

*Form No: HCJD/C-121.*  
JUDGEMENT SHEET  
IN THE ISLAMABADHIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 2666 OF 2021**

M/s Akbar & Zakria Pipes (Pvt.) Ltd.

Vs

Federation of Pakistan through Chairman, Federal Board of  
Revenue, etc.

PETITIONER BY: Ch. Imran ul Haq, Advocate.

RESPONDENTS BY: Syed Ishfaq Hussain Naqvi and Ms. Arooj  
Zeb Abbasi, Advocates.

DATE OF HEARING: 02.12.2021.

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**BABAR SATTAR, J.-** The petitioner has impugned order dated 14.07.2020 passed by Federal Board of Revenue ("**Board**") in exercise of authority under section 74 of Sales Tax Act, 1990 ("**Act**") refusing to condone the delay in relation to the petitioner's claim for refund under section 66 of the Act.

2. The learned counsel for the petitioner stated that various applications were submitted manually before respondent No.2 in 2016 to claim the refund as the petitioner was unable to file an application through the online portal. That, however, no response was received from respondent No.2 and in the meanwhile, a period of one year prescribed for claiming the refund had expired. That the petitioner subsequently continued to file applications for condonation of delay and to claim its sales tax refund. That the application for condonation of delay was dismissed by order dated

24.09.2019 by respondent No.2 and a review against the said order was filed, which was also dismissed by order dated 14.07.2020. The learned counsel for the petitioner stated that the refusal to issue the refund amounted to unjust enrichment and was not permissible in accordance with the law laid down by the august Supreme Court in **Pfizer Laboratories Ltd. Vs. Federation of Pakistan (PLD 1998 SC 64)**.

3. Learned counsel for the Board stated that the petitioner was claiming a refund for the period of January 2016 for which he did not file a return in compliance with Rule 28 of the Sales Tax Rules, 2006 (SRO 555(1)/2006 dated 05.06.2006) ("**Rules**") and consequently there was no refund application filed by the petitioner within the meaning of section 66 of the Act. He submitted that the impugned order passed by the Board in exercise of authority under section 74 of the Act rightly dismissed the application as no reason for a long delay of over three years in filing such application was provided. He further contended that the question of condonation of delay could only arise after a tax return had been duly filed in terms of section 10 of the Act, which when read together with Rule 28 of the Rules required that such tax return be furnished under the prescribed software RCPS along with supporting documents, which was not done in the instant case.

4. The petitioner's case is that it sought refund of sales tax for the month of January 2016 in the amount of Rs.2 million by letter dated 21.03.2016 addressed to Assistant Commissioner Inland Revenue, Sales Tax Refund Cell, RTO Islamabad. Through

such application it brought to the attention of the Assistant Commissioner Inland Revenue that while a refund in the amount of Rs.2 million was due to the petitioner, due to some technical glitch it was unable to file sales tax claim online despite repeated efforts. It stated that despite visiting the offices of respondent No.4 multiple times, the claim could not be filed online and sought the indulgence of the office of respondent No.4 to resolve the issue and facilitate the filing of refund claim online. A further communication reiterating the same request was addressed to the offices of respondents No. 4 and 5 on 27.06.2016. Another request was sent to respondents No. 4 and 5 on 22.12.2016. All these letters addressed to the offices of respondents No. 4 and 5 were duly received by the office of Commissioner Inland Revenue but no action was taken. In a further meeting held with officials of respondent No.4, the petitioner was advised that one-year period for claiming a tax refund under section 66 of the Act had expired and consequently the petitioner ought to file an application for condonation of delay. Heeding such advice, the petitioner then filed another application with respondent No.4 dated 27.06.2018 also seeking that the delay in filing the refund claim be condoned. The petitioner placed on record letters dated 24.04.2019 and 19.07.2019 reiterating its request to seek the indulgence of the Commissioner Inland Revenue to help with filing of the refund claim online and condoning any delay on the basis that despite best efforts the petitioner was unable to file its return online for the period of January 2016. On 24.09.2019 respondent No.2 responded to the petitioner's application dated 19.07.2019 and stated that pursuant to section 10 of Act read

