IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE SHAKEEL AHMAD
MR. JUSTICE MIANGUL HASSAN AURANGZEB

C.As.634 to 636, 1290 to 1295 of 2018, 1424 to 1430 of 2019, 1388 to 1392 of 2017, 57, 852, 1128 of 2020, C.P.L.As.2286-L, 2298-L, 2299-L, 2065-L of 2017, C.As.436, 1693 of 2021, C.P.L.As.1604-L, 1411-L of 2022, C.A.1486 of 2021, C.P.L.As.1397-L, 770-L, 1285-L of 2022, C.A.732 of 2012, 394 of 2013, 399, 712 of 2013, C.P.L.As.5107, 592-P of 2023, 2473-L and 2474-L of 2022

(On appeal against judgment dated 24.08.201, 16.01.2017, 18.01.2017, 19.01.2017, 12.02.2015, 12.02.2015, 03.04.2019, 20.11.2014, 23.11.2015, 08.05.2017, 12.06.2017, 14.06.2017, 30.05.2017, 24.05.2017, 26.01.2021, 07.03.2022, 09.03.2022, 08.12.2020, 09.03.2022, 24.01.2022, 01.03.2022, 06.06.2012, 05.04.2012, 05.04.2012, 05.02.2012, 17.10.2023, 11.05.2023 and 22.03.2022 passed by the Lahore High Court, Lahore, Lahore High Court Bahawalpur Bench Bahawalpur, Lahore High Court, Multan Bench, Multan, Islamabad High Court, Islamabad, Peshawar High Court, Peshawar in STR No.33/2005, ETR No.1 of 2005 and STRs No.10 of 2006, 01/2011/BWP, 02/2011/BWP, 02/2013/BWP, 03/2013/BWP, 03/2016/BWP, STR No.169/2012, 10/2011, 165/2013, 96/2013, 82/2012, , 23/2012, 24/2012, 14/2008, 21/2009, 185/2011, 116/2007, 127/2007, 42/2011, 01/2008, 212/2015, 81/2013, 126/2013, 78/2014, 32435/2017, 22/2012, 4925/2021, 157/2012, 77/2013, 173/2011, 36459/2021, 79765/2021, Customs Reference No.29033/2019, Sales Tax Reference No.73/2010, 101/2010, 75/2011, 13/2011, 11/2014, 23-P/2022, ETR No.05/2011 and STR No.88/2011.)

And C.M.As.1917-L, 1918-L, 1919-L, 966-L and 964-L /2015
(Stay)
In C.A.1388, 1389, 1390, 1391 and 1392 of 2017

And
C.R.Ps.153 and 154/2017
(For review of judgment dated 31.03.2017 passed by this Court in C.A.399/2013 and C.A.682/2008.)

And
C.M.A.5471/2019
(Permission to file and argue)
In C.R.P.Nil/2019 In C.A.219/2011

M/s. WAK Limited Multan Road, Lahore	:	C.A.634 to 636/2018
Commissioner Inland Revenue, Bahawalpur	:	C.As.1290 to 1295/2018
Commissioner Inland Revenue, Lahore	:	C.As.1424, 1425, 1429, 1430/2019, 1693/2021, 1604-L, C.P.L.As.1397-L,

		2473-L and 2474-L /2022
The Commissioner Inland Revenue Zone-I, Regional Tax Office, Gujranwala	:	C.As.1426 and 1427/2019
Commissioner Inland Revenue, Zone-V, Regional Tax Office-II, Lahore, etc.	:	C.A.1428/2019 and C.A.1486/2021
Haseeb Waqas Sugar Mills Ltd., through its Authorized Representative	:	C.A.1388/2017 and C.M.A.1917-L/2015
Abdullah Sugar Mills Ltd., through its Authorized Representative	:	C.As.1389, 1390, 1391, 1392/2017 and C.M.As.1918-L, 1919-L, 966-L, 964-L /2015
Commissioner Inland Revenue Zone-II, RTO, Multan	:	C.A.57/2020
Commissioner of Inland Revenue, Zone-II, RTO, Gujranwala, etc.	:	C.A.852/2020
Commissioner Inland Revenue Zone-I, Regional Tax Office, Lahore	:	C.A.1128/2020
The Commissioner Inland Revenue, Zone-VII, Corporate Regional Tax Office, Lahore	:	C.P.L.A.2286-L/2017
Commissioner Inland Revenue, Sialkot	:	C.P.L.As.2298-L, 2299-L and 2065-L/2017
Commissioner Inland (Rev.) Legal Division Regional Tax Office, Lahore	:	C.R.P.153/2017
The Collector of Sales Tax, Gujranwala, etc.	:	C.R.P.154/2017
Commissioner Inland Revenue, Zone II R.T.O., Gujranwala	:	C.A.436/2021
Director Intelligence & Investigation-FBR, Lahore	:	C.P.L.A.1411-L/2022 and C.A.712/2013
Commissioner Inland Revenue, Gujranwala	:	C.P.L.A.770-L/2022
Collector of Customs, Collectorate of Customs (Appraisement), Lahore	:	C.P.L.A.1285-L/2022
Collector of Customs Federal Excise & Sales Tax, Multan	:	C.M.A.5471/2019
Commissioner Inland Revenue, Faisalabad & another	:	C.A.732/2012
Commissioner Inland (Rev.) Legal Division Regional Tax Office, Lahore	:	C.A. 394, 399/2013
Commissioner Inland Revenue (Legal Division), Large Tax Payers Unit, Islamabad	:	C.P.L.A.5107/2023
Commisioner Inland Revenue Mardan Zone RTO, Mardan	:	C.P.L.A.592-P/2023
	...	**Appellants / Petitioners / Applicants**
Vs		
Collector Central Excise & Sales Tax, Lahore (Now Commissioner Inland Revenue, LTU, Lahore) and others	:	C.A.634 to 636 of 2018
M/s. Pak Papers Mils (Pvt.) Ltd.	:	C.A.1290/2018
M/s. Khalid Modern Industries (Pvt.) Ltd.	:	C.A.1291/2018
M/s. Asia Ghee Mills (Pvt.) Ltd.	:	C.A.1292/2018
M/s. Blue Star Spinning Mills (Pvt.) Ltd.	:	C.A.1293/2018
M/s. Abbas Cotton Factory	:	C.A.1294/2018
M/s. Imran Agencies	:	C.A.1295/2018

