

**2017 S C M R 1427****[Supreme Court of Pakistan]****Present: Mian Saqib Nisar, C.J., Maqbool Baqar and Faisal Arab, JJ****The COLLECTOR OF SALES TAX, GUJRANWALA and others---Appellants****Versus****Messrs SUPER ASIA MOHAMMAD DIN AND SONS and others---Respondents**

Civil Appeals Nos. 682 to 684 of 2008, 131, 233, 253, 504, 219 and 220 of 2011, 678-683, 783 and 729-732 of 2012, 389-401 and 710-713 of 2013, 1632 of 2014, 565 of 2015 and 1424-1425 and 2470 of 2016 and Civil Appeal No. 733 of 2010 and Civil Appeal No. 1507 of 2016, decided on 31st March, 2017.

(On appeal against the judgments/orders dated 7.11.2007, 18.12.2007, 05.11.2008, 25.09.2009, 09.07.2009, 29.01.2009, 01.04.2008, 07.04.2008, 04.05.2012, 05.04.2012, 05.04.2012, 06.06.2012, 19.07.2012, 06.06.2012, 05.04.2012, 13.07.2011, 05.04.2012, 07.12.2011, 10.09.2014, 21.01.2015, 17.11.2015, 22.03.216 of the Lahore High Court, Lahore passed in W.P.13331/2006, S.T.R.68/2006, S.T.R.13/2007, S.T.A.5/2005, S.T.R.42/2006, W.P.13499/2003, W.P.16171/2008, S.T.A.23/2006, S.T.A.2/2007, S.T.R.44/2010, S.T.R.29/2010, S.T.R.144/2011, S.T.R.95/2010, S.T.R.36/2011, S.T.R.26/2010, S.T.R.76/2010, S.T.R. 55/2009, S.T.R.82/2010, S.T.R.32/2010, S.T.R.73/2010 S.T.R.22/2010, S.T.R.77/2009, S.T.R.21/2010, S.T.R.43/2010,, S.T.R.85/2010, S.T.R.101/2010, S.T.R.21/2011, S.T.R.62/2011, S.T.R.68/2011, S.T.R.69/2011, S.T.R.75/2011, S.T.R.70/2011, S.T.R.22/2011, S.T.R.83/2011, S.T.R.130/2011, S.T.R.13/2011, S.T.R.114/2011, S.T.R.89/2014, S.T.R.14/2015, S.T.R.194/2015, S.T.R.195/2015 and S.T.R.58/2016 respectively)

**(a) Interpretation of statutes---**

---Mandatory/directory/provision, determination of--- Test--- Word "shall" used in a provision of law---Scope---Word 'shall' was to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature branded a provision as mandatory, especially when an authority was required to do something in a particular manner---Ultimate test to determine whether a provision was mandatory or directory was that of ascertaining the legislative intent---While the use of the word 'shall' was not the sole factor which determined the mandatory or directory nature of a provision, it was certainly one of the indicators of legislative intent---Other factors included the presence of penal consequences in case of non-compliance, but the clearest indicator was the object and purpose of the statute and the provision in question---Court was duty bound to garner the real intent of the legislature as expressed in the law itself.

Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited PLD 2012 SC 247; Safeer Travels (Pvt.) Ltd. v. Muhammad Khalid Shafi through Legal Heirs PLD 2007 SC 504; Mian Muhammad Nawaz Sharif v. President of Pakistan and others PLD

1993 SC 473; Syed Zia Haider Rizvi and others v. Deputy Commissioner of Wealth Tax, Lahore and others 2011 SCMR 420; In re: Presidential Election, 1974 AIR 1974 SC 1682; Lachmi Narain v. Union of India AIR 1976 SC 714 and Dinesh Chandra Pandey v. High Court of Madhya Pradesh and another (2010) 11 SCC 500 ref.

