<u>JUDGMENT SHEET</u>
<u>IN THE ISLAMABAD HIGH COURT, ISLAMABAD</u>

<u>CASE NO. : W.P. NO.1392-2022</u>

M/s Abdul Ghaffar Traders

Vs.

Federation of Pakistan etc.

Petitioner by	**:**	**Mr. Ghulam Qasim Bhatti, Advocate**
Respondents by	**:**	**Mr. Arshad Mehmood, Advocate for FBR**
Date of decision	**:**	**02.10.2023**

<u>AAMER FAROOQ C.J.</u> Through the instant petition, the petitioner has challenged show-cause notice dated 14.04.2022 issued by the respondents.

2. Learned counsel for the petitioner *inter alia* contended that impugned show cause notice has been issued on the basis of audit observations and in terms of the same, since withholding tax under section 148 of the Income Tax Ordinance, 2001 (the Ordinance), was not deducted and even sales tax was not deducted while clearance of goods, demand of Rs.50,219/- has been raised. It was submitted that show cause notice is barred by limitation, as same has been issued under section 32(3A) of the Customs Act, 1969 (the Act) and the limitation period for the same, is five years from the 'relevant date'. It was contended that 'relevant date' is the date, when the customs duty or other taxes were to be paid, which pertains to the year 2013-14, hence five years period, as prescribed under section 32(3A) of the Act, has lapsed. It was contended that in the year 2013, customs authorities could not recover sales tax. It was also submitted that respondents could not have exercised territorial jurisdiction, as the matter pertains to Rawalpindi. Learned counsel further contended that instant petition is maintainable inasmuch as show cause notice is barred by law. Reference was made to cases reported as <u>Commissioner Inland Revenue and others Vs. Jahagir Khan Tareen and others</u> (2022 SCMR 92), <u>Messrs Pakistan Oilfields Limited through</u>

General Manager Vs. Federation of Pakistan through Ministry of Finance and 4 others (2020 PTD 110), Messrs J.M. Brothers Pakistan Pvt. Ltd. through Director Vs. The Additional Commissioner Inland Revenue and another (2016 PTD 461), Abdul Sattar Vs. Federation of Pakistan through Secretary, Revenue Division/Chairman, Central Board of Revenue, Islamabad and 2 others (2006 PTD 1171), Collector of Customs (Preventive),Karachi Vs. Pakistan State Oil Karachi (2011 SCMR 1279), Federation of Pakistan through Secretary Finance, Islamabad and 4 others Vs. Messrs Ibrahim Textile Mills Limited and others (1992 SCMR 1898) & Trustees of the Port of Karachi Vs. Karachi International Container Terminal Limited (KICT) (2010 CLC 1666).

3. Learned counsel for the respondents *inter alia* contended that show-cause notice has been issued under section 202 of the Act, which provides for the recovery of government dues. It was submitted that advance tax was to be recovered on the imports under section 148 of the Ordinance, which was not accordingly done. It was further submitted that the judgment of the Supreme Court of Pakistan reported as Messrs Paramount Spinning Mills Limited Vs. Customs, Sales Tax and Central Excise Appellate Tribunal and another (2012 SCMR 1860) provides that limitation would not be applicable for proceedings under section 202 of the Act. It was also argued that instant petition is not maintainable inasmuch as it only impugns show cause-notice, against which, reply should have been filed. Learned counsel contended that in somewhat similar proceedings, reply was filed by the petitioner.

4. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The petitioner is an importer and it seems that it imported certain articles in the financial year 2013-14, with respect to which, duty was short-paid/not paid, hence impugned show-cause notice has been issued.

6. Since question of maintainability of the instant petition has been raised, hence that question is dealt with first. In the recent judgment reported as Commissioner Inland Revenue and others Vs. Jahangir Khan

Tareen and others (2022 SCMR 92), the Supreme Court of Pakistan observed that challenge to show cause notice in constitutional proceedings can only be made where notice is barred by law or suffers from abuse of process of the court or was *coram non judice*. In order for present proceedings to proceed, it is imperative that the petitioner crosses the referred hurdle. In this regard, the thrust of the arguments by the petitioner was that show-cause notice is barred by limitation and if such is the case, naturally the show-cause notice, impugned before this Court, is barred by law. The bare reading of the impugned show-cause notice shows that same has been issued for short realization of the amount of duty and taxes amounting to Rs.50,219/-, which includes sales tax as well as withholding tax under section 148 of the Ordinance. Where the duty and taxes are short levied, the Department has the option to recover the same under section 32(3A) of the Act, but before doing so, the person, from whom recovery is sought, has to 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. Under subsection (5) of section 32 of the Act, the 'relevant date' has been defined as *inter alia* the date of payment of duty or charge or on the date where duty is not levied, on which, an order for clearance of goods is made. It is an admitted position that transaction in question pertains to the financial year 2013-14 and five years period, from the referred time, would be 2019. It is the stance of the Department that limitation of five years is not applicable pursuant to the judgment reported as 2022 SCMR 92 supra, but the reading of the facts of the referred case show that the question was somewhat similar but what prevailed with the Supreme Court was issuance of the indemnity bond furnished by the petitioner and on the basis thereof, section 202 of the Act became applicable, which allows recovery of government dues without any cap of limitation. The respondents have filed reply but it does not disclose execution of any indemnity bond and where such is the case, the applicability of section 202 of the Act does not arise inasmuch as there is no definitive undertaking through indemnity bond or otherwise. In the referred backdrop, the argument of learned counsel for the petitioner seems to be correct that the show cause-notice is barred by limitation and hence notice is barred by law in terms of section 32(3A) of the Act.

7. In view of foregoing, instant petition is allowed and the impugned show-cause notice is set aside, as the proceedings sought to be initiated, are barred by limitation. However, needless to observe that if there is an indemnity bond or any other investment executed by the petitioner, undertaking the duty (ies) amount, section 202 ibid shall be applicable and recovery proceedings can be initiated pursuant thereto within the ambit of the observations made by Supreme Court of Pakistan in case reported as 2022 SCMR 92 supra.

(CHIEF JUSTICE)

Zawar