together with Rule 28 of the Rules, no refund claim could be entertained if a taxpayer failed to furnish a return on the prescribed software RCPS with supporting document within a period of 120 days of filing of the return and as the petitioner had failed to apply for the refund within the stipulated period, its request was rejected as the Commissioner Inland Revenue had jurisdiction to condone the delay for a maximum period of one year. The petitioner then approached the Federal Tax Ombudsman, who by order dated 31.12.2019 directed the Board to decide the petitioner's application for condonation of delay within a period of one month. The said application was decided through order dated 14.07.2020 impugned before this Court.

5. What emerges from the aforementioned factual sequence is that the petitioner first brought to the attention of the tax authorities as early as in March 2016 that its tax return for the month of January 2016 (which was also to be deemed as a tax refund application in view of section 10 of the Act read together with section 66) was not being uploaded in the prescribed format under the Board's prescribed software RCPS and sought the intervention and assistance of the tax authorities to ensure that the tax refund claim is accepted through the online filing system. For such purpose the petitioner not only wrote more than half a dozen letters to various officials within the offices of respondents No. 4 and 5 but also visited the offices of these officials innumerable times without any success. On being advised that the petitioner ought to seek condonation of delay as the limitation period had already lapsed, the petitioner obliged

and sought condonation of delay as well. However, despite continuing to receive these letters from the petitioner containing its grievance that its tax return for the month of January 2016 was not accepted by the software prescribed by the Board, neither any response was provided to the taxpayer nor any assistance was provided to ensure that the petitioner is facilitated and is able to file its tax return for January 2016 in accordance with requirements of the prescribed software. After the passage over three and a half years from when the petitioner had first approached the offices of respondent No. 4 and 5, respondent No.2 simply rejected the claim by letter dated 24.09.2019 stating that the said respondent was not vested with the authority to condone a delay of more than a year. The matter finally landed before the Board, after the petitioner sought the intervention of the Federal Tax Ombudsman, which noted in a perfunctory manner that the petitioner applied for condonation of time limit for filing of sales tax refund on 13.07.2019 after lapse of over there years without providing plausible reason of delay relying on the judgments holding that provisions of limitation are mandatory, and while seeking condonation of delay explanation has to be furnished in relation to each day during which the limitation period was running the application for condonation of delay was dismissed in exercise of powers under section 74 of the Act.

6. A mere perusal of the record of the case by the Board would have screamed out to it that the petitioner had been running from pillar to post starting as early as March 2016 to find

a way to have its tax return and refund application accepted through the prescribed software RCPS. The question of delay only arose in 2017 when after repeatedly writing to and approaching tax authorities, it was brought to the attention of the petitioner that the period of limitation having been run was now a fresh obstacle in the way of the tax authorities affording any assistance to the petitioner. It was thus that the petitioner started beseeching tax authorities to first condone the delay and then enable the petitioner to have its tax refund claim processed by helping him to file such claim through the prescribed software. Obviously, no question of condonation of delay would have arisen in the first place had the relevant tax officials, in response to the petitioner's letter dated 21.03.2016, acted in discharge of their public duties and facilitated the petitioner in filing the tax return for January 2016, which was to be treated as a refund application. It was only due to the nonfeasance of the relevant tax officials for three long years that the prime question that came before the Board in 2019 was that of condonation of delay.

7. In deciding the petitioner's application under section 74 of the Act, the Board acted in a mechanical fashion that falls foul of the requirement of section 24A of the General Clauses Act, 1897, which requires public authorities to act in a just, fair and reasonable manner. The Board failed to take into account the foundational cause of delay in filing of the tax return, which was the petitioner's inability to file the return in accordance with the prescribed software, to resolve which the petitioner wrote innumerable letters to relevant tax officials and also frequented

the offices of tax officials without any success. The basic question for the Board therefore should have been as to why the tax authorities failed to help, assist and guide the taxpayer who was repeatedly imploring them to help and enable it to file the refund claim through the prescribed software, which it was unable to do on its own.

