JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Date	Judgment with signature of the Judge

Present:

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Muhammad Abdul Rehman.

Spl. S.T.R.A. Nos.396, 397, 398, 399, 400 and 401 of 2022

The Commissioner Inland Revenue ..... Appellant

Vs.

M/s Kolachee International ..... Respondent.

Date of hearing: 11.08.2025.

Date of decision: 26.08.2025

Mr. Faheem Raza, advocate for appellant.
Ms. Naveen Merchant a/w Mr. Salman Yousif, advocate for respondent.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: These Spl. Sales Tax Reference Appeals arise out of an order dated 05.04.2022 passed by Appellate Tribunal Inland Revenue, Pakistan (Karachi Bench) (ATIR) allowing special Sales Tax Appeals STA No.75/KB2021 (Tax period Sept. 2013), 76/KB2021 (Tax period Sept.2013), 77/KB2021 (Tax period Oct.2014), 78 (Tax period Oct. 2014), 79/KB2021 (Tax period Dec.2014) and 80/KB2021 (Tax period Dec.2014) filed by respondent M/s Kolachee International against an order-in-original dated 20.08.2020 passed u/s 11(2) of Sales Tax Act, 1990 (the Act, 1990) by the Deputy Commissioner Inland Revenue, whereby the appeals filed by the respondent were accepted and the impugned order-in-original was set-aside.

2. As per brief facts, respondent is a registered person and engaged in business of manufacturing of textile products. For the tax period detailed above, it filed sales tax returns and claimed refunds on the basis of excessive input tax paid. When the refund claims were not processed in time, the respondent filed a complaint with Federal Tax Ombudsman (FTO), who vide order dated 19.05.2020 made recommendation to the FBR to

settle the claim of respondent expeditiously. In compliance, the processing officer scrutinized the refund claims accordingly, and found various objections and discrepancies, the same were conveyed to the respondent through a showcause notice dated 02.06.2020 U/s 10(4) of the Act, 1990 issued by Deputy Commissioner Inland Revenue. The said showcause notice was duly replied by the respondent but the department decided to proceed against it U/s 11(2) of the Act,1990 hence a notice under the said section dated 14.07.2020 captioned as "addendum" was issued to the respondent. Reply of which filed by the respondent was not found satisfactory by the department, hence the Deputy Commissioner Inland Revenue passed the order-in-original dated 20.06.2020 against the respondent rejecting the refund claims on the one hand and on the other hand ordering for recovery of Rs.572,141,553 and penalty at 5% amounting to Rs.28607078 U/s 33 of the Act, 1990. Further, the amount of Rs.4,312,451 was also ordered to be recovered from the respondent on account of inadmissible amount of input tax claimed on building material, hence a total of Rs.605061082 was ordered to be recovered from the respondent.

3. The respondent aggrieved by the said order preferred separate appeals before the Commissioner Inland Revenue, (Appeals) Karachi, who vide order dated 18.01.2021 allowed the appeals on the point of limitation holding that the order-in-original u/s 10(4) r/w section 11(2) of the Act, 1990 was barred by time. The department/appellant got aggrieved by the orders in appeal and filed second appeals before the ATIR on various grounds. The Tribunal vide impugned order has decided all the appeals as listed above by upholding the decisions arrived at by the Commissioner Inland Revenue, (Appeal) hence these special tax reference appeals.

4. Vide order dated 07.02.2025 the following three questions of law were framed for adjudication:-

> "1. Whether on the facts and circumstances of the case, the Learned ATIR was justified in upholding that the failure to pass an order within the time period specified under Section 10 of the Sales Tax Act, 1990, results in a refund application being deemed as allowed, thereby entitling the claimant to the entire refund amount irrespective of the merits of the claim?
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> 2. Whether on the facts and circumstances of the case, the Learned ATIR was justified in disregarding the penal provisions of Section 67

of the Sales Tax Act, 1990, which delineate the consequences of failing to process and disburse a refund claim within the timeframe stipulated under Section 10 of the same Act?

3. Whether, under the facts and circumstances of the case, the learned ATIR erred in rendering the impugned judgment by disregarding the settled principle of law that, in cases of tax fraud-where a reference application (SSTRA No. 193/2017) is already pending adjudication-the tax law does not prescribe a time limit for scrutinizing the records of the registered person?"

