

IN THE HIGH COURT OF SINDH, KARACHI

CP No.D-2890 of 2020

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

*BEFORE: Irfan Saadat Khan,
Zulfiqar Ahmed Khan, JJ*

M/s. Micro Innovations and
Technologies (Pvt) Ltd.,
Petitioner

: through Qazi Umair Ali,
Advocate.

Vs.

Federation of Pakistan
Respondent No.1

: through Mr. G.M. Bhutto,
Assistant Attorney General.

Federal Board of Revenue,
Respondent No.2

:

The Director,
Directorate of Post Clearance
Audit (south),
Respondent No.3

:

The Collector of Customs
Respondent No.4

:

The Deputy Collector of Customs
Respondent No.5

: Mr. Muhabbat Hussain Awan,
Advocate for Respondents No.2 to
5.

Date of hearing : 06.12.2022

Date of decision : 12.12.2022

JUDGEMENT

Irfan Saadat Khan, J. Through this petition fourteen (14) show cause notices issued to the petitioner, all dated 15.5.2020, have been challenged on the ground that they were time barred and thus illegal and are liable to be struck down.

2. Briefly stated the facts of the case are that the petitioner is a private limited company engaged in dealing in I.T equipments. During the period 2014-2015 the petitioner imported certain items,

which were duly processed by the Department. However upon the directives of Senate Standing Committee on Commerce and Textile (hereinafter referred to as the Committee) reported dated 23.01.2019 the Department proceeded to reassess the goods declaration made by the petitioner, by exercising its powers under Section 32 of the Customs Act, 1969 (hereinafter referred to as the Act) by calling upon the petitioner, through various show cause notices as to why the amount of taxes mentioned in those show cause notices may not be recovered, in addition to the penal action proposed in the said notices.

3. Qazi Umair Ali, Advocate has appeared on behalf of the petitioner and at the very outset stated that from the perusal of these show cause notices it is apparent that these were issued on 15.5.2020, which pertained to the goods declaration made by the petitioner imported during the years 2014-2015, hence according to him without going into the merits of the case these show cause notices are time barred and may therefore be vacated. Learned counsel in support of his above contention has placed reliance on the following decisions.

- i. *M/s. Lever Brothers Pakistan Ltd. v. Customs, Sales Tax and Central Excise Appellate Tribunal & another (2005 PTD 2462)*
- ii. *Muhammad Measum & others v. Federation of Pakistan & others (2015 PTD 702)*
- iii. *Collector of Customs, Customs House, Karachi v. Syed Rehan Ahmed (2017 SCMR 152)*
- iv. *Commissioner Inland Revenue, Zone-I, RTO, Hyderabad v. M/s.Hyderabad Electric Supply (HESCO) Hyderabad (2014 PTD 951)*

v. (M/s. Gulistan Textile Mills Ltd., Karachi v. Collector (Appeals) Customs Sales Tax and Federal Excise, Karachi & another (2010 PTD 251)

Unreported Judgments

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| 1. Tax Ref. No.27/2014
Lahore High Court | Multan Electric Power Co. Ltd. v. Commissioner Inland Revenue, Multan & ors. |
| 2. Cus. Ref. No.12/2016
Lahore High Court
Multan Bench | Additional Collector, Model Customs Collectorate, Multan v. M/s. Reliance Commodities (Pvt.) Ltd. etc.) |
| 3. C.P. No.D-216 / 2013
Sindh High Court | M/s. Lucky Cement Limited, Karachi v. Federation of Karachi Pakistan & others. |
| 4. C.P. No.D-5482/2017
Sindh High Court
Karachi | Nestle Pakistan Limited v. The Federal Board of Revenue others |

4. Mr. Muhabbat Hussain Awan, Advocate has appeared on behalf of the Department and stated that none of the show cause notices were time barred as these were issued to the petitioner on the directives of the Committee dated 23.1.2019, which is to be considered as the date of detection of tax evasion by the petitioner. He stated that the department has the authority under the provisions of Section 32(5) of the Act, to reopen a matter and to require from the petitioner to pay the evaded amount of duties and taxes within five years of the date of the said detection therefore, according to him the notices were timely issued and the petitioner was obliged to file a reply in respect of the said show cause notices.