**(b) Sales Tax Act (VII of 1990)---**

---Ss. 11(4), first proviso [erstwhile], 36(3), first proviso [erstwhile], 11(5) & 74--- Sales tax, recovery of---Show cause notice---Adjudication proceedings---Order-in-original---Limitation period---Question as to whether the limitation period contained in the first provisos to the erstwhile Ss. 11(4) & 36(3) of the Sales Tax Act, 1990, and the current S. 11(5) of the Act for passing an order thereunder was 'mandatory' or 'directory' in nature; held, that provisions of S. 11 and the erstwhile S.36 of the Sales Tax Act, 1990 ("the Act") were mandatory in nature, and any order passed beyond the time period stipulated therein would be invalid---Collector/Commissioner had the power to extend the time within which an order under provisions of S. 11 or the erstwhile S. 36 of the Act was to be passed---Such time could also be extended in a particular case or class of cases by the Federal Board of Revenue ("the Board") or the Commissioner if empowered by the Board, as per the provisions of S. 74 of the Act---Power to extend time in terms of S. 74 of the Act must be exercised within a reasonable time period of 'six months' from the date when the time period provided in the first provisos to S. 11 and the erstwhile section 36 of the Act and the extension granted thereunder had lapsed, and such power could only be exercised (by the Board under S. 74) to grant an extension of not more than a reasonable time period of 'six months'.

Plain language of the first provisos to the erstwhile sections 11(4) and 36(3) of the Sales Tax Act, 1990, clearly indicated that the tax officer was bound to pass an order within the stipulated time period of forty-five days, and any extension of time by the Collector could not in any case exceed ninety days. The Collector could not extend the time according to his own choice and whim, as a matter of course, routine or right, without any limit or constraint; he could only do so by applying his mind and after recording reasons for such extension in writing. Language of the first proviso was, thus, meant to restrict the officer from passing an order under sections 11(4) and 36(3) whenever he wanted. It also restricted the Collector from granting unlimited extension. The curtailing of the powers of the officer and the Collector and the negative character of the language employed in the said first provisos pointed towards their mandatory nature. This was further supported by the fact that the first provisos were inserted through an amendment. Prior to such insertion, undoubtedly there was no time limit within which the officer was required to pass orders under sections 11(4) and 36(3) of the Act. The insertion of the first provisos through an amendment reflected the clear intention of the legislature to curb the earlier latitude conferred on the officer for passing an order under the said sections. When the legislature made an amendment in an existing law by providing a specific procedure or time frame for performing a certain act, such provision could not be interpreted in a way which would render it redundant or nugatory. Thus, the first provisos to erstwhile sections 11(4) and 36(3) of the Act and the first proviso to the current section 11(5) of the Act were mandatory in

nature, and the natural corollary of non-compliance with their terms would be that any order passed beyond the stipulated time period would be invalid.

Collector had the power to grant extensions within which an order under erstwhile sections 11(4) and 36(3) of the Act were to be passed, however, such extension could not exceed ninety days. It was not incumbent upon the Collector to extend the time within the currency of the initial time period of forty-five days; it was entirely possible to extend the time even after the expiry of the initial time period but the critical period in this regard was ninety days because at the expiry of this maximum period time could not be further extended. As per the first provisos to erstwhile sections 11(4) and 36(3) of the Act, if an officer failed to pass an order within forty-five days (the initial time period), the Collector need not grant an extension within such forty-five days, instead he could do so after the said number of days. However, since the latter part of the first provisos only allowed him to grant an extension of ninety days, thus any extension granted must not exceed the maximum limit of one hundred and thirty-five days (forty-five plus ninety) from the date of the show cause notice.

In terms of section 74 of the Act, the Federal Board of Revenue ("the Board") also had the power to extend the time within which an order under the erstwhile sections 11(4) and 36(3) of the Act and the current section 11(5) of the Act were to be passed. However this did not mean that in exercise of its power under section 74 of the Act, the Board would have unfettered and unbridled authority to extend time when, and for however long, it felt it expedient to do so. Rather time would only be extended in certain cases, after application of mind and that too for a reasonable amount of time. For the purposes of settling the reasonable time, after the expiry of the two time periods envisaged by the first provisos to erstwhile sections 11(4) and 36(3) of the Act, i.e. forty-five days [within which the order was to be passed] and a further ninety days [extended period under the first provisos], the Board should have six months within which it may grant extension of time under section 74 which (extension) could also not exceed six months. If such reasonable time also lapsed, then the rule of past and closed transaction shall apply because it was inconceivable in law that the Board would have infinite and unlimited time within which it could grant extensions under section 74. Board could not grant infinite and unlimited extension under section 74 to obliterate the vested rights that stood created in favour of the taxpayer on account of lapse of time.