M/s. R.F.K Traders	:	C.A.1424/2019
M/s. Pak Kuwait Textile, etc.	:	C.A.1425/2019
M/s. Ibrahim Steel Casting, Dewan Road, More Emanabad Grid Station, Gujranwala	:	C.A.1426/2019
M/s. Allah Tawakal Steel Mills, Near Ghugi Samanabad, Gujranwala	:	C.A.1427/2019
M/s. Shahbaz Engineering Works, Javed Park, Kala Khatai Road, Shahdara, Lahore, etc.	:	C.A.1428/2019
M/s. Alpine Textile Industries, Lahore	:	C.A.1429/2019
M/s. A.R.R. Corporation, Lahore	:	C.A.1430/2019
Govt. of Pakistan through its Secretary Finance, etc.	:	C.A.1388/2017 and C.M.A.1917-L/2015
Large Taxpayers Unit (LTU), etc.	:	C.A.1389/2017 and C.M.A.1918-L/2015
Appellate Tribunal Inland Revenue, Lahore Bench, etc.	:	C.A.1390/2017 and C.M.A.1919-L/2015
Govt. of Pakistan through its Secretary Finance, etc.	:	C.As.1391, 1392 of 2017, C.M.As.966-L and 964-L of 2015
M/s. Imperial Agro Chemicals (Pvt.) Ltd., Multan	:	C.A.57/2020
M/s. Ittehad Trading Corporation, Gujranwala	:	C.A.852/2020
M/s. Coca Cola Beverages Pakistan Ltd., 5-E-II, Gulberg-III, Lahore	:	C.A.1128/2020
M/s. Shahnawaz Textile Mills Ltd., KM, Manga Road, Raiwind, District, Lahore, etc.	:	C.P.L.A.2286-L/2017
M/s. Hameeda Industries (Pvt.) Ltd., Lahore	:	C.P.L.As.2298-L/2017 and 1397-L/2022
M/s. Barkat International, Company	:	C.P.L.A.2299-L/2017
M/s. Rado Engineering Works, Gujrat	:	C.P.L.A.2065-L/2017
M/s. Chaudhry Steel Re-Rolling Mills, LHR.	:	C.R.P.153/2017
M/s. Super Asia Mohammad Din & Sons	:	C.R.P.154/2017
M/s. Rauf Industries, Gujranwala	:	C.A.436/2021
M/s. Makerwal Collieries Limited, Lahore	:	C.A.1693/2021
M/s. Pinnacle Magic Marketing, 97/10-A, Nisar Colony, Lahore	:	C.P.L.A.1604-L/2022
M/s. Ayub Textile Industries, Faisalabad	:	C.P.L.A.1411-L/2022
M/s Fazal Brothers, Lahore	:	C.A.1486/2021
M/s. Tahir Engineering Works, Gujranwala	:	C.P.L.A.770-L/2022
M/s. Hajvery Traders, Lahore, etc.	:	C.P.L.A.1285-L/2022
M/s. Joyia Sadat Cotton Industries	:	C.M.A.5471/2019
M/s. Mian Zafar & Co. & another	:	C.A.732/2012
M/s. Mirtex Enterprises, LHR, etc.	:	C.A.394/2013
M/s. Chaudhry Steel Re-Rolling Mills., LHR.	:	C.A.399/2013
M/s. Umer Textiles	:	C.A.712/2013
M/s Bahria Town Pvt. Ltd., Rawalpindi	:	C.P.L.A.5107/2023
M/s. Redco Enterprises Cantonment Plaza, Mardan and another	:	C.P.L.A.592-P/2023
M/s. Coca Cola Export Corporation, Lahore	:	C.P.L.As.2473-L and 2474-L of 2022
	...	**Respondents**