5. Learned counsel further stated that the instant petition is not maintainable and the petitioner may be directed to give a proper reply to the show cause notices issued to the petitioner. He stated that the petitioner has the remedy to file an appeal under

Section 193 of the Act in case an assessment or an order-in-original is passed by the customs authorities against the petitioner. He therefore, stated that the petitioner may be directed to give proper reply of the show cause notices and to join the adjudication process before the concerned Collectorate and this petition being not maintainable may therefore, be dismissed with cost.

6. Mr. G. M. Bhutto, Assistant Attorney General has adopted the arguments as advanced by Mr. Muhabbat Hussain Awan, Advocate.

7. We have heard all the learned counsel at some length and have also perused the record, law and the decisions relied upon by the learned counsel for the petitioner.

8. The show cause notices were issued in the following manner.

Sr.No.	Show cause notice number	Date of issuance of Notice	Date of G.D
1.	Adj-II/DC/SCN-745/PCA-5624/GD-12097/Micro Innovations/2020	15.05.2020	26.09.2014.
2.	Adj-II/DC/SCN-748/PCA-5624/GD-7792/Micro Innovations/2020	15.05.2020	27.08.2014
3.	Adj-II/DC/SCN-746/PCA-5624/GD-142/Micro Innovations/2020	15.05.2020	02.07.2014
4.	Adj-II/Coll/SCN-581/PCA-5624/GD-126370/Micro Innovations & Tech/2020	15.05.2020	16.02.2015
5.	Adj-II/DC/SCN-744/PCA-5624/GD-20429/Micro Innovations/2020	15.05.2020	13.05.2019
6.	Adj-II/Coll/SCN-584/PCA-5624/GD-153925/Micro Innovations & Tech/2020	15.05.2020	06.04.2015
7.	Adj-II/Coll/SCN-578/PCA-5624/GD-5310/Micro Innovations & Tech/2020	15.05.2020	09.08.2014
8.	Adj-II/DC/SCN-749/PCA-5624/GD-2883/Micro Innovations/2020	15.05.2020	21.07.2014
9.	Adj-II/DC/SCN-747/PCA-5624/GD-9444/Micro Innovations/2020	15.05.2020	08.09.2014
10.	Adj-II/Coll/SCN-582/PCA-5624/GD-109994/Micro Innovations & Tech/2020	15.05.2020	19.01.2015
11.	Adj-II/Coll/SCN-580/PCA-5624/GD-130534/Micro	15.05.2020	23.02.2015

	Innovations & Tech/2020		
12.	Adj-II/Coll/SCN-579/PCA-5624/GD-25143/Micro Innovations & Tech/2020	15.05.2020	20.08.2014
13.	Adj-II/Coll/SCN-583/PCA-5624/GD-26106/Micro Innovations & Tech/2020	15.05.2020	05.09.2014
14.	Adj-II/Coll/SCN-585/PCA-5624/GD-186667/Micro Innovations & Tech/2020	15.05.2020	26.05.2015

9. We also deem it appropriate to reproduce hereinbelow the relevant provision;

Section 32. *[Unture] statement, error, etc.*

(1)

(2) *Where, by reason of any such document or statement as aforesaid or by reason of some collusion any duty, taxes or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within five years of the relevant date, requiring him to show cause why he should not pay the amount specified in the notice.*

(3)

(4)

(5)

(a)

(b)

(c)

(d)

(e) *in case of clearance of good through the Customs Computerized System, on self- assessment or electronic assessment, the date of detection. (Underline ours for emphasis).*

10. From the facts of the case, it is noted that the impugned show cause notices were issued on the directives of the Committee dated 23.1.2019 as the said Committee vide its meeting dated 23.1.2019 has come to the conclusion that the multinational I.T companies should be summoned with regard to under invoices of I.T products imported by them. It is also noted that apart from this observation of the said Committee no credible information was available with the Department to issue show cause notices to the present petitioner pertaining to different consignments imported by them during the period 2014-2015, as mentioned in para-8 above,

for proceeding against the petitioner under Section 32 of the Act for the alleged nonpayment of the duties and taxes.

