

**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ

Mrs. Justice Ayesha A. Malik

**CIVIL PETITION NO.4599 OF 2021**

[Against the order dated 01.06.2021, passed by the Lahore High Court, Rawalpindi Bench, in Sales Tax Reference No.02 of 2013]

Commissioner Inland Revenue, Zone-II,  
Regional Tax Officer (RTO), Mayo Road,  
Rawalpindi and another ...Petitioners

Versus

M/s Sarwaq Traders, 216/1-A, Adamjee  
Road, Rawalpindi and another ...Respondents

For the Petitioners : Malik Itaat Hussain Awan, ASC a/w  
Naeem Hussain,  
Secretary (Lit.), FBR

Respondents : N.R.

Date of Hearing : 12.05.2022

**JUDGMENT**

**AYESHA A. MALIK, J-**. This Civil Petition for Leave to Appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of order dated 01.06.2021, passed by the Lahore High Court, Rawalpindi Bench, (**High Court**) whereby Sales Tax Reference No.2 of 2013, filed by the Petitioners, was decided against the Petitioners.

2. The Respondent No.1, taxpayer challenged Order-in-Original dated 22.02.2011 before the Commissioner (Appeals). The Appeal was filed on 22.03.2011 and the matter was decided on 21.09.2011. The issue before us is that the Appeal was decided beyond the prescribed period of limitation

under Section 45-B(2) of the Sales Tax Act, 1990 (**Act**) being 180 days. The Appellate Tribunal considered this issue and concluded that the Commissioner (Appeals) decided the matter after the prescribed time limit under Section 45-B(2) of the Act. Consequently, it declared the order as *void* being a nullity in law. The Petitioners have challenged this order before us essentially on the ground that the provisions of Section 45-B(2) of the Act are not mandatory rather discretionary and that there is no justification for declaring the order as *void*. Hence, the question before us is whether Section 45-B(2) of the Act is mandatory or directory in nature.

3. Learned counsel for the Petitioners argued that even though there is an admitted delay of three days, the order in Appeal dated 21.09.2011, passed by the Commissioner (Appeals-III) Inland Revenue, Islamabad, is not *void* rather it becomes a weak order and non-compliance of the given time frame prescribed in Section 45-B(2) of the Act is not fatal. He states that Section 45-B(2) of the Act cannot be read to the advantage of the taxpayer, so as to do away with the tax liability simply because the order was not issued within the prescribed time. In support of his arguments, he has placed reliance on the cases reported as Messrs MFMY Industries Ltd. and others v. Federation of Pakistan through Ministry of Commerce and others (2015 SCMR 1550) and Messrs Wak Limited Multan Road, Lahore v. Collector Central Excise and Sales Tax, Lahore (Now Commissioner Inland Revenue, LTU, Lahore) and others (2018 SCMR 1474).

4. The Sales Tax Act, 1990 is a law related to the levy of sales tax on sale, import, export, production, manufacture and consumption of goods. Section 45-B(2) of the Act provides that an appeal is to be filed within 30 days against the order passed by an officer of Inland Revenue. The Commissioner (Appeals) has to decide the appeal within 120 days from the date of filing of the appeal and if that's not possible then the time period can be extended for another 60 days by the Commissioner (Appeals), through an order in writing. The relevant provision is reproduced hereunder for ease of reference:

"S. 45-B (2) The Commissioner Inland Revenue (Appeals) may, after giving both parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, varying, altering, setting aside or annulling the decision or order appealed against :

[Provided that such order shall be passed not later than one hundred and twenty days from the date of filing of appeal or within such extended period as the Commissioner (Appeals) may, for reasons to be recorded in writing fix:

[Provided further that such extended period shall, in no case, exceed sixty days]

[Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days shall be excluded from the computation of aforesaid periods.]"

In terms of this Section, when an appeal is filed, the Commissioner (Appeals) on hearing both the parties has to pass an order with respect to the appeal pending before him.

In terms of the first proviso, the Commissioner (Appeals) is mandated to pass the order not later than 120 days from the date of filing of the appeal. In the event that the case cannot be decided in 120 days, Section 45-B(2) of the Act gives the Commissioner (Appeals), the authority to extend the 120 days by 60 days, if required, provided that the Commissioner (Appeals) records the reasons, in writing as to why the period of 120 days is being extended. However, the Second Proviso clarifies that such extended period *shall, in no case, exceed* 60 days. This means that the total period within which the appeal must be decided is 180 days as by using the words *in no case* the legislature has limited or restricted the discretion of the Commissioner (Appeals) rendering its compliance mandatory. Accordingly, the intent of the legislature can be seen from the clear use of the language of Section 45-B(2) of the Act, where the Commissioner (Appeals) *may* decide the appeal within 120 days, giving the Commissioner the discretion to decide the case within the given time or to extend the time by justifying the reasons for extension in time. However, the section mandates that the Commissioner (Appeals) *shall* extend the time *no more than* 60 days, meaning that a total of no more than 180 days can be consumed to decide an appeal. Consequently, the legislature has prescribed a clear time frame of 180 days for deciding the appeal, by using negative and restrictive language.