Federal Land Commission through Chairman v. Rias Habib Ahmed and others PLD 2011 SC 842 ref.

### **(c) Interpretation of statutes---**

---Casus omissus, principle of---Scope---Principle of reading in or 'casus omissus' was not to be invoked lightly, rather it was to be used sparingly and only when the situation demanded it---Courts should refrain from supplying an omission in the statute because to do so steered the courts from the realms of interpretation or construction into those of legislation.

Abdul Haq Khan and others v. Haji Ameerzada and others PLD 2017 SC 105 and Principles of Statutory Interpretation (13th Ed.) by Justice G. P. Singh ref.

**(d) Interpretation of statutes---**

---'Directory' and 'mandatory' provisions---Scope---When a statute required that a thing should be done in a particular manner or form, it had to be done in such manner, but if such provision was directory, the act done in breach thereof would not be void, even though non-compliance may entail penal consequences; however, non-compliance of a mandatory provision would invalidate such act.

Rubber House v. Excelsior Needle Industries Pvt. Ltd. AIR 1989 SC 1160 ref.

Izhar-ul-Haq, Advocate Supreme Court for Appellants (in C.As. 682-684/08, 131, 233, 253, 504/11, 389-401/13, 710, 711, 713/13, 219 and 220/11)

Dr. Farhat Zafar, Advocate Supreme Court, M. S. Khattak, Advocate-on-Record and Raja Abdul Ghafoor, Advocate-on-Record for Appellants (in C.As. 678-683/12, 783/12, 1632/14, 565/15, 1424, 1425, 1507, 2470/16 and 729-732/12).

Farhat Nawaz Lodhi, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for Appellants (in C.A. 733/10).

Ch. M. Zafar Iqbal, Advocate Supreme Court for Appellants (in C.A. 712/13).

Nemo for Respondents (in C.A. 220/11).

Syed Naveed Andrabi, Advocate Supreme Court for Respondents (in C.As. 682/08, 397 and 398/13).

Riaz Hussain Azam, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondents (in C.A. 733/10).

Waqar Azeem, Advocate Supreme Court for Respondents (in C.As. 682-684/08).

Nemo for Respondents (in C.A. 131/11).

Nazir Mahmood Qureshi, Advocate Supreme Court for Respondents (in C.A. 233/11).

Nemo for Respondents (in C.A. 253/11).

Muhammad Iqbal Hashmi, Advocate Supreme Court for Respondents (in C.As. 504/11, 396, 399, 710/13).

Nemo for Respondents (in C.As. 678/12, 713/13, 683/12, 392/13).

Shazib Masud, Advocate Supreme Court for Respondents (in C.A. 390/13).

Mian Ashiq Hussain, Advocate Supreme Court for Respondents (in C.A. 400/13).

Nemo for Respondents (in C.As. 394, 401/13, 711/13, 1632/14, 2470/16, 565/15, 730/12, 712/13, 732/12).

M. Ajmal Khan, Advocate Supreme Court for Respondents (in C.A. 1507/16).

Ex parte for Respondents (in C.As. 219/11, 729/12, 731/12).

Nemo for Respondents (in C.As. 679-682, 783/12, 382, 391, 393, 395/13, 1424, 1425/16).

Date of hearing: 31st March, 2017.

