

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP Nos.D-1363 of 2020
a/w CP Nos.D-1228, 1395, 1457, 1530, 1555 & 1600 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

1. For hearing on Misc. No.6267/2020
2. For hearing of main case.

06.10.2021

Mr. Arshad Hussain Shahzad, Advocate for the Petitioner in CP No.D-1228 of 2020

Mr. Zohaib Hassan Advocate holds brief for Mr. Imran Ali Abro, Advocate for the Petitioner

Mr. Ghulam Asghar Pathan, Advocate for Respondent

Mr. Kafeel Ahmed Abbasi Deputy Attorney General

Mr. Hussain Bohra, Assistant Attorney General.

In these proceedings the assesses/petitioners have received a notice/summon to give evidence/documents under section 37 of the Sales Tax Act in relation to a Tax Year beyond five years; that perhaps is not permissible under the law as admittedly the statutory period of five years has been prescribed under section 11(5) of the Sales Tax Act 1990 which read as under:-

“11.(5) No order under this section shall be made by an officer of Inland Revenue unless a notice to show cause is given within five years, of the relevant date, to the person in default specifying the grounds on which it is intended to proceed against him and the officer of Sales Tax shall take into consideration the representation made by such person and provide him with an opportunity of being heard”

This issue perhaps came up for consideration in a number of cases/petitions such as CP No.D-6008/2017 where while discussing provisions of section 11(5) of the Sales Tax Act 1990, the bench came to the conclusion that as and when such notices exceeds the statutory powers it can be strike down as being without jurisdiction. The relevant part of the reasoning assigned by the Bench is as under:-

“We have heard all the learned Counsel and perused the record. On facts, it has not been disputed that the impugned Show Cause Notices have been admittedly issued after the statutory period of five years provided under Section 11(5) of the Sales Tax Act, 1990. Though the tax period in all cases are different; however, it is an admitted position that the Show Cause Notices issued are beyond the period of 5 years as above; hence, the proceedings of recovery are apparently time barred and cannot be allowed to be acted upon. Moreover, the argument that it is a case of tax fraud in terms of Section 2(37) ibid also appears to be misconceived on two grounds. First, even if we were to accept the allegation that there is an element of tax fraud involved, it would not ipso facto enhance the limitation as provided in Section 11(5) of the Act as contended. It would still remain the same. The Principle that no limitation runs against a void order (tax fraud here) is of no relevance; rather an attempt on the part of the respondent to cover their inefficiency by asking this Court to condone the limitation. It is not a question of exercising any discretion in the matter”

The respondent’s counsel has no cavil to such observations of the Bench as the provisions of section 11(5) of the Sales Tax Act 1990, is apparently clear and does not require any extended or modified interpretation as to the one that has been done by the Bench in the above referred judgment. As it is a covered case, we deem it appropriate to allow these petitions by declaring such notices to be without jurisdiction as it pertains to a period calling documents for tax period beyond five years as required under section 11(5) of the Sales Tax Act 1990. With this short observation all these petitions are allowed.

J U D G E

J U D G E

Amjad/PA