For the private parties	:	Mr. Ali Sibtain Fazli, ASC (in CA 634-636/2018) Ch. Hafeezullah Yaqoob, ASC (in CA 1291/18) Dl. Muhammad Khan Alizai, ASC (in CA 1292-1294/2018) Mr. M. Ajmal Khan, ASC (Via video-link, Lahore) (in CAs 1426/2019, 1486/2021) Mr. Munawar-us-Salam, ASC (Via video-link, Lahore) Mr. M. Shoaib Rashid, ASC (Via video-link, Lahore) (in CA 1128/2020) Mr. Ijaz Ahmed Awan, ASC (Via video-link, Lahore) (in CA 1388-1392/2017) Syed Naveed Amjad, Indrabi, ASC (in CRP 154/2017)
For Commissioner Inland / FBR	:	Mrs. Kausar Parveen, ASC (in CA 634-636/2018 and CA 1292/18, 1428/19, CPLA 2298-L, 2299-L/17, 2065-L/17, 770-L/22) Ch. Muhammad Zafar Iqbal, ASC (in CA 1290, 1293, 1294, 1295/18 and CAs 1388-1392/17, 712/13, CPLA 1411-L/22, 1285-L/22, 2286-L/17) Mr. Abdul Razzaq Raja, ASC (in CA 57/20 and CMA 5471/21) Dr. Farhat Zafar, ASC (in CA 732/12) Mian Yousaf Umar, ASC (Via video-link, Lahore) (in CA 1424/19, 1429/19, 1430/19, 852/20, 436/21, CPLA 1604-L/22) Malik Qamar Afzal, ASC (in CP 5107/23) Mr. Sarfraz Ahmed Cheema, ASC (Via video-link, Lahore) (in CA 1425/19 and 1128/20) Mr. Ahmed Pervez, ASC (Via video-link, Lahore) (in CA 1693/21) Mr. Yahya, ASC (Via video-link, Lahore) (in CA 1291/18) Mr. M. Saeed Tahir, ASC (Via video-link, Lahore) (in CA 1486/21) Mr. Waqar A. Sh., ASC (Via video-link, Lahore) (in CA 1426 and 1427/19) Mr. Izhar ul Haq, ASC (in CRP 153-154/17, CA 394/13 and 399/13)

Ms. Saba Saeed, ASC
(in CPLA 1397-L/22, 2473-2474-L/22)

Mr. Ishtiaq Ahmad, ASC
(in CP 592-P/23) (Via video-link, Peshawar)

Dr. Ishtiaq, DG (Law), FBR

Dates of Hearing : 21.4.2025 & 28.04.2025

JUDGMENT

Munib Akhtar, J.: This larger Bench has been constituted, in circumstances shortly to be stated, to consider whether the judgment of a learned three member Bench of the Court given in *Collector of Sales Tax, Gujranwala and others v Super Asia Mohammad Din and others* 2017 SCMR 1427, 2017 PTD 1756 ("*Super Asia*") is correct. That decision was concerned with certain provisions of the Sales Tax Act, 1990 ("1990 Act"), set out below, and held the same to be mandatory and not directory. Inasmuch as the said provisions are to be found in virtually identical terms and in the same context in the other two federal laws relating to indirect taxation—the Customs Act, 1969 ("1969 Act") and the Federal Excise Act, 2005 ("2005 Act")—the principles of law enunciated in the judgment obviously have, in terms of well settled rules of precedent as embodied, in particular, in Article 189 of the Constitution, a much broader application than merely the interpretation of the 1990 Act.

2. In *Super Asia*, the Court was concerned with a bunch of cases challenging show cause notices issued over a number of years stretching from 1998 to 2013 for, inter alia, the recovery of tax allegedly short levied or unpaid. At the beginning of the said period, the provisions that fell for consideration were to be found in s. 36. This was omitted by the Finance Act, 2012 and the provisions in question "shifted" to s. 11 which was also substituted in its entirety by that statute. (The provisions were also to be found in s. 11 in its incarnation prior to 2012.) They also underwent certain changes but the substantive nature and effect remained the same. The provisions themselves, as applicable over the years in question, are set out at pp. 1433 to 1435. For convenience, we only reproduce so much of s. 11 as is material, and as it stood at the end of the aforesaid period:

> "**11. Assessment of Tax & 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, 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:
>
> 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 sixty days shall be excluded from the computation of the period specified in the first proviso."

The question before the Court was whether the periods provided for in the first proviso to subsection (5) (and their antecedents in the earlier version of s. 11 and s. 36) were mandatory or directory? To answer this question the Court also examined s. 74, which will be considered later. As noted, the contents of the first proviso are to be found in the other laws as well. For convenience, what is contained in the first proviso, whether in terms of the 1990 Act or the other two laws referred to above, is herein after referred to as the "relevant provisions".

3. The Court held that the relevant provisions were mandatory and not directory (in paras 7 to 9, pp. 1438-9) and that therefore an order made by the adjudicating officer/authority (usually known as an order-in-original and so referred to in this judgment) beyond the stipulated periods was, subject to any permissible application of s. 74 (which was set out in para 12, pp. 1440-1), "invalid".

