

223/1

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
KARACHI BENCH-I

Present: MR. SHAHID MEHMOOD SHEIKH A.M.
MR. FAKHAR UL ZAMAN AKHTAR, J.M.

STA No.89/KB/2024
& M.A (stay) No. 217/KB/2024
(Tax Period June-2023 & July-2023)
U/s 45-B

M/s Noorani Textile & FabricsApplicant

Versus

The Commissioner Inland Revenue,
Zone-1, CTO, Karachi.....Respondent

Appellant : Mr. Muhammad Irshad Alam, Advocate
Respondent : Mr. Mamoon Moazam, D.R

Date of hearing : 28.03.2024
Date of Order : 29.04.2024

ORDER

 **SHAHID MEHMOOD SHEIKH, A.M:** The titled appeal along with the application of stay has been filed by the appellant taxpayer against the

Order No. CIR/Z-I/CTO/DC-Hq/S.O-IV/Anex-H/Noorani Tex. & Fabrics/2023/1480 dated 08.12.2023 pursuant to rejection of the request for extension of the time limit under Rule 28 of the Sales Tax Rules, 2006, read in conjunction with Section 10 of the Sales Tax Act, 1990, for filing of Annexure-H on the following grounds:-

1. That The order issued by the Commissioner Inland Revenue, Zone-1, CTO, Karachi, rejecting the condonation for the filing of Annexure-H, is deemed flawed and invalid, encompassing deficiencies in both legal and factual dimensions.
2. That the Commissioner Inland Revenue (CIR) rejected the condonation application, citing that the taxpayer's delay in filing Annexure-H for the tax period June-2021 and July-2023 was deemed non-cogent, in accordance with Federal Board of Revenue's Circular, vide No. 02 of 2020/IR-Operation, dated 21.09.2020.
3. That the Commissioner Inland Revenue (CIR) rejected the condonation application in a seemingly casual manner, overlooking crucial facts. The taxpayer had a substantial carried

forward/closing balance in Annexure-H for the tax period of 05/2023, with a closing stock value of Rs. 138,779,338 and sales tax amounting to Rs. 23,897,871. The same balance, due to the non-filing of Annexure-H for the month in question, should not have been carried forward. The cogent reason for the delay is self-evident and is reflected in the previous month's Annexure-H closing balance. The Commissioner rejected the condonation without applying a judicious peace of mind, thereby overlooking pertinent details and circumstances.

4. That the Appellant made exports in the month of December 2023, as evidenced by KPEX-103468-18.12.2023 and KPEX-98492-11.12.2023, with a total export value of Rs. 51,388,188. A refundable amount of Rs. 2,681,702 has been claimed. It's important to note that without the submission of Annexure-H for the previous months, the Annexure-H for the month of December 2023 cannot be filed with a declaration of stock value carried forward from the preceding months.
5. That the appellant emphasizes their significant contribution to the generation of foreign remittance through exports, foreign remittance plays the role as the lifeblood of the country's economy, impacting day-to-day affairs, including GDP. The rejection of the condonation application, without substantiating the facts detailed above, poses a significant obstacle for the exporter. The Appellant asserts that the decision of rejection is deemed illegal and unlawful in light of these considerations.
6. That the Appellate Tribunal, High Court, and Supreme Court have consistently ruled in favor of taxpayers in refund-related cases, and some relevant citations are provided below;

"So far provision dealing with refund is concerned, it must be construed liberally and in favour of the citizen" [1993 PTD (Note) 2011]

"In revenue matters, the prayer for condonation by assessee / citizen should be considered sympathetically" [GST 2003 CI.601]

"It is well settled law that cases should be decided on merits and the parties not to be non-suited on technicalities including the grounds of limitation." [PLD 2003 SC 724]

"The Government had no right to withhold citizen's money on ground of limitation or technical reasons" [PLD 1998 SC 64 (M/s Pfizer Laboratories Ltd. versus the Federation of Pakistan.)]

That the Appellant craves permission to add, alter, argue or modify any other ground or grounds at the time of final hearing of this appeal.

