

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

S.T.R. No.12/2008

Hassan Carpets (Pvt.) Ltd.

versus

Additional Collector of Customs, etc.

Applicant by: Mr. Abdul Rahim Bhatti, Advocate.

Respondents by: Ch. Muhammad Nawaz, Advocate.

Date of Hearing: 13.07.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant sales tax reference, the applicant has called in question judgment of the Customs, Central Excise and Sales Tax Appellate Tribunal (Bench-II), Islamabad, dated 27.09.2008, maintaining the order of the Additional Collector of Customs, dated 18.05.2005, whereby the applicant was directed to deposit the Sales Tax of Rs.1,427,479/- for violating Sections 3, 9, 20, 26, & 73 of the Sales Tax Act, 1990 along with additional tax under Section 34(I) of the Sales Tax Act, 1990 together with penalty equal to 3% of the evaded amount of sales tax.

2. Brief facts referred in the instant sales tax reference are that Sales Tax Audit of Hassan Carpets (Pvt.) Ltd. (*hereinafter referred to as "Applicant"*) was conducted for the period 2001-02 and 2002-03, whereby a difference in the values of supplies during 2002-03 was noted as the supplies shown in Sales Tax were less as compared to that shown in the Income Tax Return for the same tax period to the tune of Rs.1,459,817/-, involving recoverable Sales Tax of Rs.262,767/- along with additional tax of Rs.52,553/-. The applicant was also directed to provide proof of payments for the purchases made and input tax claimed during the audit period, whereby certain discrepancies were observed in the proof of

payments and sales tax of Rs.378,383/- along with additional evaded tax of Rs.160,953, making an amount of Rs.1,427,479/- recoverable from the applicant together with additional tax of Rs.386,790/-. Accordingly, a show cause notice, dated 21.07.2004, was issued to the applicant as to why the said unit did not deposit the said sales tax, though the applicant failed to pursue the case despite having been served notices, whereafter the Additional Collector of Customs, vide order dated 18.05.2005, ordered the applicant to deposit the Sales Tax of Rs.1,427,479/- for violating Sections 3, 9, 20, 26, & 73 of the Sales Tax Act, 1990 along with additional tax under Section 34(I) of the Sales Tax Act, 1990 together with penalty equal to 3% of the evaded amount of sales tax. Feeling aggrieved thereof, the applicant filed an appeal before the Customs, Central Excise and Sales Tax Appellate Tribunal (Bench-II), Islamabad, which was dismissed vide judgment dated 27.09.2008. Hence, the instant sales tax reference.

3. While considering the above background of the case, learned counsel for the parties have highlighted the following questions which are arising out of the judgment dated 27.09.2008, passed by learned Customs Appellate Tribunal, Islamabad:-

- i. *Whether the audit conducted by the Sales Tax Officer is illegal?*
- ii. *Whether the Order-in-Original passed after the stipulated period of ninety days is time barred, hence, illegal?*

4. Learned counsel for applicant contended that on receiving the show cause notice dated 01.07.2004, the applicant replied the same with detail reply but the learned lower forums upheld all the charges against the applicant through the impugned order and judgment, even otherwise, the audit was conducted without any legal authority; that the impugned order dated 18.06.2005 was time barred having been passed after expiry of the limitation period of 90 days, even extension in such time is also illegal as the Central Board of Revenue (CBR) had

no authority to extend the period after expiry of the original period of 90 days; that the sales tax under Section 3 of the Sales Tax Act, 1990 is leviable only on supply of goods whereas the respondents have neither any proof that the applicant had made supplies of goods nor the applicant has been charged with the offence of evasion of sales tax in the show cause notice served upon the applicant, therefore, passing of the impugned order followed by the impugned judgment dated 27.09.2008 are in violation of law and liable to be set-aside.

5. Conversely, learned counsel for respondents opposed the filing of instant sales tax reference on the grounds that the departmental auditors had not conducted any stock taking due to the declaration of the applicant that the shortages in stocks were worked out, even otherwise, the applicant had not contested the calculations, made regarding shortage in stocks, evaded amount of tax and about the facts of the case; that the income tax returns/declarations filed by the applicant are valid documentary evidences under the provisions of Article 31 of the *Qanun-e-Shahadat* Order, 1984; that audit conducted by the department was not hit by any legal provision and was, therefore, completely legal as per provisions of the Sales Tax General Order 01 of 1999, dated 07.01.1999, read with Section 25 of the Sales Tax Act, 1990; that Central Board of Revenue (CBR) is authorized to extend time limit specified under any provision and that too without recording of reasons in exercise of powers conferred under Section 74 of the Sales Tax Act, 1990.

6. Arguments heard, record perused.

7. Perusal of record reveals that applicant is mainly aggrieved with the audit conducted by the Sales Tax Officer in this case and it has been contended by the applicant's side that case of the applicant cannot be selected for audit as the concept of audit referred in Section 25(2) of the Sales Tax Act, 1990 has been

inserted for the first time through Finance Act, 2003 effective from 1st July, 2003 and its operation could not be retrospective.