4. The principles enunciated in *Super Asia* came up for application sometime thereafter in a case before another three member Bench (though the members were overlapping). That Bench expressed certain reservations with the findings recorded in *Super Asia*, in an order dated 20.03.2018 and reported as *Wak Limited v Collector Central Excise and Sales Tax and others* 2018

SCMR 1474 ("*Wak Ltd.*"). That order, as presently relevant, was in the following terms (pg. 1477):

> "3. ... Another question which has been raised by the learned ASC for the petitioner is that if an order is not passed within 45 days and then within 90 days despite extension in terms of the proviso to section 36(3) of the Sales Tax Act, it could not be passed subsequently. Learned ASC for the petitioner in support of his contention placed reliance on the case of *The Collector of Sales Tax Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 PTD 1756)*. We with due deference do not find ourselves in agreement with the interpretation placed on the said provision because the intent behind the said provision of the Act, as far as we are capable to understand it, is to ensure expeditious disposal of case and not an outright extinguishment of the tax liability. Such interpretation cannot be accepted when it also tends to open room for escape of tax liability through official and Institutional manipulations. Even otherwise when no consequence for neglect to comply with the said provisions has been given in the statute, it cannot be construed as mandatory on any account and by any attribute.
>
> 4. We, having considered the questions raised above, grant leave to appeal and at the same time request the honourable Chief Justice to constitute a larger bench on the aforesaid questions...."

It was by reason of this order (herein after referred to as the "referral order") that larger Benches were constituted from time to time to consider the correctness or otherwise of the principles enunciated in *Super Asia*. The matters could not however proceed for one reason or another, and ultimately the present Bench came to be constituted to decide the question.

5. Before proceeding further, it will be convenient to set out certain recent developments in relation to the 1990 Act. By means of the Finance Act, 2024 s. 11 has been omitted and its subject matter (and certain other matters) has been, as it were, spread over other provisions some of which are newly added, being ss. 11A to 11G. However, the relevant provisions continue in the same terms as before, and are now to be found in s. 11G. This, as presently relevant, states as follows:

> "**11G. Limitation for assessment**.— ...
>
> (2) An order under sections 11D, 11E and 11F 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 specify, provided that such extended period shall in no case exceed from ninety days:

> Provided 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 registered person not exceeding sixty days shall be excluded from the computation of the period specified in this sub-section."

Thus, what was earlier the first proviso to subsection (5) of s. 11 is now subsection (2) of s. 11G and the second proviso of the former is now the proviso to the latter. As will be seen, the substantive effect remains the same as before even in the latest manifestation of the law. What exactly is the legislative intent was of course decided in *Super Asia* and the question now before this larger Bench is whether that determination was correct or not. The issue, in other words, remains very much alive and subsisting.

6. Since the Commissioner/Collector (herein after referred to as the "Department") were of the view that the referral order had correctly identified the reasons why *Super Asia* ought to be reconsidered, we invited learned counsel appearing for the Department to first make submissions. Learned counsel who appeared in CA 634 of 2018, referred to the relevant portions of the judgment in *Super Asia* as also the relevant portions of the referral order. Referring to the relevant portion of s. 36 learned counsel submitted that the test whether the provisions were mandatory or directory required recourse to the principles of interpretation of statutes in order to discover the real intention of the legislation. Learned counsel submitted that the purpose of using the term "shall" was to ensure that the adjudication of cases was not prolonged, but it could not negate the proper collection of sales tax, as due. For this purpose learned counsel also referred to the preamble to the Act. It was submitted that *Super Asia* was wrongly decided and that the term "shall" as used in the relevant provisions was clearly directory and not mandatory in nature.

7. Learned counsel who appeared in CA 1429 of 2019 submitted that the scheme of the 1990 Act had not been properly appreciated in *Super Asia.* Learned counsel submitted that no penal consequences had been provided for if the period prescribed for issuance of an order-in-original was breached and that therefore, the Court had read in language into the provisions in *Super Asia,* which was impermissible. Learned counsel submitted

that the points noted in the referral order were correct and that therefore it ought to be declared that *Super Asia* was not good law.

8. Learned counsel appearing in CPLA 5107 of 2023 submitted that in the relevant provisions the term “shall” had been used twice. It was submitted that the first “shall” ought to be read as “may” and in this regard reference was made to s.14 of the 2005 Act. It was submitted that the pith and substance of the provisions had to be kept in mind and the object was recovery of any tax that remained unpaid or short paid. That, according to learned counsel, was the focus of the legislative intent. Learned counsel submitted that there had to be a balance between the requirements of the State *qua* recovery on the one hand and the rights of the taxpayers on the other. There could not be any impermissible advantage conferred on the tax payer or any undue enrichment. The interests of both sides had to be kept in mind. Learned counsel submitted that the relevant provisions had to be read conjunctively and not, as erroneously done in *Super Asia*, disjunctively. It was submitted that the first use of the term “shall” should be regarded as directory because that was the legislative intent. Recovery provisions, of which the relevant provisions were simply one part or aspect, had to be liberally construed and in favor of allowing the tax to be recovered. In this regard learned counsel also referred to Article 254 of the Constitution. Learned counsel further submitted that the word “shall” had been used and not, for example “must” or “should”. The use of the word “shall” was ambiguous and had in the present context to be read in a directory manner. Reading the term as mandatory would defeat the interests of the State. Reliance was also placed on the reading down principle and the well known mischief rule for purposes of interpretation of statutes. Learned counsel submitted that the clear mischief sought to be remedied by the provisions was to recover unpaid tax and by the relevant provisions to expedite matter in this regard. The said provisions were nothing but a procedural safeguard that had to be interpreted and applied in a manner that protected the interests of both the Revenue and the taxpayer. Learned counsel who appeared, respectively, for the Department in CPLA 592 of 2023 and CA 732 of 2012 adopted the submissions already made.