2. The brief facts culled out from the record are that the appellant is an exporter of textile goods and was required by the Sales Tax Rules, 2006 to submit Annexure-H (sales tax refund claim) within one hundred and twenty days following the filing of the sales tax return. Regrettably, during the tax periods of June 2023 and July 2023, the personnel

responsible for the submission of Annexure-H, who possessed the requisite data and expertise, were hospitalized due to typhoid and typhus exanthema. As a result, the deadline for the filing of Annexure-H lapsed. Consequently, the appellant's legal representative submitted a request letter to the concerned CIR for the condonation of the time limit for filing Annexure-H. Under Rule 28 of the Sales Tax Rules, 2006, the CIR holds the authority to condone or extend the time limit for a period of up to sixty days. The Commissioner of Inland Revenue declined the condonation request via Order No. CIR/Z-I/CTO/DC-Hq/S.O.IV/Anex-H/Noorani Tex & Fabrics/2023/1480, dated 08.12.2023. Felt aggrieved, by this order, the appellant has now come up before this Tribunal and has assailed the impugned appellate order on a number of grounds.

3. On the date of hearing Mr. Muhammad Irshad Alam, Advocate attended on behalf of the appellant /taxpayer while Mr. Mamoon Moazam, DR attended on behalf of the department.

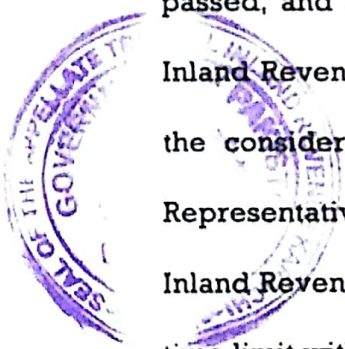
4. During the course of the hearing, the learned Authorized Representative (A/R) argued that the order issued by the learned Commissioner Inland Revenue Zone-I CTO Karachi, rejecting the condonation of the time limit prescribed under Rule 28 of the Sales Tax Rules 2006, read in conjunction with Section 10 of the Sales Tax Act, 1990, is not maintainable. It was further argued that the Commissioner Inland Revenue (CIR) failed to provide a proper opportunity for a hearing, as no show cause notice or hearing notice was issued prior to the rejection of the condonation. The appellant, in this regard, placed reliance on the judgment reported as 2017 PTD 1839. Furthermore, the learned A/R of the Appellant contended that the taxpayer had a substantial carried forward/closing balance in Annexure-H for the tax period of May 2023, with a closing stock value of Rs. 135,779,338 and a



sales tax amounting to Rs. 23,697,671. This balance, due to the non-filing of Annexure-H for the months of June 2023 and July 2023, would not have been carried forward. The substantial stock retention in terms of goods value, goods quantity, and closing input tax in May 2023, itself constitutes a cogent reason to allow condonation of the time limit. The Commissioner rejected the condonation without applying a judicious frame of mind, thereby overlooking pertinent details and circumstances.

5. The learned Departmental Representative D.R supported the Commissioner of Inland Revenue's rejection order and contended that the order issued by the Commissioner is lawful and adequately explanatory. Further, the D.R requested the bench to dismiss the appeal of the taxpayer and uphold the rejection order issued by the Commissioner of Inland Revenue.

6. We have considered the submissions made by both sides and have thoroughly reviewed the records, including the denial order passed, and the treatment meted out by the learned Commissioner of Inland Revenue, which is the subject matter of this appeal. We are of the considered view that the contention of the learned Authorized Representative (A/R) carries weight, noting that the Commissioner of Inland Revenue decided on the condonation application concerning the time limit without providing an opportunity for hearing. The substantive right of the taxpayer/appellant guaranteed and ensured under the legal provisions cannot be snatched away on mere technicalities and procedural lapses. The Commissioner himself assumed that the appellant had advanced no cogent reason which may warrant condonation. However, the substantial stock retained as of May 2023 could not be carried forward into subsequent tax periods without the