5. We have heard the parties. Learned counsel for the appellant has contended that in the face of irregularities detected during audit, the Commissioner Inland Revenue and ATIR were not justified to decide appeals against the department merely on the ground of limitation ignoring merits of the case; that both the forums below without any deeming and penal provisions have considered noncompliance of section 10(3) as mandatory resulting in deeming the claim of respondent as allowed which is against the scheme of law. He has relied upon an unreported order of the Supreme Court passed in Civil Review Petition No.275 of 2022 in Civil Petition No.4599 of 2021, PTCL 2024 CL 81, and 2022 PTD 1876.

6. On the contrary, learned counsel for the respondent has supported the orders in appeals and impugned order passed by ATIR. She has further emphasized that showcause notice issued u/s 11(2) being beyond the period of 05 years was time barred u/s 11 (5) of the Act, 1990. According to her, if the limitation period provided in the statute is not adhered to, it would create a vested right in favour of the other party by operation of law, therefore, order-in-original calling for recovery and imposing penalty on the respondent was not sustainable in law. She also argued that rejection of the refund claim after statutory period as prescribed u/s 10(3) of the Act,1990 is not permissible in law. According to her, adhesion to the time specified therein is mandatory. She, to support arguments, has relied upon 2002 SCMR 1903, 2022 SCMR 634, 2017 SCMR 1427, 1992 SCMR 1898, 1984 CLC 490, 2021 SCMR 1463, 2021 SCMR 1154, 2022 SCMR 1082, 2020 SCMR 246, 2021 PTD 1042, 2024 PLC 100, PLD 2022 SC 817, and an unreported judgment of this court passed in SCRA No.404 of 2024 and a judgment of Supreme court passed in Civil Petition No.2100 / 2024.

7. We have considered the respective pleas of the parties and gone through the record which reveals that respondent filed tax returns of the

relevant period, as detailed in para1, in the year 2017 after a lapse of 4 years (such delay was undisputedly condoned by the department u/s 74 of the Act, 1990). When the claims were neither processed, nor decided, the respondent filed a complaint before FTO who ordered the authority concerned to decide the refund claims expeditiously. It was only then the refund claims of the respondent were scrutinized and some objections and discrepancies on the invoices submitted by the respondent for the purpose were found by the processing officer. Hence, a show cause notice under relevant provisions of the Act, 1990 was issued to it that as to why the refund claims amounting to Rs.244, 095,490/- may not be rejected and penalty in terms of section 33 of the Act, 1990 imposed. The reply was duly submitted by the respondent but it was not found satisfactory and hence an addendum of the said show cause notice u/s 11 (2) of the Act, 1990 was given to the respondent. This addendum too was replied by the respondent in black and white.

8. Both the said show cause notices were decided through the order-in-original, in terms of first the refund claims were rejected and in terms of second the recovery and penalty of certain amounts, as explained above, were ordered. This order did not sustain before the appellant forum, nor before ATIR. Both have held it to be time barred. Now, as far as the addendum u/s 11 (2) is concerned, both the forums have decided the same to be time barred in terms of section 11 (5) of the Act, 1990. Section 11 envisages, inter alia, powers of the Inland Revenue Officer to make, after a show cause notice, an order of assessment of tax actually payable by the registered person or determine amount of tax credit or tax refund and impose a penalty and charge default surcharge in accordance with sections 33 and 34, where a person has not paid the tax due on supplies made by him or has made short payment or has claimed input tax by credit or refund which is not admissible under the Act 1990.

9. Notwithstanding, such powers are qualified by the condition set out in sub section (5) of section 11 of the Act, 1990. This provision of law provides a cap of 5 years, of the end of financial year in which the relevant date fall, to the Inland Revenue Officer to give a show cause notice to the person in default quoting the grounds on which it is intended to proceed against him. The expression ‘relevant date’ is defined as (a) the time of payment of tax or charge as provided under section 6; and (b) in a case where tax or charge has been erroneously refunded, the date of its refund. Learned Deputy Commissioner Inland Revenue erroneously understood the said expression

when he in the order-in-original held that since the respondent submitted refund claims in November 2017, the period for show cause notice u/s 11 (2) would be counted to start from then and it would be time-barred, in terms of section 11 (5) of the Act, 1990, only in September 2022. He does not seem to have any qualms or any second thought about the nature of the said provision being mandatory and binding and therefore needing extra care and caution to interpret. In his view, the relevant date started from the year, 2017 when the respondent filed the refund claims, otherwise, he seems to accept the idea of 5 years cap to be adhered to, if a person is intended to be proceeded against u/s 11 (2) of the Act, 1990.