8. Section 4 of the Federal Board of Revenue Act, 2007 identifies powers and functions of the Board. And section 4(1)(s) identifies setting up a mechanism and processes that facilitate removal of grievances and complaints of taxpayers as one such function. Notwithstanding such function, the Board in exercise of its authority under section 74 of the Act simply refused to take into account the utter delinquency on part of tax officials to facilitate a taxpayer filing a tax return and a refund claim despite repeatedly reaching out the tax authorities with such request.

9. It is by now settled law that while discharging statutory authority, public officials have a fiduciary role. It appears that the respondents have remained completely oblivious to the fiduciary aspect of their responsibilities to the petitioner as a taxpayer. Within any civilized system of rule of law, the State is not meant to act as a tormentor of citizens. The purpose of law is to define and clarify the role and the responsibilities of both the State and the citizens, and the requirements of law are equally applicable to both the State and the citizens as prescribed by Article 4 of the Constitution. In the instant case, respondent No.2 or any other responsible tax official within the hierarchy of respondents No. 4 and 5 could simply have pointed the petitioner back in March of

2016 as to how to resolve its grievance of being unable to file its tax return for January 2016 under the prescribed software but that was not done. The tax officials continued to turn a deaf ear to the repeated request of the taxpayer till one year had already passed and then set up the problem of limitation as a stumbling block due to which the petitioner's request for tax refund could not be entertained and ever since the sole focus of the taxpayer to seek refund of excess sales tax paid to the treasury has been transformed into whether or not the taxpayer is entitled to condonation of delay in pursuing its claim.

10. There is no doubt that it is now settled that provisions of Limitation Act are of a mandatory nature and anyone filing a claim beyond the limitation period must explain as to why the delay was caused while seeking its condonation. However, the rationale for the existence of the law of limitation is that legal controversies come to an end, still-born dispute do not continue to be litigated and relitigated, and that an indolent claimant bears the burden of such indolence. But in the instant case the question of indolence does not arise at all. The petitioner has been pursuing its refund claim for the month of January 2016 since March of 2016, as borne out by the record, and it was due to its inability to file the refund claim in the prescribed form as required under section 10 of the Act read together with Rule 28 of the Rules that the question of delay arose. However, neither respondents No. 2, 4 and 5 nor the Board felt obliged to look into the basic grievance of the taxpayer and to help address such grievance in a timely fashion, which would have prevented the



question of delay all together. Instead of acting as trustees of public authority, which authority is meant to be exercised to address the grievance of a taxpayer at a mercy of such public authorities, the respondents set up the question of limitation as a ground for refusing to consider the claim of the petitioner. In view of this alone, the impugned order is *mala fide* in law and falls foul of section 24A of the General Clauses Act, 1897, for not being just and fair and for being bereft of relevant reasoning in the context of the facts and circumstances of the present case.

11. The impugned order is also infirm for it does not take into account the law laid down in **Pfizer Laboratories Ltd. Vs. Federation of Pakistan (1998 PLD SC 64)**, wherein the august Supreme Court clarified the law in relation to refund and held that the State was not entitled to unjustly enriched itself by accepting and retaining money paid under a mistake of law and that the State is not entitled to then refuse to repay it to the person from whom it was accepted. It was held that:

*"The above resume of the case-law of Indian, English and Pakistani jurisdictions indicates that the latest judicial trend is to deprecate and to discourage withholding of a citizen's money by a public functionary on the plea of limitation or on any other technical plea if it was not legally payable by him. It is also evident that claims for the refund of the amount paid as a tax or other levy on account of mistake as to want of constitutional/legal backing or because of exemption are a1 par. It is also apparent that such payments are held to be not covered by Rule 11 of the Central Excises Rules, 1944, or section 27(1) of the Indian Customs Act, 1951, or section 33 of the Act etc. The refunds of such C amounts are allowed by the superior Courts inter alia in India on the basis of section 12 of the Contract Act which provides that "a person to whom*