## JUDGMENT

**MIAN SAQIB NISAR, C.J.**---The facts pertaining to these appeals, with the leave of the Court, are that the respondents are manufacturing units/suppliers who made taxable supplies during various tax years and filed sales tax returns for the relevant periods. They were served with show cause notices under the erstwhile sections 11 and 36 of the Sales Tax Act, 1990 (the Act) and later the current section 11 thereof. The orders-in-original were passed beyond the period of limitation provided in law. Aggrieved, some respondents approached the learned High Court directly by way of writ petitions, whilst others challenged the orders before the Customs, Excise and Sales Tax (Appellate) Tribunal (the Tribunal) which culminated in sales tax references before the learned High Court. The learned High Court allowed the writ petitions and the references alike through the impugned judgments; holding that since the adjudicating authority failed to decide the show cause notices within the statutory period provided in the first provisos to the erstwhile sections 11(4) and 36(3) of the Act and the current section 11(5) thereof, the orders were barred by time. Leave was granted on 09.04.2008 in the following terms:-

" whether the limitation of 45 days for completion of adjudication proceedings under Finance Ordinance, 2000 enhanced to 90 days by the Finance Act, 2003 was mandatory or directory in nature "

2. The moot point is whether the limitation period contained in the first provisos to the erstwhile sections 11(4) and 36(3) of the Act and the current section 11(5) thereof for passing an order thereunder is mandatory or directory in nature (note:- as the show cause notices and the orders passed pursuant thereto were spread over a span of approximately 15 years, i.e. from 1998 to 2013, we shall discuss all the relevant provisions which were in force from time to time). The relevant law read as under:-

Erstwhile section 36

[36. Recovery of tax not levied or short-levied or erroneously refunded.-

:

(3) The officer of [Inland Revenue] empowered in this behalf shall, after considering the objections of the person served with a notice to show cause

under subsection (1) or subsection (2), determine the amount of tax or charge payable by him and such person shall pay the amount so determined [:]

[Provided that order under this section shall be made within [one hundred and twenty] days of issuance of show cause notice or within such extended period as [the [Commissioner] [\* \* \*]] may, for reasons to be recorded in writing, fix, provided that such extended period shall in no case exceed [sixty] days [:]

[Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days shall be excluded from the computation of the periods specified in the first proviso.]

:

### **Erstwhile section 11**

[11. Assessment of Tax.-

:

(4) 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] to the person in default specifying the grounds on which it is intended to proceed against him and the officer of [Inland Revenue] shall take into consideration the representation made by such person and provide him with an opportunity of being heard [:]

[Provided that order under this section shall be made within [one hundred and twenty] days of issuance of show cause notice or within such extended period as [the [Commissioner] [\* \* \*]] may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed [sixty] days [:]

[Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days shall be excluded from the computation of the periods specified in the first proviso.]

:

Current section 11

[11. Assessment of Tax and recovery of tax not levied or short-levied or erroneously refunded.--

:

(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 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:

Provided that order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed ninety days:

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days shall be excluded from the computation of the period specified in the first proviso.

:

[74. Condonation of time-limit.-Where any time or period has been specified under any of the provisions of the Act or rules made thereunder within which any application is to be made or any act or thing is to be done, the [Board] may, in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate [:]

[Provided that the Board may, by notification in the official Gazette, and subject to such limitations or conditions as may be specified therein, empower a [Commissioner] to exercise the powers under this section in any case or class of cases.]]

[Explanation.- ]

Since the first provisos to the erstwhile sections 11(4) and 36(3) of the Act and the current section 11(5) of the Act are identical, save for the time limit prescribed and the officers mentioned therein, we are using the erstwhile section 36(3) (as originally inserted in the Act) as notionally representative of the other sections and any reference to the said provision and the terms used therein are to be taken to include the corresponding provisions and terms of the erstwhile section 11(4) and the current section 11(5) of the Act and the subsequent amendments made therein from time to time (unless stated otherwise).

3. The learned counsel for the petitioner/department argued that once the first proviso to section 36(3) of the Act had been inserted, a time frame came to be prescribed for the officer of Sales Tax (the 'officer') to pass an order under the said section and the same is not mandatory but rather directory especially considering that this period can be extended by the Collector under the first proviso itself and by the Board (or Collector notified by the Board) under section 74 of the Act. He was of the opinion that the order passed by the officer after the stipulated period would not be vitiated merely

on the ground that it had been passed beyond such time frame; therefore, the impugned orders of the learned High Court were liable to be set aside. Conversely, the learned counsel for the respondents submitted that the word 'shall' appearing in the first proviso to section 36(3) of the Act rendered the provision mandatory and the officer was bound to pass the order within the stipulated period. Further, whilst time could be extended under the Act, such extension could not be for an unlimited period but only for the period specified therein.