8. In order to answer the question, we have confronted the applicant's counsel to demonstrate from record as to whether any objection has been raised in this regard while replying the show cause notice dated 21.07.2004 but surprisingly such objection has never been raised, even order-in-original was passed on 16.05.2005 due to non-appearance of the applicant before the Additional Collector, who has passed the initial order. However, in order to answer the question, we have gone through Section 25 of the Sales Tax Act, 1990 and as such there is no cavil to the proposition that Section 25 was amended through Finance Act, 2003 and the concept of audit with specific procedure has been incorporated therein. The said provision authorizes the officer to requisition any record or document from assessee or an access was granted to the officer for the purpose to conduct audit once in the year and as such there is no bar to conduct audit, or it is not the case of applicant that pre-2003 concept of audit was not available, therefore, at this stage, objection for the purpose of audit could not be raised when this question was not agitated in reply to the show cause notice which remained unanswered by the applicant, even order-in-original was passed without presence of applicant and as such no such plea with reference to Section 25 for the purpose of selection for audit has been highlighted. The plea could not be raised at the appellate stage.

9. The order-in-original specifically refers that four hearings were granted but applicant remained absent and it has been observed by the Additional Collector in order-in-original that applicant is intentionally avoiding the case proceedings, therefore, no illegality has been observed in the selection of applicant for audit once in the year in terms of Sales Tax Act, 1990.

10. We have also gone through the second question framed by this Court, whereby objection was raised by the applicant that order-in-original was passed after 90 days, which is beyond period of limitation and as such it has lost its legal effect. We have considered this question with reference to the explanation rendered by the Appellate Tribunal, which has been discussed and settled with the following observations:-

I have considered these divergent views of the rival parties and hold for the sake of consistency that the time limit prescribed in the proviso to section 11 and section 36 of the Sales Tax Act, 1990 is of the nature of direction as the same does not provide the consequences in the event of non compliance of the aforesaid limitation period. The sales tax is levied under serial No. 49, Part-I of the Federal Legislative List in the Fourth Schedule read with Article 70(4) of the Constitution of the Islamic Republic of Pakistan. The adjudication proceedings are also conducted for the purposes of levy or otherwise of the sales tax on imported and locally supplied goods. The provisions of Article 254 of the Constitution of the Islamic Republic of Pakistan are therefore, attracted as far as the limitation period prescribed under section 11 and 36 of the Sales Tax Act, 1990 is concerned. I also agree with the contention of the respondents that notwithstanding the wording used in proviso to section 36(3), the Central Board of Revenue had the powers to extend the time limit without recording reasons as provided under section 74 of the Sales Tax Act, 1990. As a result, the impugned order admittedly passed after the expiry of period of 90 days, remains a legally valid order.

11. While considering the above observations of the Appellate Tribunal, we have confronted the applicant to demonstrate from law as to whether there are any consequences attached to the time limitation of 90 days for the purpose of decision, if the same was not passed within that period, the applicant has failed to demonstrate any of the provision of the Sales Tax Act, 1990 through which any illegality has been construed.

12. In order to resolve the controversy, we have gone through the Article 254 of the Constitution of Islamic Republic of Pakistan, 1973, which is reproduced as under:-

254. When any act or thing is required by the constitution to be done within a particular period and it is not done within that period, the doing of the act or thing shall not be invalid or other-wise ineffective by reason only that it was not done within that period.

13. While considering the above article of the constitution an exception has been created to protect the orders of departmental authorities. The legislature was well aware of the fact that if any clog has been placed upon the authority, tribunal, it may effect the working of government.

14. Besides the above mentioned constitutional provision of Article 254, Section 74 of the Sales Tax Act, 1990 also provides the concept of condonation, whereby time period could have been extended in appropriate cases. The plain language of the first proviso provide the period of limitation for passing of order within 90 days of issuance of show cause notice or within such extended period. When this provision has been placed in juxtaposition with order-in-original No.36/2005, it has been observed that case was fixed on different dates and even the same was transferred on different occasions, whereby applicant has not turned up, which resulted into delay and even the concerned officer was transferred, finally matter was transferred on the direction of Board on 29.03.2005, as a result whereof the matter was fixed for 28.04.2005 and as such delay caused in the process is not willful and intentional rather due to non-appearance of applicant and non-availability of Presiding Officer, therefore, the fact for non-passing of the order within notified time will not affect its merit. Learned counsel for the applicant has relied upon 2017 PTD 1756 (The Collector of Sales Tax, Gujranwala and others Vs. Messrs Super Asia Mohammad Din and

Sons and others), whereby relevant extract of the judgment resolved the controversy in the following manner:-

Thus we are of the opinion that while undoubtedly the Board has the power under section 74 supra to extend the time limit and permit an order under section 36 supra to be passed within such time or period as it may consider appropriate, such power must be exercised within a reasonable time period of six months from the date when the time period provided in the first proviso to section 36(3) supra and the extension granted thereunder have lapsed, and such power can only be exercised (by the Board under section 74 supra) to grant an extension of not more than a reasonable time period of six months.

15. As such the question raised by the applicant in the instant reference have also been answered by the Appellate Tribunal in a proper manner and the ratio and logic raised in the impugned order is fully satisfied as such no illegality has been observed. The question raised by the applicant is not made out, hence, reference is answered in Negative.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 18th Aug. 2020

JUDGE

JUDGE

Zahid.