9. The learned Director General (Law) FBR sought, and was granted, permission to address the Court. The learned Director General submitted that the years involved in *Super Asia* were 1998 to 2013. Referring to para 2 of the judgment (at page 1432) in this regard the learned Director General submitted that there were two periods involved. One was the overall limitation of 5 years and the second was in the relevant provisions which according to the learned Director General did not however involve a matter of limitation. In this regard it was submitted that prior to the insertion of the relevant provisions in 2000 there was no period for the making of an order-in-original by the adjudicating authority. Thus a benefit had been conferred on the taxpayer, which could not however be applied or interpreted in a manner as negated the substantive provisions involved. The learned Director General also drew attention to the treatment of s. 74 in para 12 of the judgment and to the table set out in para 13 with regard to the details of the various cases that were before the Court in *Super Asia*. The learned Director General in particular drew attention to two cases in the table where the conclusion was that the respective orders-in-original were within time on account of the extension granted by the FBR in terms of s.74, a point that was further elaborated in para 14 of the judgment. It was submitted that in the two cases referred to the orders were passed after around 400 days on account of the extension given whereas in para 12 of the judgment the power of the FBR to grant extensions under s. 74 had been limited to 6 months, i.e. 180 days. The learned Director General submitted that this was a contradiction within the judgment itself which according to him established that the timeframe imposed on FBR with regard to s. 74 could not be sustained. The learned Director General further pointed out that in the relevant provisions, where specific time periods were set out in the legislation itself, the Court had held the same to be mandatory on the one hand while, on the other, in respect of s. 74 which did not mention any time period at all, the Court had itself imposed a period of 6 months. The learned Director General submitted that these two approaches and conclusions were self-contradictory and could not stand together. It was accordingly submitted that the decision in *Super Asia* case ought to be revisited in terms as set out in the referral order.

10. The taxpayers took the position that *Super Asia* was correctly decided and the principles of law enunciated therein ought to be affirmed. Learned counsel appearing for them in the various cases were then invited to make submissions. Learned counsel who appeared in CA 634 of 2018 referred to a judgment of a five member Bench of the Court reported as *Abbasi Enterprises Unilever Distributor Haripur v. Collector of Sales Tax and Federal Excise Duty* 2019 SCMR 1989 and relying on observations made in para 8 thereof (at page 1993) submitted that the matter already stood settled in terms of this decision. It was contented that this decision had accepted the correctness of the view taken in *Super Asia* and in fact applied the same to the facts and circumstances before the Court. Learned counsel submitted that the cited case was conclusive for present purposes. Learned counsel further submitted that the reliance placed on Art 254 of the Constitution was not correct as it had no application in the facts and circumstances of the cases before the Court. It was pointed out that earlier (i.e. prior of 2000) there had been no time limit and on such basis it was contended that the very insertion of specified periods in terms of the relevant provisions was sufficient, in and of itself, to show that the legislative intent was that they were mandatory and not directory. Learned counsel prayed that the decision in *Super Asia* be affirmed.

11. Learned counsel who appeared in CA 1426 of 2019 drew attention to the erstwhile s. 45 of the 1990 Act. This related to powers of adjudication. Learned counsel submitted that a new sub-section (2) had been added to this section by the Finance Act, 2006 which was in the following terms:

> "Notwithstanding anything contained in sub-section (4) of section 11 and sub-section (3) of section 36 or any other provisions of the Act or any other law for the time being in force and notwithstanding any decision or judgment of any forum, authority or court the time for adjudication in all the cases pending as on 30th June, 2006 shall be deemed always to have been extended up to 31st December, 2006, from the date on which the time-limit prescribed under sub-section (4) of section 11 and sub-section (3) of section 36, expires."

Learned counsel contended that the insertion of this sub-section was sufficient to show that the relevant provisions were clearly intended to be, and were, mandatory in nature.

12. Learned counsel who appeared in CA 1128 of 2020 adopted the submissions already made and further contended that the

words used in the relevant provisions were clear in nature and intent and were mandatory. Reliance was placed in this regard on certain case law, both of this Court as well as well as of the Supreme Court of India. Furthermore, learned counsel submitted that the provisos had been added by way of amendments and it was well settled that an amendment was intended to alter the law. According to learned counsel the law clearly was altered to make the time periods inserted by way thereof to be mandatory; the legislative intent could not be made redundant. Finally, learned counsel who appeared for the taxpayer in CRP 154 of 2017 adopted the submissions already made and contended that the judgment in *Super Asia* ought to be affirmed and upheld.

13. We have heard learned counsel and the learned Director General as above, considered the statutory provisions involved and seen the case law relied upon. We have also gone through the written synopses filed by some of the learned counsel, and by the learned Director General.