4. The first proviso to section 36(3) of the Act (as it stood at the time it was inserted) stipulated that orders passed thereunder 'shall be made within forty-five days' of the issuance of the show cause notice or within such extended period as the officer may, for reasons to be recorded in writing, fix, provided that such extended period 'shall in no case exceed ninety days'. There were basically two time frames: (i) a period of forty-five days within which the officer was to pass an order under section 36 of the Act; and (ii) a period of ninety days which was the maximum period for which the officer could grant extension of time (with reasons recorded in writing) for passing of the order under section 36 supra. The word 'shall' as opposed to 'may' has been used on both occasions when prescribing the maximum time period in the first proviso. It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory, especially when an authority is required to do something in a particular manner. Reference in this behalf may be made to the case of Haji Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited (PLD 2012 SC 247) wherein, whilst interpreting Order VII Rule 11 of the Code of Civil Procedure, 1908, this Court held that the Courts were bound by the word 'shall' used therein which made it mandatory to reject a plaint if it appeared from the statements in the plaint that it was barred by any law. In effect the deployment of the word 'shall' in this context denuded the Courts of their discretion in this behalf. Similarly, in the judgment reported as Safeer Travels (Pvt.) Ltd. v. Muhammad Khalid Shafi through legal heirs (PLD 2007 SC 504) it was held with regard to section 16(2) of the Sindh Rented Premises Ordinance, 1979 that the word 'shall' made it obligatory for the Court to strike off a defence in case of default. Therefore we find that the use of the word 'shall' is a strong indicator that the provisos in question are mandatory in nature.

5. Learned counsel for the appellants argued that the word 'shall' is not always to be construed as mandatory but rather the determining factor is whether non-compliance with a provision entails penal consequences or not. He stated that since no such consequences flowed from section 36(3) of the Act thus the proviso was directory notwithstanding the fact that the word 'shall' was used therein.

6. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself. Reference may be made to the cases of Syed Zia Haider Rizvi and others v. Deputy

Commissioner of Wealth Tax, Lahore and others (2011 SCMR 420), In Re. Presidential Election, 1974 (AIR 1974 SC 1682), Lachmi Narain v. Union of India (AIR 1976 SC 714) and Dinesh Chandra Pandey v. High Court of Madhya Pradesh and another [(2010) 11 SCC 500].

7. From the plain language of the first proviso, it is clear that the officer was bound to pass an order within the stipulated time period of forty-five days, and any extension of time by the Collector could not in any case exceed ninety days. The Collector could not extend the time according to his own choice and whim, as a matter of course, routine or right, without any limit or constraint; he could only do so by applying his mind and after recording reasons for such extension in writing. Thus the language of the first proviso was meant to restrict the officer from passing an order under section 36(3) supra whenever he wanted. It also restricted the Collector from granting unlimited extension. The curtailing of the powers of the officer and the Collector and the negative character of the language employed in the first proviso point towards its mandatory nature. This is further supported by the fact that the first proviso was inserted into section 36(3) supra through an amendment (note:- the current section 11 of the Act, on the other hand, was enacted with the proviso from its very inception in 2012). Prior to such insertion, undoubtedly there was no time limit within which the officer was required to pass orders under the said section. The insertion of the first proviso reflects the clear intention of the legislature to curb this earlier latitude conferred on the officer for passing an order under the section supra. When the legislature makes an amendment in an existing law by providing a specific procedure or time frame for performing a certain act, such provision cannot be interpreted in a way which would render it redundant or nugatory. Thus, we hold that the first proviso to section 36(3) of the Act [and the first proviso to the erstwhile section 11(4) and the current section 11(5) of the Act] is/was mandatory in nature.