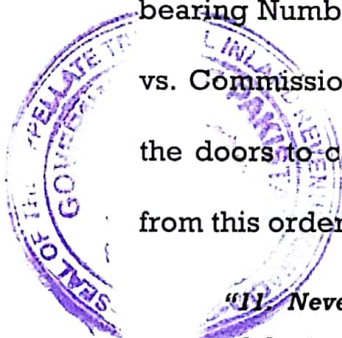


submission of Annexure-H for June 2023 and July 2023. The rejection of any condonation by the Commissioner of Inland Revenue under any provision or rule must be preceded by the issuance of a show cause notice before taking any adverse action. Reliance is placed on the judgment reported as 2017 PTD 1839, the relevant extract of which is as follows;

"It may be further observed that in view of Article 10A of the Constitution and Section 24-A of the General Clauses Act, every public functionary, including the Taxation Authorities, are required to provide fair opportunity of being heard to any person before taking an adverse action against him, or passing any order of assessment or creating any additional liability of tax, by confronting such person with the proposed action in writing. The fair trial and right of hearing is regarded as a cardinal principle of Natural justice, which has to be read into every Statute, even if it may not be specifically provided therein."

7. The apex court has upheld that the government cannot withhold a citizen's money on the grounds of limitation or for technical reasons, as demonstrated in the precedent set by [PLD 1998 SC 64 (M/s Pfizer Laboratories Ltd. vs. the Federation of Pakistan.)]. Furthermore, the Appellate Tribunal Inland Revenue (ATIR), Karachi bench, in its order bearing Number STA 116/KB/2022 in the case of M/s. MAK Corporation vs. Commissioner Inland Revenue, held that the authority cannot close the doors to carrying out legitimate business. The relevant paragraph from this order is reproduced below;

"11. Nevertheless, it is very important to understand that the purpose of the tax regulatory system, is not to militate against the taxpayer. No action must be taken that does not provide a remedy to the taxpayer to rectify his actions as per law and close the door for carrying out of legitimate business, while complying with the tax regime. Any such order to closes a door permanently without recourse to correction, would stand opposed to the Freedom of trade as enshrined under Article 18 of the constitution. Hence, it is important to ensure that the appellant is given an opportunity to make do corrections and reconvene his business operations after filling the deficiencies highlighted by the department as per law. The



purpose of any order should not be to render a taxpayer incapacitated to carry out business permanently, as the same would be anathema to the essence of tax law."

8. Having meticulously reviewed the extensive grounds of appeal presented herewith, we find that the Commissioner of Inland Revenue has effectively closed the door for the taxpayer to file sales tax refund against exports made in the subsequent tax periods. This has been achieved by halting the carried forward balance of Annexure-H as per the decision cited above, that has adversely impacted the taxpayer.

9. Rejection of condonation request without confronting the taxpayer and providing of a fair opportunity of hearing and issuance of denial order is against the principle of natural justice and fair trial on this factum alone, we hereby declare that the rejection of the condonation of the time limit for filing Annexure-H for the tax periods of June 2023 and July 2023 is illegal. As a result, the appeal of the appellant and stay application are hereby accepted and relief allowed.



-Sd-

(SHAHID MEHMOOD SHEIKH)
ACCOUNTANT MEMBER

-Sd-

(FAKHAR-UL-ZAMAN AKHTAR)
JUDICIAL MEMBER

M.B.SAHITO/APS

Copy of the Tribunal's Order forwarded to
The Appellant Noorani Textile
MS of ut and / school.
C.O. _____
The C.I.T. _____
_____ (A) or A.C.C. _____
Asstt. Registrar, A.T.R. Karachi
BY ORDER
[Signature]
ASSISTANT REGISTRAR
Appellate Tribunal Income Tax Revenue
Karachi 10/05/24

ASSESESSES

Copy of the Order served on the Assesses/A.R.
M/s Noorani Textile & Furnish.
M. Imad Ali.
on 04/05/2024 at _____
by the undersigned.

[Signature]
10/05/24
PROCESSE SERVER
(Name/Signature and Date)
Appellate Tribunal Income Tax Revenue
Karachi