14. We begin by considering the reasons for which the Court concluded in *Super Asia* that the relevant provisions were mandatory. (Section 74 will be considered later.) The relevant paragraphs of the judgment in this regard have been identified above. It will unnecessarily burden the record to set them out in full and therefore only a summary will be given. In para 6 (pg. 1437) the Court set out the principles established in the case law for determining whether a provision is intended to be mandatory or directory. We are in respectful agreement with the indicia identified in this regard. In para 7 (pg. 1438) the Court noted that the intent behind the use of “shall” appeared to be to curtail the power of the adjudicating officer and the Collector/Commissioner (herein after, for convenience and in the context of the relevant provisions, referred to as the “Commissioner”) inasmuch as the extension could not be granted for an unlimited period and reasons had to be recorded for the same. The negative character of the language used in this regard was also noted. It was noted that the time periods were inserted by amending the law (in 2000); prior thereto, there had been none. It was observed: “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." It was concluded that the relevant provisions were mandatory in nature.

15. In para 8 (*ibid*) the submission by learned counsel for the Department, that the intent was only to ensure that orders-in-original were made within a reasonable time and that therefore the relevant provisions were directory, was not accepted. While relying on an earlier decision of the Court it was observed as follows: "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."

16. Finally, in para 9 (pg. 1439) it was observed as follows: "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."

17. On such basis it was concluded (in para 9) that an order-in-original made beyond the periods prescribed in the relevant provisions would be "invalid". In para 10 (*ibid*) the effect of the second proviso (which is now the first proviso to subsection (2) of s. 11G) was noted and held to apply in terms as stated therein. Finally, as a wrap up observation, in para 11 (*ibid*) it was observed that the Commissioner could extend the period up to the stipulated days even if such application was made by the adjudicating authority after the initial period had already expired. However, the overall time limit had to be respected and could not be breached.

18. The doubts expressed in the referral order made in *Wak Ltd.* (set out in para 4 herein above) in relation to what was held in *Super Asia* may now be summarized. It was observed that the intent behind the relevant provisions was only to "ensure expeditious disposal of case and not an outright extinguishment of the tax liability". An apprehension was expressed that the conclusions arrived at in *Super Asia* may open the door to unscrupulous evasion of tax "through official and Institutional manipulations". Finally, it was observed that since no penal consequences were provided for the breach of the time periods "it

cannot be construed as mandatory on any account and by any attribute".

19. We have carefully considered the contrasting stances in *Super Asia* on the one hand and the referral order on the other. In the main (though not entirely) the submissions made by learned counsel for the Department and the learned Director General and learned counsel for the taxpayers track the latter and the former respectively. In order to resolve the issue we have therefore endeavored to undertake our own analytical exercise.

20. The question whether a provision is mandatory or directory has of course arisen innumerable times and in many different contexts. The principles are well settled. As noted in para 6 of *Super Asia* the ultimate purpose is to ascertain the legislative intent. We note in passing that generally the courts have more readily concluded that in appropriate circumstances a "shall" is to be read as "may" (i.e., that the provision seemingly mandatory was in actuality directory) rather the other way round.

21. We begin by approaching the question textually. In the relevant provisions, the term "shall" is used twice: firstly, in relation to the initial period in which the order-in-original is to be made and then in relation to the extension that may be granted by the Commissioner. The power of extension is a statutory power conferred on a specified authority. Two points may be noted with regard thereto. Firstly, the Commissioner "may" (and not "shall") grant the same. In principle he may therefore refuse to do so. To put it differently, he has been granted discretion in this regard. In case he does so he is to record reasons in writing. This is a condition attached to the exercise of the discretionary power and therefore, in terms of well settled principles, is itself a mandatory requirement. In other words, the exercise of the statutory power in favor of granting the extension would be unlawful without the recording of reasons. The reverse is not necessarily true: if he refuses to grant the extension he may record reasons but is not bound to do so. Secondly, the period for which the extension is to be granted "shall in no case" exceed the stipulated number of days. This is the second "shall" that has to be reckoned with. But it is to be noted that it is coupled with strong negative or prohibitory language: "in no case". As an initial observation, it appears that these words provide what may be described as a

hard edge to the second use of “shall”. They seem to constitute a definite boundary that cannot be crossed. In other words, they appear to convey a sense of finality and conclusiveness. Periods provided in statutes (or in exercise of delegated legislation) within which something is (or, more rarely, not) to be done are usually just that: a specific duration of time. This coupling with strongly negative language is unusual and appears to indicate, even on a bare textual consideration, that an unbreachable limit is indicated.

22. Analytically, there are four textual possibilities. Firstly, both uses of “shall” are to be read in mandatory terms. Secondly (and thirdly), one or the other of them is to be read as directory, i.e., as “may”. Fourthly, both are to be read as directory. Of course, the judgment in *Super Asia* concluded that the correct reading was per the first possibility; the Department submits that it is the fourth possibility that best aligns with the legislative intent. We now set out the relevant provisions (in terms of s. 11 as reproduced herein above) with these possibilities inserted in square brackets (and emphasized):

> “Provided that order under this section shall *[may]* 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 *[may]* in no case exceed ninety days”.