8. As regards the submission of the learned counsel for the appellants that the time period in the first proviso was only meant to ensure that orders were passed within a reasonable time and in fact, the orders could have been passed beyond the stipulated time period if the department were able to show that special circumstances existed warranting the same, suffice it to say that there is no justification whatsoever to read 'special circumstances' and 'reasonable time' into the said proviso. It is settled law that the principle of reading in or casus omissus is not to be invoked lightly, rather it is to be used sparingly and only when the situation demands it. In fact the Courts should refrain from supplying an omission in the statute because to do so steers the Courts from the realms of interpretation or construction into those of legislation. This principle has been aptly dealt with by this Court in judgment reported as Abdul Haq Khan and others v. Haji Ameerzada and others (PLD 2017 SC 105) in which it was observed that:-

The reading in of words or meaning into a statute when its meaning is otherwise clear is not permissible. As a matter of statutory interpretation, Courts generally abstain from providing casus omissus or omissions in a statute, through construction or interpretation. An exception to this rule is, when there is a self-evident omission in a provision and the purpose of the law as intended by the legislature cannot otherwise be achieved, or if the literal

construction of a particular provision leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. However, this power is to be exercised cautiously, rarely and only in exceptional circumstances.

Therefore, we find that the wording of the first proviso to section 36(3) of the Act contained no ambiguity or obscurity warranting reading in of the aforesaid phrases.

9. Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. But if such provision is directory, the act done in breach thereof would not be void, even though non-compliance may entail penal consequences. However, non-compliance of a mandatory provision would invalidate such act. In this context, reference may be made to the case of *Rubber House v. Excellisor Needle Industries Pvt. Ltd.* (AIR 1989 SC 1160). Thus, having held the first proviso to section 36(3) supra to be mandatory, the natural corollary of non-compliance with its terms would be that any order passed beyond the stipulated time period would be invalid.

10. Learned counsel for the appellants submitted that in terms of the second proviso to section 36(3) of the Act, the time consumed by virtue of stay orders or adjournments not exceeding thirty days was to be excluded from the calculation of the time period in the first proviso. We find that such exclusion could not exceed 30 days as per the clear mandate of the provision itself.

11. Learned counsel for the appellants also stated that the Collector under the first proviso to section 36(3) of the Act was empowered to grant extensions. Learned counsel for the respondent argued that the Collector could only extend time during the subsistence of the time limit provided in the former part thereof, accordingly, as per section 36(3) of the Act, once the time period of forty-five days for passing the order under the section *ibid* had passed, no extension could be granted. We do not find any force in this argument. Undoubtedly the Collector has the power to grant extensions which cannot exceed ninety days, as is manifest from the wording of the latter part of the first proviso, however it is not incumbent upon the Collector to extend the time within the currency of the initial time period of forty-five days: it is entirely possible to extend the time even after the expiry of the initial time period but the critical period in this regard is ninety days because at the expiry of this maximum period time cannot be further extended. By way of illustration, as per the first proviso to section 36(3) of the Act, if an officer fails to pass an order within forty-five days (the initial time period), the Collector need not grant an extension within such forty-five days, instead he can do so after the said number of days. However, since the latter part of the first proviso only allows him to grant an extension of ninety days, thus any extension granted must not exceed the maximum limit of one hundred and thirty five days (forty-five plus ninety) from the date of the show cause notice.

12. As regards the reliance placed on section 74 of the Act, it provides that where a time frame has been stipulated in the Act within which an act or thing is to be done, the Board, or the Commissioner notified by the Board, are empowered to permit such act or thing to be done within such time period as they may consider appropriate. Passing