10. On this point, the Appellate Forum and ATIR both have made a correct inference by discussing the point in right perspective. They both have held that due time to be considered in terms of section 11 (5) is the time of payment of tax, and not the time of filing of application for refund tax by the registered person. Relevant date, defined as the time of payment of tax (or charge as provided under section 6), obliterates scope of any other interpretation than the one understood by the Appellate Forum and ATIR that the time to open up the case of respondent for the purpose of section 11 (2) would be considered from the year 2013 when it had paid the tax and filed the tax return.

11. The qualification of 5 years in section (5) seems to be mandatory as it is aimed at providing protection to the registered person from unending and indefinite harassment by the FBR officials regarding his tax liability. Minus such protection, FBR would assume unbridled powers to examine and upset findings of any Assessment Officer at any time without any restriction. To think that FBR has such authority is preposterous because admittedly unrestrained authority neither the Constitution envisages lies with any office, nor by any operation of the law the same can be read to be vested in any government official. The limitation of 5 years for examining the case of a registered person u/s 11 (5) works as a buffer against arbitrary assumption of powers by the FBR officials. It is mandatory and any deviation from it would make the order under the said provision bad in law and unsustainable. The cap of 5 year as a final limit envisaged u/s 11 (5) is to ensure that a show cause notice u/s 11 (2) is given and decided expeditiously so that recovery of tax or short payment of tax etc. is effected at the earliest on the one hand, and on the other hand the sword of Damocles in the shape of tax liability does not hang over the head of

taxpayer indefinitely. Therefore, if the time specified u/s 11(5) is not complied with, the proceedings u/s 11 (2) would stand nullified. Since, this provision i.e. 11 (5) provides protection after a certain period to the rights of a taxpayer from departmental harassment– undetermined indefinite hanging tax liability – its compliance is mandatory and binding.

12. In *Super Asia* case[1], the Supreme Court while examining the nature of the said provision: section 11 (5) [erstwhile section 11(4)] with section 36 (3) of the Act, 1990 has already declared the said provision of law as mandatory. In the said case the Supreme Court was seized with a bunch of the cases challenging show cause notices issued to a number of registered persons over the years staggering from 1998 to 2013 for, among others, recovery of tax allegedly short levied or unpaid. The question was that whether the scheme qua timeline in fist proviso to subsection (5) of section 11, and the earlier versions thereof including section 36, was mandatory or directory. The three member bench of the Supreme Court held that the said provisions were mandatory, and therefore the order made by the adjudicating officer i.e. the order in original was, subject to any permissible application of section 74, invalid.

13. Against the judgment in *Super Asia* case, review petitions were filed before the Supreme Court that were taken up, along with other identical matters *in Wak Lt. v Commissioner Inland revenue CAs 634 to 636, 1290 to 1295 of 2018 & others* by a five member bench and decided vide judgment dated 14.5.2025. The five member bench has confirmed the judgment in Super Asia case on all points and has further affirmed the principles enunciated therein after an in-depth analysis of the said provisions of the law.

14. We in the circumstances hold that the actions envisaged in the order in original u/s 11 (2) of the Act, 1990 proposing recovery and imposing penalty of certain amounts upon the respondent has been rightly set aside by the Appellant Forum and ATIR in their decisions.

15. Nonetheless, the setting aside of the same order for declining the request of the respondent for tax refund by the two fora below on the ground of delay in adjudicating the same needs our attention. Section 10 (3) sets out that the proceedings in a claim about an inadmissible input tax

[1] 2017 SCMR 1427, 2017 PTD 1756

credit or refund shall be completed in (60) sixty days. But for the purpose of enquiry, audit etc. the period can be extend up-to 120 days. This period, for reasons to be recorded, could further and finally be enlarged up-to 9 months by the relevant authority – which in this case is the Board.