23. We begin with the second possibility, i.e., that the first use of “shall” is to be treated as “may” and the second as “shall”. Does this possibility accord with the textual position? Now, if the first “shall” is directory then the adjudicating authority “may” or “may not” issue the order-in-original within the stipulated period. In any situation where the statutory use of “shall” is to be regarded as directory, these possible outcomes (“may” or “may not”) are but two sides of the same coin. The one cannot be argued for without the other. But if this is so, then what is the purpose of the requirement that the Commissioner be approached for an extension in time? Even if the stipulated period is crossed the adjudicating authority can still make the order-in-original. The need to have recourse to the Commissioner (who is an officer higher in the departmental hierarchy) and get an extension becomes redundant. And even if the adjudicating authority does approach the Commissioner and the latter refuses the request, so

what? The adjudicating authority even then can simply go ahead and make the order-in-original since the prescribed period is only directory. Thus, the second part of the relevant provisions would either be reduced to redundancy or effectively become inconsequential. This can hardly be consistent with the legislative scheme and runs contrary to settled principles of statutory interpretation. Even though during the hearing this outcome was put to learned counsel for the Department no plausible response was, with respect, forthcoming. In our view therefore, even on a simple textual analysis the first "shall" can be read as directory only at the cost of effectively destroying the latter part of the relevant provisions. For all intents and purposes, it would be scrubbed from the statute book. This is hardly consistent with any rational or reasonable legislative intent.

24. We now take up the fourth possibility. (As will become clear, this also deals with the third possibility.) This is where both uses of "shall" are to be read as "may". Looking first at the second use, it would seem to mean that while the Commissioner retains his discretion whether to at all grant the extension, he may grant one that goes beyond the stipulated ninety days. But would this understanding be correct textually? In our view, this question can only be answered in the negative. The reason is that it fails to keep in mind the effect of the words "in no case". These cannot be ignored. In the possibility now under consideration the last part would read as follows (emphasis supplied): "... provided that such extended period *[may] in no case* exceed ninety days". But keeping in mind the ordinary usage of language what can "may in no case", when read as a whole and in compound form, mean other than "shall not"? This is the natural and grammatically acceptable understanding that emerges even with the substitution. The submission on behalf of the Department in effect requires the words "in no case" to be ignored and scrubbed from the provision. With respect, there is no warrant for this conclusion, which on the face of it would unacceptably distort and deny the statutory language. Furthermore, as noted, when a "shall" is determined to be directory, especially in the context of or in relation to a period of time, the substitution of "shall" with "may" ought to work equally well with "may not". It is only then that the court can conclude that whatever it is that can (or should) be done within the period found to be directory may, as a matter of law, be done

within a reasonable period. In the present context however, this is simply not possible. While “may in no case” works as a matter of ordinary usage in the sense already noted (and opposite to the meaning contended for by the Department), “may not in no case” (or any variation thereof) makes no sense at all. Indeed, the double use of the negative could mean, if it can mean anything at all, that in *all* cases where the Commissioner chooses to exercise his statutory discretion to extend the period, he *must* extend it beyond ninety days. A moment’s reflection shows that this cannot possibly be a sensible conclusion. It is wholly inconsistent with any rational or reasonable legislative intent. Therefore, even in textual terms, in our view, the second use of “shall” cannot be directory. It can only be mandatory. As will be seen this conclusion also deals with the third possibility (i.e., where the first use of “shall” is mandatory but the second use is directory). Insofar as (reverting to the fourth possibility) the first use of “shall” is concerned, for the reasons already stated in relation to the second possibility, the term cannot be understood and applied in the directory sense; it is mandatory.

25. It is therefore our conclusion, with respect, that even on a bare textual analysis it is only the first possibility, where both uses of “shall” are mandatory, that can “work” in any sensible or reasonable manner. That possibility must therefore be the only one that aligns fully with the legislative intent. And that of course is the conclusion arrived at by the Court in *Super Asia*.

26. During the course of the hearing a query was put from the Court that if the judgment in *Super Asia*, which was rendered in 2017, did not accord with the legislative intent Parliament could have given appropriate expression to its will by suitably amending the relevant provisions. This however was not done. From this, learned counsel for the Department were asked, could it not be reasonably inferred that *Super Asia* did, in fact, accord with the legislative intent? To this, with respect, no answer was forthcoming. But an answer has in fact been given by the Finance Act, 2024. The statutory provisions have indeed been amended by wholesale substitution but, as noted above, the relevant provisions continue to find place in the statute in exactly the same form, in s. 11G. (We may note for completeness that subsection (2) of that section has the word “from” just before “ninety days”. This

word was not used in the earlier incarnations of the relevant provisions. Furthermore, the earlier versions used the word "fix" while s. 11G(2) uses "specify". These appear to be the only differences in language. In our view, they have no substantive effect or any material bearing.) This is an indication that *Super Asia* correctly identified and applied the legislative intent, which was that the relevant provisions were mandatory and not directory.

27. The show cause notice that, in the present context, could result in an order-in-original was, and is, required to be issued within a specified period, being five years. All sides were as one that this was a limit that could not be breached. A show cause notice issued beyond this period was time-barred and any proceedings in respect thereof were liable to be quashed for that reason alone. However, learned counsel for the Department submitted that this was the only time bound limitation. That was all the protection accorded to the taxpayer in this regard. If the State did not act (i.e., issue the show cause notice) within time the liability of the taxpayer stood effectively extinguished since it could not thereafter be lawfully pursued. However, if, and once, a show cause notice was timely issued then an order-in-original made beyond the periods stipulated in the relevant provisions could not, for that reason alone, be invalid in law. That of course was also the point made in the referral order as noted above. The intent was only to ensure that the recovery proceedings were not prolonged and lingered on indefinitely. The tax liability could not be extinguished in this manner. We have carefully considered the point. With respect, we can see no reason why, in principle, the legislature cannot give a multi-layered protection in terms of time-bound limitation to the taxpayer. That there ought to be a period of limitation can scarcely be contested and indeed, as noted, was not questioned by learned counsel for the Department as regards the absolute or "outer" limit of five years. But why can the legislature not grant another layer of protection within that framework? Here, it must be remembered that the adjudication is by a functionary of the State itself. It is that officer whose adjudicatory powers are being circumscribed by the limits imposed by the relevant provisions. If the State wishes to tie the hands of its own functionaries in this manner (or more precisely, if the legislative branch desires to place a time bound limitation on