an order under section 36(3) of the Act is certainly an act or thing to be done under the Act. Therefore the Board (which expression shall hereinafter include Commissioner notified by the Board) has the power under section 74 of the Act to permit the passing of an order under the aforesaid section within such time period as it may consider appropriate. While applying the principles of harmonious construction, we find that the proviso is restricted in its application to the section it is attached to, whereas section 74 of the Act is of general applicability and shall apply to all the provisions of the Act and the rules framed thereunder. This provision will undoubtedly have an overriding effect over the first proviso to section 36(3) supra and can be held to be an exception thereto. The purpose of section 74 supra is to give a separate overriding power to the Board to permit any act or thing to be done under the statute within such time period as it may deem appropriate, which undoubtedly is independent of any other provision of the Act which provides a time frame. To restrict the time period that can be granted under section 74 supra to the maximum period available under the first proviso to section 36(3) of the Act would render the former absolutely redundant and superfluous, which cannot be countenanced under the settled rules of interpretation which do not allow such redundancy to be attributed to the legislative intent. Therefore, where the Board has permitted the passing of an order under the proviso within a time frame different from that contained therein, this new time frame shall be deemed to be the relevant one. However this does not mean that in exercise of its power under section 74 of the Act, the Board will have unfettered and unbridled authority to extend time when, and for however long, it feels it expedient to do so. Rather time would only be extended in certain cases, after application of mind and that too for a reasonable amount of time. For the purposes of settling the reasonable time, we hold that after the expiry of the two time periods envisaged by the first proviso to section 36(3) of the Act, i.e. forty-five days [within which the order under section 36 of the Act is to be passed] and a further ninety days [extended period under the first proviso to section 36(3) *ibid*], the Board should have six months within which it may grant extension of time under section 74 supra which (extension) can also not exceed six months. If the reasonable time mentioned above also lapses, then the rule of past and closed transaction shall apply because it is inconceivable in law that:- (a) the Board would have infinite and unlimited time within which it can grant extensions under section 74 supra; and (b) the Board can grant infinite and unlimited extension under section 74 *ibid*; to obliterate the vested rights that stand created in favour of the taxpayer on account of such lapse of time. In this respect, the judgment reported as *Federal Land Commission through Chairman v. Rais Habib Ahmed and others* (PLD 2011 SC 842) is relevant in which this Court, while relying upon the settled principles of past and closed transaction and reasonable time, stipulated that a period of six months was the reasonable time for the purposes of exercise of power by the Federal Government under section 25 of the Land Reforms Act, 1977. Thus we are of the opinion that while undoubtedly the Board has the power under section 74 supra to extend the time limit and permit an order under section 36 supra to be passed within such time or period as it may consider appropriate, such power must be exercised within a reasonable time period of six months from the date when the time period provided in the first proviso to section 36(3) supra and the extension granted thereunder have lapsed, and such power can only be exercised (by the Board under section 74 supra) to grant an extension of not more than a reasonable time period of six months.

13. In view of the findings given hereinabove, it is appropriate to consider the relevant facts of each case which are tabulated below:-

<b>Civil Appeal No.</b>	<b>Date of show cause notice</b>	<b>Date of order in original</b>	<b>Limitation period</b>	<b>Observations</b>
682/2008	06.04.1998	No order passed as yet.	90 days	Beyond time
683/2008	22.06.2000	24.02.2004	45 days	Beyond time
684/2008	19.06.2000	30.10.2000	45 days	Beyond time
131/2011	06.04.2002	31.07.2002	45 days	Beyond time
233/2011	31.05.2004	02.01.2006	90 days	Beyond time
253/2011	21.11.2001	20.08.2003	45 days	Beyond time
504/2011	23.04.2005	28.03.2006	90 days	Beyond time
219/2011	09.09.2004	30.04.2005	90 days	Beyond time
220/2011	17.05.2002	28.10.2002	45 days	Beyond time
678/2012	07.11.2001	23.07.2003	45 days	Beyond time
679/2012	11.12.2006	23.10.2008	90 days	Beyond time
680/2012	27.11.2001	08.05.2002	45 days	Beyond time
681/2012	19.07.2001	18.10.2001	45 days	Beyond time
682/2012	20.03.2006	30.12.2006	90 days	Beyond time
683/2012	12.02.2002	30.05.2002	45 days	Beyond time
783/2012	15.11.2007	20.09.2008	90 days	Beyond time
729/2012	09.08.2003	31.03.2005	90 days	Beyond time
730/2012	19.02.2009	13.10.2009	120 days	Beyond time
731/2012	09.08.2003	24.11.2004	90 days	Beyond time
732/2012	06.11.2006	14.12.2007	90 days	Within time (extension granted by the Board)
389/2013	04.03.2002	30.11.2005	45 days	Beyond time
390/2013	12.04.2001	17.08.2001	45 days	Beyond time
391/2013	19.05.1999	17.06.2004	45 days	Beyond time
392/2013	10.11.2004	12.10.2005	90 days	Beyond time
393/2013	12.12.2002	11.11.2004	45 days	Beyond time
394/2013	17.10.2008	12.02.2009	120 days	Within time
395/2013	22.10.2007	28.02.2008	90 days	Beyond time
396/2013	13.03.2004	18.05.2005	90 days	Beyond time
397/2013	10.03.2004	10.06.2005	90 days	Beyond time
398/2013	28.06.2003	20.03.2004	90 days	Beyond time
399/2013	21.09.1998	19.06.1999	No limitation period	Before insertion of proviso
400/2013	07.05.2005	06.10.2005	90 days	Beyond time
401/2013	21.05.2005	21.10.2005	90 days	Beyond time
710/2013	28.11.2007	30.12.2008	90 days	Beyond time