16. The Appellate Forum on this point after referring to the relevant time period provided in section 10 (3) has observed that the order rejecting the claim was made on 20.08.2020 much after the lapse of specified period of 60 days and even the extended period 120 days, or further extendable period of 9 months, although no such extension, to be granted only by the Additional Commissioner IR, and in the latter case by the Board, was ever obtained by the Deputy Commissioner IR. Having observed so, it has concluded that the order under appeal passed by the Deputy Commissioner is time barred in terms of section 10 of the Act, 1990. Interestingly, the Appellate Forum has albeit made such conclusion but has not elaborated its effects in law that whether the claim of the respondent for refund tax would be deemed to have been accepted or not. Such lapse has created confusion and ultimately led to filing of this reference, after the Tribunal, in appeal, agreed to such a finding.

17. The Tribunal, mainly, in its decision after holding a lengthy discussion, noting mainly mishandling of the case by the Deputy Commissioner and his failure to seek advice from his seniors on the timelines for deciding it, has concurred with the findings of the Appellate Forum on the point by observing in para 14 that it was mandatory for the department to adhere to the time limitation as laid down in the said sections [Sections 10 (1), 10 (3) and 11 (5)]. Since the orders were passed after expiry of the time limitations the same were not tenable under the law.

18. The above inferences by the two fora induce an impression that the scheme under section 10 (3) [like the object u/s 11 (5)]is mandatory and binding, its non-compliance must translate into acceptance of the refund claim filed by the respondent regardless of its merit. This approach, sans of any substantive support or discussion on the relevant context, has resulted in more confusion than clarity. If accepted would mean that a person has to do nothing but file a claim for refund and make sure that the department is not able to make a decision on it within stipulated time. Because, in that case it would lead to automatically acceptance of his claim irrespective of its merits.

19. If such a view is endorsed, there would be nothing to safeguard the relevant officer of FBR, entrusted with deciding the case, from being exposed to uncanny pressures and various stimulations to simply delay his decision beyond the timeline given in the said provision to permanently benefit the person applying for the refund. Permanently because the forums above would reject the challenge to such order, like the case in hand, by observing that the decision is time-barred and hence not amenable to appeal on merits. The person would stand benefited without his claim ever examined on merits. The department would be constrained to incur all the losses without any fault on its part and pay undetermined claims to all the persons who are successful in twisting the system a little bit by persuading the officer concerned to prolong the matter for some time. The claim made would be as good as the claim granted, it would need a little shove to lie dormant just for the time being, without there being any occasion to determine whether it was the defaulter, who caused such delay or not.

20. Such an approach, disastrous as it seems, would be patently opposed to not only intention of the legislature i.e. decision of the refund claim on merit, but the aim and object of the very law: an act to consolidate and amend the law relating to the levy of a tax on the sale, importation, exportation, production, manufacture or consumption of goods. The two fora above without even applying the litmus test -- legislative intent, presence of penal consequences for non-compliance -– to determine nature of the said provision proceeded to confuse implications of two provisions i.e. section 10 (3) and 11 (2) having different contexts, and declare their compliance as mandatory. It was necessary for them to first examine the purpose and perspective of the two provisions along with domain of their applicability and consequence to follow for non-compliance before treating them together at par and making an identical declaration about them.

21. The first caters to a determination of refund claim that was not admissible and requires an enquiry, audit etc. to be carried out over a period of time for such determination. While the second envisages effecting recovery and imposing penalty to be done only within a time-limit of 5 years of filing tax return. There is no deeming provision in the law nor any penalty to follow to regard timeline u/s 10 (3) as binding and its non-compliance, regardless of any factor, resulting in acceptance of the claim. While section 11 (2) could lead to recovery, penalty and default surcharge to be effected from the registered person. Yet the Appellate Forum and the Tribunal have mixed them together and held timeline u/s 10 (3) as

mandatory in the same manner as it is u/s 11(5) and thereby divesting virtually the department of its power to determine admissibility or otherwise of the claim.

22. No doubt, the department's officials are not allowed to sit over rights of tax payers respecting the tax refund for an indefinite period and are required by operation of the law [Section 10 (3)] to conclude pre-refund audit proceedings in time, and their failure to do so would amount to depriving the taxpayers their money till such decision is made. But to conclude that such a failure must ipso facto crystalize into the claim being regarded as undisputed and payable would amount to reading something in law which is not specifically provided. The courts are not allowed to read something in a provision which is not discernible from plain reading thereof and introduce something that in not the intent of legislation. Reliance in this regard may be placed on a case reported in PLD 1990 SC 68[2].