*money has been paid or anything delivered by mistake or under coercion must repay or return it". Such refunds can be claimed either by filing a suit for the recovery of the amount for which the period of limitation applicable would be three years under Article 96 of the First Schedule to the Limitation Act (which provides period of three years from the date mistake becomes known to the plaintiff) or the same can be recovered through a Constitutional petition if no disputed fact is involved. The Indian Supreme Court and the various Indian High Courts referred to in the cited case-law hereinabove had ordered the refund of the amounts involved in exercise of their Constitutional jurisdiction under Article 226 of the Indian Constitution. In Pakistan, Sindh and Lahore High Courts have also allowed the refund of such amounts under Article 199 of the Constitution in exercise of their constitutional jurisdiction in the cases of Ghulam Abbas v. Member (Judicial), Central Board of Revenue (supra) and Kohinoor Industries Ltd., Faisalabad v. Ministry of Finance (supra), respectively."*

12. The law settled by the august Supreme Court in **Pfizer Laboratories Ltd.** has come to be understood as part of the protection afforded by the Constitution to the right of a citizen property as guaranteed under Article 23 of the Constitution and has more recently been relied in **Sui Northern Gas Pipelines Vs. Deputy Commissioner Inland Revenue (2014 PTD 1939)** and **MCB Bank Ltd. Vs Deputy Commissioner Inland Revenue (2015 PTD 911)**. In the instant matter the impugned order suffers from legal infirmity for (i) failing to appreciate that the initial claim for refund brought before the relevant tax authorities in March 2016 was within time and it was only due to the malfeasance and nonfeasance of tax officials that the claim was projected as having been filed beyond the period of limitation, (ii) even if the claim for refund was not filed in the prescribed form within the limitation period prescribed, it was the

duty of tax authorities to facilitate the taxpayer in filing of such claim in the prescribed form once he had reached out to the tax authorities for such purpose, and (iii) the finding that there was no basis to condone the delay was in breach of the law laid down in **Pfizer Laboratories Ltd.** and nothing more than an effort by a public authority to compound the miseries of a taxpayer that had arisen due to refusal of tax authorities to assist it within time in the first place as the public functionaries endowed with the responsibility to oversee the tax collection machinery of the State. The ordinary expected course on part of the Board in the instant matter would have been to take cognizance of why one tax official after another repeatedly refused to assist the taxpayer in complying with the requirements of form prescribed by the Board, in its capacity as the authority mandated to oversee the governance of the tax collection system, as opposed to bringing the hammer down on the claim of the taxpayer on ground of limitation.

13. In view of the above, the instant petition is **allowed**. The impugned order is set-aside and refund claim of the petitioner for the month of January 2016 will be deemed pending before respondent No.4 from March 21, 2016, when the sales tax refund request was first received by the Assistant commissioner Inland Revenue, Sales Tax Refund Cell, RTO Islamabad. The petitioner will appear before respondent No.4 or any other tax official who is vested with jurisdiction to deal with the petitioner's sales tax refund on 08.02.2022 together with all relevant supporting documentation and such official after facilitating the

petitioner in filing the tax refund claim in the prescribed form shall consider the same in accordance with law and decide such refund claim within a period of ninety (90) days. For its failure to act as a just, fair and reasonable adjudicator for purposes of section 74 of the Act, which has not only delayed the consideration of sales tax claim filed in 2016 but also resulted in an unnecessary litigation consuming public time and resources, the Board shall pay Rs.50,000/- as cost to the petitioner in terms of section 35(1)(3) of the Code of Civil Procedure, 1908, within a period of 30 days. The learned counsel for the Board will file a certificate with the Deputy Registrar (Judicial) confirming compliance with the cost order before the expiry of the said period.

(BABAR SATTAR)  
JUDGE

Announced in the open Court on \_\_\_\_\_

JUDGE

Saeed.