revenue condoned the time limit up to 29.08.2022 for finalization of assessment proceedings but the show cause notices were issued on 22.08.2022. It is case of the petitioner-company that the show cause notice envisaged the same dispute which has already been decided by the courts up to the Supreme Court of Pakistan.

3. Learned counsel for the respondent-department has placed on record the documents relating to condonation of time limit under section 74 of the Act. On 26.04.2022, a letter was addressed by the Assistant Commissioner Inland Revenue to the Commissioner Inland Revenue seeking the grant of condonation of time limit for issuance of show cause notice. It is pertinent to mention that the tax period mentioned in the letter is October 2005, February 2006, December 2006, July 2007, January 2007, June 2007, November 2005, December 2005 and February 2007. This letter was forwarded to FBR on 08.06.2022. By an approval dated 01.07.2022, FBR condoned the time limit under section 74 of the Act for assessment

proceedings under section 11 for these periods in the

following terms:

"I am directed to refer to your letter No.CCIR/SO-ST/F-53/2020-21/16194 dated 08-06-2022 on the subject cited above and to state that in exercise of powers conferred under section 74 of the Sales Tax Act, 1990, FBR is pleased to condone the time limit upto 29-08-2022 for finalisation of assessment proceedings initiated against M/s. Mehr Dastgir Leather & Footwear Industries (Pvt) Ltd, Multan STRN: 0407640500646 for the tax period Oct-2005, Feb-2006, Dec-2006, July-2007, Jan-2007, June-2007 in terms of section 11 of the Sales Tax Act, 1990.

2. Final report may be communicated to the Board once the proceedings are finalized."

4. Firstly, the time limit was condoned up to 29.08.2022 and obviously the proceedings in the show cause notice which was issued on 22.08.2022 were not finalized by that date. Hence, proceedings beyond the condonation of time limit up to 29.08.2022 are *ultra vires* and beyond the jurisdiction of the officer issuing the show cause notice.

5. Secondly, the very basis on which show cause notices have been triggered is the exercise of power conferred under section 74 of the Act by FBR whereby time limit was condoned up to 29.08.2022 for

finalization of assessment proceedings. Section 74 provides that:

“74. Condonation of time-limit.— Where any time or period has been specified under any of the provisions of the Act or rules made there under within which any application is to be made or any act or thing is to be done, the Board may, at any time before or after the expiry of such time or period, in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate.

Provided that the Board may, by notification in the official Gazette, and subject to such limitations or conditions as may be specified therein, empower any Commissioner to exercise the powers under this section in any case or class of cases.”

6. The above provision grants power to the Board to permit an act or thing to be done within such period or time as it may be considered appropriate. This condonation applies where any time or period has been specified under any provision of the Act or rules within which any application is to be made or any of the act or thing is to be done. The condonation may under peculiar circumstances permit such act or thing to be done within an extended period of time. Quite clearly, this provision does not apply to an action being taken under section 11 (now repealed) which relates to assessment of tax and recovery of tax not levied or short levied or erroneously refunded. The action against the petitioner-company is being taken under section

11(2) and alleges that the petitioner-company has claimed a refund which is not admissible under the Act. From a reading of section 74 of the Act, it can be discerned that there have to be reasonable and rational grounds which should compel the Board to make an order in the nature of the one envisaged by section 74. It is not an automatic exercise of power or a request made by an officer of Inland Revenue. Reasonable cause has to be spelt out both in the application as well as in the permission granted on that application which is conspicuously missing in the order which has been reproduced above. It is not enough for FBR to simply condone the time limit and this must be supported by reasons and on the basis of documents which would show that there were circumstances beyond the control of officers of Inland Revenue at the relevant time which constrained them from taking action under the normal time limit.

7. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court of Pakistan reported as Federal Board of Revenue through Chairman, Islamabad and others v. Abdul Ghani and another (2021 SCMR 1154) and the following observations were made therein:-

“3. More importantly, the order passed under section 74 of the Act by the FBR fails

to state any reason for extending the limitation period for issuance of a show cause notice against the Respondent. The said requirement is meant to ensure fairness and transparency in the exercise of statutory discretion by the FBR which suffers from opacity and therefore unreasonableness. It is also noted that section 74 of the Act neither specifically envisages nor provides guidance, criteria or parameters for overriding any limitation period prescribed by the Act for initiating action against a taxpayer. Consequently, on the facts of the present case we are not inclined to interpret the said provision as authorizing the unchecked reversal of a statutory limitation period and consequential legal rights created by it. In the circumstances, the show cause notice issued by the petitioner department suffers from fatal defects that float on the face of the record. Accordingly we are not inclined to interfere with the impugned judgment."

8. The holding of the Supreme Court of Pakistan is clear and unequivocal and it has been held that no guidelines or parameters have been mentioned in section 74 of the Act and the least that FBR should do is to provide reasons for extending the limitation period. There cannot be unbridled reversal of statutory period of limitation as legal rights have come to accrue in the registered person. On these grounds, show cause notices were held to be *ultra vires* and were set aside. The facts of the present case are on all fours with the cited judgment and there are no reasonable grounds mentioned in the letter of condonation by FBR which would give power to the officer to issue a show cause

notice after almost 15 years. In the meantime, rights have come to vest in the petitioner-company which cannot be upset by issuance of show cause notice. Further, the issuance of show cause notice clearly smacks of *mala fide* as refund claim of the petitioner-company have been delayed and instead of doing so, petitioner-company has been served with a frivolous and vicious show cause notice.

9. In view of the above, this petition is **allowed** and the Impugned Notices are struck down and quashed. The respondent-department is directed to process the refund claims of the petitioner-company within the next **three months**.

(***SHAHID KARIM***)
JUDGE

Approved for reporting.

JUDGE

Umar