23. The failure to decide the refund claim in time can be dealt with by various other modes such as granting cost to the other side on each delay, if it is occasioned by the department, or taking departmental action against the officer who has failed to observe the timeline in deciding the case, withdrawing the file from him and entrusting it to some other officer for deciding the same within a certain period or the file automatically being presented before next senior officer for a timely decision and action against the defaulting officer. Apart from such measures, the legislature can introduce in law some other steps to check delay on the part of Inland Revenue Officer to decide a refund claim. But for the time being, at the law stands now, to interpret it i.e. the failure to decide the refund claim in time as amounting to accepting the claim as admissible and payable is beyond the pale of section 10 (3) of the Act 1990.

24. In the case of *Agritech Limited vs. Federation of Pakistan*[3] , the Lahore High court, seized with more or less identical situation while taking cognizance of all relevant facts and circumstances, has formed certain opinions on the subject which are being reproduced here for a benefit of present discussion.

> (i) Section 10 of the Act is not a self-containing and self-executory provision rather the admissibility of the tax refund claim is required to be determined in a case where there is reason to believe that the refund claim is not admissible;
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> (ii) the respondent-FBR and its officials cannot sit over the rights of the taxpayers in relation to the tax refund claims for indefinite period and must

[2] Government of Pakistan v. M/s Hashwani Hotel Ltd.
[3] PTCL 2024 CL.81

> conclude the pre-refund audit proceedings by strictly following the mandate of Section 10(3) of the Act;
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> (iii) ……
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> (iv) …….
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> (v) Section 67 of the Act is only applicable and the additional amount is payable to the taxpayer when the refund is held due and is not made within the time specified in Section 10 of the Act but the said provision is to be applicable after the investigation of the claim, or so much of the claim as, is accepted and for the said purpose mandate of Section 10(3) is to be strictly adhered to; and
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> (vi) non-adherence by the respondent-FBR to the time-limit envisaged under Section 10(3) of the Act in concluding the refund claims amounts to concomitant violation of the fundamental rights of the tax-payers guaranteed under Articles 23 and 24 of the Constitution. No consequences of such non-adherence have been envisaged under the Act. This aspect of the matter is a policy issue and requires legislation, which is for the Federal Government to examine on priority basis. Therefore, the Federal Government is directed to consider the possibility of initiating necessary legislation on the subject by providing the consequences of non-adherence to the provision of Section 10(3) so that the rights of the tax payers can be safeguarded.

The Islamabad High Court, dealing with an income tax matter, in *pari materia* background, in the case titled as *Commissioner of Inland Revenue, Islamabad vs. Messrs. Pearl Security (Pvt.) Limited*[4] has not agreed to analogy of acceptance being automatically granted to the claim of refund on failure of a Tax Officer to decide the claim of refund in timeline provided in the law. It has observed in para 13 that though section 170 (4) required the decision to be made within 60 days, a failure to do so would not *ipso facto* result in the contested refund claim being deemed decided in favour of the taxpayer, for the taxpayer could very well appeal against the inaction, and on the principle that an appeal is continuation of the original proceedings, the Commissioner (Appeal) could decide the contested refund claim instead of the Commissioner Inland Revenue.

25. The Supreme Court, (*Civil Review Petition 275 of 2022 in Civil Petition No.4599 of 2021*[5]) was posed with a question whether the first and second provisos to section 45B(2), when considered as mandatory provisions, deprive the taxpayer of his right to appeal for no fault of him, and are also adverse to the interest of the department because the consequence of the delay results in the acceptance of the appeal of the taxpayer, as held by the Appellate Tribunal Inland Revenue. It may be reminded that section 45B(2) deals with a right of appeal to be entertained and decided by the Commissioner Inland Revenue (Appeals) not later than

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[4] 2022 PTD 1876

[5] Commissioner Inland Revenue, RTO, Rawalpindi etc. vs. M/s Sarwar Traders Rawalpindi

120 days from the date of filing or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix. But in no case, such extended period shall exceed 60 days.