5. The rationale, as we understand, for prescribing a time frame is to ensure that tax matters be resolved at the

earliest, within the relevant tax year, so that the taxpayer satisfies its liability and the Department is able to collect revenue, within the relevant tax year. This is important because taxes pay for public goods and services and is one of the main sources of revenue for the State. Consequently, the intent of the legislature is to obligate the Commissioner (Appeals) to decide the appeal within 180 days. The question is whether this obligation is mandatory or is it directory. We find that its mandatory as the first time frame given under section 45-B(2) is 120 days, which is extendable, meaning that, the Commissioner can exercise discretion and extend the time where required. The only caveat is that reasons have to be given in writing, so that the discretion is not misused and is not exercised arbitrarily. The second time frame under Section 45-B(2) is for extending 120 days by 60 days and nothing beyond 60 days. With the help of negative language, the legislature has created an obligation on the Commissioner (Appeals) to decide the appeal in a total of 180 days where the appeal is not decided within 120 days. This obligation renders the section mandatory as the Commissioner (Appeals) cannot go beyond 180 days, as the Commissioner's discretion is curtailed if the time needs to be extended beyond 120 days. Consequently, the obligation fixed on the Commissioner (Appeals) to decide the matter within 180 days is mandatory and not directory.

6. Now, the question is what happens if the Commissioner (Appeals) does not decide the matter within the

180 days. To our mind, since this is a mandatory provision, if a decision is made beyond the 180 days as prescribed under Section 45-B(2) of the Act, then such a decision made beyond the prescribed period is an invalid decision. This is because the statute requires the appeal to be decided within 180 days, hence, it has to be decided in the prescribed period. A similar view has already been taken in the case of Messrs Mujahid Soap and Chemical Industries (Pvt) Limited v. Customs Appellate Tribunal, Bench-I, Islamabad and others (2019 SCMR 1735) where the provision under consideration was Section 179 of the Customs Act, 1969, which is *pari materia* to the provisions under consideration under the Act, which reads as follows:

“S.179(3) The cases shall be decided within one hundred and twenty days of the issuance of show cause notice or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed sixty days.”

This Court concluded that the understanding of law is for the taxing authority to decide the matter within the prescribed 180 days. In another case, reported as The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), this Court has held that the ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. The Court found that while the use of the word ‘shall’ is not the sole factor which determines mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the

presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. The Court concluded that it is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.

7. In this case, the intent of the legislature is clear, to regulate and control the time frame within which an appeal must be decided. The second proviso to Section 45-B(2) of the Act limits the discretion of the Court, by providing that the extension period cannot be extended beyond 60 days. The restrictive words used, restricts the powers of the Commissioner and also shows that the intent of the legislature was mandatory and not discretionary. We also note that where the law regulates the manner in which public officials have to exercise power vested in them, then such provisions have to be interpreted in its legislative context. In this case, where the public authority is empowered to create a liability against a taxpayer, then such exercise of power must be performed within the prescribed time. This Court has already dealt with a similar issue on whether a provision is directory or mandatory in the case reported as Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328) where the Supreme Court concluded that the intent of the legislature was relevant and to ascertain if its non-compliance causes injustice or inconvenience. The Court also finds that negative language used in a statute where it imposes a statutory duty on a

public official means that the provision is mandatory even if no penalty is prescribed for it.

8. The petitioner has relied on 2015 SCMR 1550 (*supra*) which is not applicable. The said judgment is with reference to time frames within which the judgments of the High Courts and the trial court should be decided in order to ensure that decisions are made in a timely manner. This case is totally distinguishable on the facts and laws under consideration. Consequently, the said judgment is not applicable to the facts of this case. So far as the second judgment relied upon 2018 SCMR 1474 *supra*, that judgment is with reference to Section 36 of the Sales Tax Act, 1990 which provides for recovery of tax short levied and the time frame provided under the said section to levy the tax and determine the amount. In this section, the proviso stated that such an order shall be made within 120 days of issuance of the show cause notice or within an extended period which should not exceed 60 days. The Supreme Court while considering this provision did not agree with the findings rendered in the case reported as 2017 SCMR 1427 *supra* on the ground that there should be no room to escape tax liability through official and institutional manipulations and that expeditious disposal of cases does not mean extinguishment of the tax liability. The said judgment is with reference to Section 36(3) of the Act which provides for the recovery of tax erroneously refunded, hence, the purpose of the section under consideration in 2018 SCMR 1474 is



different and distinguishable from the case in hand. Even otherwise, subsequent to this decision, this Court has again considered the matter of adjudication within the given time frame and decided in 2019 SCMR 1735 *supra* that such provisions, where the time frame is set out in the statute for deciding the appeal are mandatory and if decided beyond the given time, being 180 days, in this case it makes the order void.

9. Under the circumstances, Civil Petition No.4599 of 2021, being devoid of merits, is dismissed and leave refused.

**CHIEF JUSTICE**

Bench-1  
Islamabad  
12.05.2022  
'APPROVED FOR REPORTING'  
Mantab H. Sheikh/\*

**JUDGE**