

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A No. 401 of 2012

M/s Bharia Town (Pvt.) Ltd.
Versus
Federation of Pakistan & others

Appellant by: M/s Hafiz Muhammad Idrees and Syed
Farid Ahmed Bukhari, Advocates.
Respondents by: M/s Baber Bilal and Saeed Ahmed Zaidi,
Advocates.
Date of Decision: 27. 10.2020

Ghulam Azam Qambrani, J: Through this Intra Court Appeal, the appellant has prayed for annulment of judgment dated 02.07.2012, passed by the learned Single Judge in Chambers, whereby W.P No.811 of 2010, filed by the appellant/petitioner was dismissed.

2. Briefly, the appellant being aggrieved of issuance of notice No.C.No.LTU/Audit/ ST/17/09/101 dated 04.02.2010 issued under Section 45 read with 46 of the Federal Excise Act, 2005, by the Deputy Commissioner Inland Revenue (DCIR), Audit-III, Large Taxpayer Unit, Islamabad, filed Writ Petition No.811 of 2010, which was dismissed vide judgment dated 02.07.2012.

3. The appellant approached Appellate Tribunal Inland Revenue, Headquarters Bench, Islamabad, through an appeal FEA No.08/IB/2013, against the order dated 18.02.2013, which was allowed vide order dated 02.12.2013, in the following terms:-

"We have found that this Tribunal in its order dated 9.1.2012 in FEA No.09/IB/2012 has already held, placing reliance on already decided cases that issuance of provisional allotment letters by the promoter or developer i.e. Defence Housing Authority does not constitute service within the meaning of Section 3 of Federal Excise Act, 2005. The time for chargeability of the FED on plots developed by the appellant shall come when the possession of the developed plots is delivered by it to allottees. Until the time the plots are developed and their physical possession is passed on the

allottees, the services within the meaning of Section 3 of the Federal Excise Act, 2005 cannot be considered to be rendered or provided. The essential elements of sale transaction i.e. confirm price is also missing in this case. The advance payment deposited by the allottees with the developer is not chargeable to Federal Excise Duty in terms of Section 3 of the Federal Excise Act, 2005.

Even otherwise in this case the order in original is barred by time under First proviso to sub section (2) of section 14 of the Federal Excise Act, 2005. Under this proviso the adjudicating authority was required to pass order in original within 120 days after issuance of show cause notice. The show cause notice has been issued on 18.06.2011, which was suspended by the honourable High Court in Writ Petition No.811/2010 and remained suspended till the decision by this Court on 02.07.2012. The limitation period of 120 days started running from 02.07.2012 and the FBR condoned the limitation period for 30 days vide letter dated 13.12.2012 when the limitation has already expired on 29.10.2012 whereas, the order in original has been passed on 11.01.2011, which is 44 days time barred. Admittedly the order in original has been passed beyond the prescribed limitation period of 120 days and the adjudicating authority had neither got extension from the commissioner nor has recorded any reason for passing of order after 120 days. It is settled law that once limitation period had started to run and had come to an end, the registered person acquire a vested right of escapement of assessment by laps of time. In view of these facts and circumstances and legal position, the impugned order of learned CIR (A) is vacated and the order in original is cancelled being barred by time."

4. In view of the above, this appeal having become infructuous is disposed of, accordingly.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

Rana M. Ift