26. It is in such a context, the Supreme Court has held that the test to ascertain whether a provision of a statue is directory or mandatory is to look into the object and purpose of the statute and the provision in question. The duty of the court is to garner the real intent of the legislature as expressed in the law itself. The legislature intent can be drawn by consideration of the entire statute, its nature, its object and the consequences whether it will cause serious inconvenience or injustice to a person as a result of construing the provision in one way or the other. If by holding a provision mandatory serious inconvenience is created for innocent persons without furthering the object of the enactment, the same should be construed as directory. After examining the said provision, the Supreme Court has then held that the first and second provisos to section 45B (2) are directory provisions and lapse of the statutory timeframe will not affect the proceedings before the Commissioner (Appeals) who shall conclude the appeal in accordance with law by deciding the appeal on its merits. And despite the said provisos being directory, the Commissioner (Appeals) must make reasonable effort to decide the appeal of the taxpayer within the maximum statutory timeframe, subject to the third proviso to section 45B(2). The Commissioner (Appeals) must also give reasons if the appeal is not decided within the statutory timeframe under the proviso to section 45B(2), so that the legislative aspiration to achieve effective and efficient tax governance is also realized even though such a timeframe is only directory in nature.

27. In addition , it may be said that section 10 (3) relates that the proceedings against a person shall be completed in 60 days where there is a reason to believe that he has claimed input tax credit or refund which was no admissible to him. This period can be extended by the Additional Commissioner Inland Revenue up-to 120 days, when into the admissibility of the refund claim, either enquiry, or audit, or investigation is required. This would imply that when a claim requires an enquiry etc. to determine its admissibility, the period has to be extended. Although the word ‘may be’ has been used, but it does not imply discretion of the Additional Commissioner Inland Revenue to reject the request and refuse to extend the period in the face of a need to hold an enquiry into admissibility of the claim. Nothing is written in the provision that only in appropriate cases, or only in exceptional circumstance, he can exercise his power and extend the

time to think that his power is discretionary. But when further extension than the time extended by the Additional Commissioner Inland Revenue is required, the matter has to be brought before the Board. The Board (if agrees to the request) may for the reasons to be recorded extend the period which shall in no case exceed nine months.

28. It seems, the Board has no absolute power to extend time, it has to satisfy itself of the necessity (which could be impending enquiry, investigation into the claims etc.) to extend time by recording reasons leading to its having been so satisfied. Therefore, it lies within the power of the Board to extend time, or if not satisfied, decline such a request by recording reasons in support of such view. But in no case it can extend time beyond nine months. This timeline is the ultimate limit on the powers of the Board to extend time for enquiry or investigation into admissibility of a refund claim. The raison d'etre justifying enlargement of time for deciding the refund claim (which was not admissible) beyond 60 days appears to be the necessity to hold an enquiry, audit, or investigation into admissibility of the claim. The emphasis on determination of the admissibility of the claim first through an enquiry etc. rather than on completing the proceedings within 60 days.

29. Only to regulate the period of enquiry etc. however the Additional Commissioner Inland Revenue, and the Board, (if further extension is required), for reasons to be recorded by it, have been empowered. Since, it is not provided specifically that even if within the ultimate timeframe, the enquiry etc. for any reason howsoever justifiable, is not finalized, what will follow, whether the enquiry will be dropped or if completed then would become null and void and its findings, which may reveal glaring illegalities in the refund claim, redundant, we have no reasons to infer so and conclude that in such a scenario – the proceedings not completed within stipulated time -- the claim must crystalize into one undisputed and payable irrespective of its merits. The other aspect of this conclusion would be a natural corollary i.e. the urge in the said provision is on finalizing the enquiry etc. to determine admissibility of the claim first, and not on completing the proceedings within stipulated time. The time limit given in this regard (the proceedings to be completed within a certain time limit) appears to be therefore merely regulatory and not mandatory.

30. We, in view of above discussion (a reference being made to above cited case law also), say that it is a consensus view that mere timeframe for deciding a refund claim in section 10 (3) does not make it mandatory and its noncompliance resulting into acceptance of the claim. To consider a

provision mandatory, we have already elaborated above, its intent, the consequences to follow in case of non-compliance, the intention of the legislature have to be weighed before forming a positive opinion in this regard. If by regarding it mandatory, it infringes rights of either the person or department, it would not be considered so. It is department's right to examine and make an informed decision on a refund claim submitted by the person. If the timeline not followed, in case for some justifiable reason like impending enquiry etc., abridges right of the department to evaluate the claim and decide it on merits, the same cannot be construed as mandatory. On the other hand, acceptance of the refund claim so submitted is not a right of the person. It requires to be examined and its merits determined to make it admissible. So if the timeframe, for some justifiable reason, is not observed in completing the proceedings of a refund claim, it will not breach any fundamental right of the person, nor the same can be construed to have resulted in acceptance of the claim.