11. Perusal of the Section 32 of the Act stipulates that the Department has the authority under the law, where they come across that untrue statements have been filed by the petitioner, where the tax is short levied or erroneously refunded but the issuance of said notices should be within five years of the relevant date. It has been held in various judgments including the decision given by the Lahore High Court in the case of *Reliance Commodities* (supra) that the relevant date would be the date of payment of duties / taxes, as per the goods declaration. In the instant matter from the show cause notices and as per para-8 the relevant date for goods declaration has been provided in column 'C' of the said show cause notices, which date in our view has to be considered as the relevant date from where limitation would start and in our view after the expiry of the five years of the said relevant date the show cause notice issued, if any, under Section 32 of the Act would become time barred.

12. We disagree with the contention of Mr.Awan, that limitation has to be counted from the date of detection, as if this interpretation placed by Mr.Awan, is considered and accepted then the very purpose of providing limitation under Section 32(2) of the Act would become redundant and nugatory. It is a settled proposition of law that no provision of the law is to be read either in isolation or such interpretation be made which would render the other provisions as redundant or nugatory.

13. In our view Section 32 of the Act do not give powers to the Department that if they detect some error in the G.D of the petitioner even after passage of the limitation period let us say after 10 years they have the authority under Section 32 of the Act to issue show cause notice upto five years from the date of the said detection, which may be falling beyond five years of the relevant date. We are afraid we cannot accept or entertain such type of interpretation placed by Mr. Awan nor this could be the intention of the legislature so as to draft the law in such a manner through which an uncertain position would arise. In our view the obvious intention of the legislature was not to count the limitation period of five years from the relevant date; meaning thereby that the law framers were fully conscious of the fact that even in the event of reopening any matter or issuing show cause notice upon a person time limit has to be counted as five years from the relevant date and not from the detection date, as ascribed by Mr. Awan.

14. Hence, in our view, for all practical purposes a show cause notice has to be issued within five years of the relevant date and where it is found that the said show cause notice is issued beyond this stipulated time the said show cause notice has to be considered as time barred and of no legal effect. It may be noted that issuance of a show cause notice in a timely manner is a sine-quo-non for assuming the jurisdiction vested under the provision of Section 32 of the Act by the Department and where the said show cause notice is issued beyond this period, it has to be considered and declared as null and void.

15. We were able to lay our hands on the decision of *Collector of Customs (Preventive), Karachi ..Vs.. Pakistan State Oil Karachi (2011 SCMR 1279)* wherein the Hon'ble Apex Court while deciding the matter has observed that *inordinate delay cannot be ignored where specific period of six months has been provided under Section 32(3) of the Customs Act* (as it then was). In the instant matter also it has not been controverted that out of 14 show cause notices 13 were issued after the period of five years but the only contention raised was based on the interpretation that the Department as the authority under Section 32 (5)(e) of the Act to issue show cause notice from five years of the date of detection which interpretation, as stated above, in our view cannot be accepted and endorsed. It is also a settled proposition of law that notices issued beyond mandatory period are liable to be struck down as acceptance of a show cause notice after the period of limitation would amount to enhancement of the period of limitation, which is not legally permissible. In the case of *(M/s. Gulistan Textile Mills Ltd., Karachi v. Collector (Appeals) Customs Sales Tax and Federal Excise, Karachi & another (2010 PTD 251)* a Division Bench of this Court has categorically observed that proceeding culminating in respect of a time barred notice would render the entire proceedings as extinguishable. It is also a settled proposition of law that in case where a show cause notice is time barred or has been issued as an abuse of process of law the said show cause notice is liable to be vacated (*Commissioner Inland Revenue and others ..Vs.. Jahangir Khan Tareen and others (2022 SCMR 92)*).

16. Thus in light of what has been discussed above, we are of the view that all the show cause notices issued, except the show cause notice which pertains to the G.D of 26.5.2015 (available at page 81-83 of the present petition and duly mentioned in para-8 above) are time barred hence vacated and are declared to be of no legal effect. However, so far as the show cause notice pertaining to the G.D dated 26.5.2015 is concerned the same is found to be within the stipulated time, thus the petitioner is directed to file a proper reply in respect of the said show cause notice in accordance with law.

17. The upshot of the above discussion is that the petition so far as show cause notices from Sr. No.1 to 13, as reproduced in para-8 above, is accepted whereas the petition with regard to show cause notice appearing at Sr.No.14, in para-8 above, is dismissed, as per the directions given in para-16 above.

18. With these directions the instant petition alongwith the listed and pending application(s) stands disposed of.

JUDGE

JUDGE

Karachi
Dated: 12.12.2022
SM