711/2013	22.04.2005	26.12.2006	90 days	Beyond time
712/2013	28.05.2007	12.09.2008	90 days	Within time (extension granted by the Board)
713/2013	17.12.2004	16.05.2005	90 days	Beyond time
1632/2014	09.08.2003	06.04.2004	90 days	Beyond time
565/2015	16.05.2003	12.06.2004	45 days	Beyond time
1424/2016	15.05.2012	05.10.2012	120 days	Beyond time
1425/2016	14.03.2012	04.10.2012	120 days	Beyond time
2470/2016	14.12.2012	19.04.2013	120 days	Beyond time

14. While dictating the judgment, it came to our attention that in Civil Appeal No.394/2013, the show cause notice was issued on 17.10.2008 while the order was passed on 12.02.2009 which was within the limitation period of 120 days. In Civil Appeal No.399/2013, the show cause notice was issued on 21.09.1998 and the order was passed on 19.06.1999 therefore the matter pertained to the time period when the proviso containing the limitation period was not yet inserted into the Act hence, such limitation period did not apply thereto. In Civil Appeal No.712/2013, the show cause notice was issued on 28.05.2007 and the order was passed on 09.09.2008. However there are letters of the Board on record suggesting that the time period was extended up till 30.09.2008 under the second proviso to section 45(1) read with section 74 of the Act. Thus the order was passed within time. Similarly, in Civil Appeal No.732/2012, the show cause notice was issued on 06.11.2006 and the order was passed on 14.12.2007, whereas there is a letter of the Board on record indicating that the time period was extended up till 31.12.2007 under the provisions ibid hence the order was passed within time. Therefore these four noted appeals are separated from the rest of the cases and the office is directed to fix them for re-hearing.

15. In the remaining appeals, all the orders of the officers were time barred as they were passed beyond the time period provided in the respective law existing at the relevant point in time and there is no material on the record in any of the cases suggesting that time was extended [under the second part of the first proviso to section 36(3) of the Act or section 74 thereof] for passing an order under section 36 of the Act or that there was any stay order or adjournment granted on the request of the assessee [under second proviso to section 36(3) of the Act] warranting exclusion of a period of 30 days from the limitation period in the first proviso, therefore, Civil Appeals Nos.682 to 684 of 2008, 131, 233, 253, 504, 219 and 220 of 2011, 678 to 683, 783 and 729 to 731 of 2012, 389 to 393 and 395 to 398, 400, 401, 710, 711 and 713 of 2013, 1632 of 2014, 565 of 2015 and 1424 to 1425 and 2470 of 2016 are dismissed.

16. The above are the detailed reasons for our short order of even date which reads as under:-

"For the reasons to be recorded later and without in any manner limiting our jurisdiction to appropriately enlarge the scope of the detailed judgment, we hold that the provisions of section 11 and the erstwhile section 36 of the Sales

Tax Act, 1990 (the Act) are mandatory in nature. The Collector/Commissioner has the power to extend the time within which an order under either of the Sections supra is to be passed; besides, such time can also be extended in a particular case or class of cases by the Federal Board of Revenue (or the Commissioner if empowered by the said Board) as per the provisions of section 74 of the Act. In the light of the above, all these petitions (except Civil Appeals Nos.733/2010 and 1507/2006) are dismissed on the above question of law.

**C. As.733/2010 AND 1507/2016**

Due to their peculiar facts, these cases are separated from the aforementioned cases and are to be relisted."

MWA/C-9/SC Order accordingly.

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