31 No doubt an expeditious decision is a recognized proposition which the Superior Courts have always urged must be followed, as justice delayed is justice denied. But in the context of present case, in our view, it can be taken care of by adopting a number of measures, as detailed above, to check the delay. Hence we hold that Section 10 (3) of the Act, 1990 is not a self-executory provision, it is not mandatory, rather it is regulatory and directory in nature, the admissibility of the tax refund claim is required to be determined on merits in a case where there is reason to believe that the refund claim is not admissible.

32. Section 67 caters for a situation where a refund due u/s 10 is not made within the timeframe as specified thereunder, and hence a further sum equal to KIBOR per annum of the amount due is awarded to the claimant. Section 10 (1), which seems to be relevant for such purpose, specifies that if the input tax paid by a registered person on taxable purchases made during a tax period exceeds the output tax on account of zero local supplies or export made during that tax period, the excess amount of input tax shall be refunded to that person not later than forty-five days of filing of refund claim. This provision actually lays down that where in such a scenario, the excess amount is not paid in the stipulated period, it shall result in compensation, at a certain percentage as above, to be paid to the taxpayer. But this rule is not absolute and is qualified by a certain condition – the refund claim is admissible. Proviso to the said section clarifies that where there is a reason to believe that a person has claimed the refund which is not admissible to him, the provisions regarding

the payment of such additional amount shall not apply till the investigation is completed and the claim is either accepted or rejected.

33. It is manifestly clear that the rule in this provision is conditioned to the outcome of investigation to be done to determine admissibility of the claim first where the department has a reason to believe, on account of some information or any other evidence, that the refund claim is not admissible. If the claim is rejected after such investigation, it goes without saying that there would be no question of compensating the taxpayer. The rule of compensation will be applicable only where there is a positive result in favour of the taxpayer that his claim is admissible. Rejection of the claim on any ground would make the taxpayer disentitled to grant of the very claim made by him, what to say about any compensation on delay in paying the refund claim. When the very claim of the taxpayer is frustrated, no penal consequence (in the shape of a further sum), leading to a benefit to the taxpayer, for the department could follow.

34. In the case of *Agritech Limited*[6] (Supra), the Lahore High Court has already endorsed this view by observing that section 67 is only applicable and additional amount is payable to the taxpayer when the refund is held due and is not made within the time specified in section 10. It is further clarified that the said section – section 67 – is applicable only when after the investigation, the refund claim is accepted. Once accepted, the timeline will have to be strictly followed, and in case of any breach in observing the timeline, the scheme u/s 67 would come into play and the claimant would be held entitled to additional sum to the amount of refund due as defined u/s 10 of the Act, 1990.

35. The case in hand is based on distinct facts, the refund claims of the respondent did not see the light of day and were rejected on merits in the order-in-original, the Appellate Forum and the Tribunal did not look into merits of the claims, and simply got swayed away by the notion of delay in deciding the claim as per section 10 (3), and held that such delay was fatal and its non-compliance should necessarily translate into acceptance of the claims. If this opinion is accepted, then of course the question of compensation u/s 67 to the respondent will arise. But we have held, here in the pages above, contrary to it, and said that this view is not spot on, our opinion is based on the consensual view on the point expressed by the superior courts time and again. We therefore hold that scheme u/s 67 of the Act, 1990 is not applicable here. The decisions rendered by both the fora – the Appellate Forum and the Tribunal, in respect of interpretation of

[6] PTCL 2024 CL.81

section 10 (3), holding non-compliance of the timeframe therein as impliedly amounting to acceptance of the refund claim is set aside. The matter of refund claim of respondent is remanded to the Commissioner Inland Revenue (Appeal) for a decision on merits expeditiously.

36. The three questions of law are replied and decided as above and the reference in hand is accordingly disposed of.

JUDGE

JUDGE