the officers of the executive branch in the exercise of statutory powers), why should it not be able to do so? And even those periods of limitation have been leavened, as it were, in *Super Asia* by a generous margin in terms of s. 74. If an order-in-original is not issued even in such a statutory framework then why should not that bring matters to a close, rendering any order-in-original issued thereafter "invalid"? In the referral order, the specter of tax evasion by "manipulation" was raised. But, with respect, that apprehension can be expressed with regard to any period of limitation. Indeed, the position is arguably the converse. The double layer of protection accorded to the taxpayer shields him from unmeritorious claims and bogus show cause notices, which may be issued by the concerned officer to harass and intimidate the former and/or for ulterior motives and purposes. The conclusion that the relevant provisions are mandatory help in ensuring that it is only a genuine case, based on substance and having (objectively) a reasonable prospect of success, of alleged non- or short payment of tax that is opened against the taxpayer. It is a bogus and false claim that the concerned officer would wish to keep pending, for it to be as it were a Damocles' sword hanging over the taxpayer. A time bound closure of cases would help in reducing cases being brought for non-genuine reasons and purposes. For if the show cause notice is based on firm grounds and for lawful purposes then (subject of course to whatever reply the taxpayer may give thereto) it would be in the interest of the State (as represented by the adjudicating authority) to decide the same as expeditiously as possible, which would be well within the generous time periods allowed by the statute, as held in *Super Asia*. And if, in the end, a case is not made out then equally a responsible officer acting lawfully and truly motivated by the public interest would wish to bring proceedings to a close as quickly as possible, which would again be within the time periods set out in the relevant provisions. Therefore, a multi-layered protection, by way of mandatory periods of limitation, is not just well within the legislative power; it is the intent that is expressed in the relevant provisions, as rightly held in *Super Asia*.

28. The referral order also referred to the well known rule devised by the courts when determining whether a provision is mandatory or directory, viz., that if no penal consequences are provided for then the provision can be regarded as directory. This

rule was also noted in *Super Asia*. It is however but one device among many available in the judicial toolkit in this regard. It is, with respect, neither universal nor determinative in and of itself. It is certainly not, with respect, applicable in the rather absolute terms as appear to be set out in the referral order. As always, the relevant principles of statutory interpretation can tug in different, and even opposing, directions. For example, in the context of the present exercise, the equally well known rule that if the statute requires something to be done in a particular manner it ought to be so done (applied in *Super Asia*) tends to point in the opposite direction. The goal however remains always the ascertainment of the legislative intent. In our view, when considering which of the two rules is applicable here, the use of the words "in no case" in particular tips the balance in favor of the latter. The hard edge provided by these words is a clear indication that if the thing here required to be done (i.e., the issuance of the order-in-original) goes beyond the prescribed time limits there is indeed a penal consequence that ensues, i.e., its invalidity. And the hard edge in the second part of the relevant provisions makes no sense unless the first part is also understood and applied in mandatory terms.

29. During the course of the hearing, learned counsel for the Department relied in particular on a recent decision of the Court reported as *Commissioner Inland Revenue and others v Sarwaq Traders and others* 2025 SCMR 341 (for reasons that will become clear, herein after referred to as "*Sarwaq Traders II*") to contend that the relevant provisions were directory. This decision was by a majority of 2:1, which included a learned referee Judge to whom the matter was referred on account of a difference of opinion between the two learned members who had constituted the Bench that heard the case. Before proceeding to consider this decision it will be appropriate to first look at another decision of the Court, *A.J. Traders v Collector of Customs and others* PLD 2022 SC 817 ("*A.J. Traders*"), which was referred to and relied upon therein.

30. *A.J. Traders* arose under the 1969 Act and involved a consideration of the appellate jurisdiction conferred on the Customs Appellate Tribunal. Section 194B related to that jurisdiction and as presently relevant, the first proviso to its subsection (1) provided as follows: "Provided that the appeal shall be decided within sixty days of filing the appeal or within such

extended period as the Tribunal may, for reasons to be recorded in writing, fix". The appeals of the taxpayer were not decided by the Tribunal within the stipulated time and it was contended that the decision was therefore invalid. Reliance was placed, inter alia, on *Super Asia*. However, the case was found to be distinguishable. The difference in language between the relevant provisions and the one before the Court was noted, i.e., that in the latter, there was no time limit prescribed for the extension that was permissible. Another decision of the Court, *Mujahid Soap and Chemical Industries Ltd. v Customs Appellate Tribunal* 2019 SCMR 1735 ("*Mujahid Soap*), was also relied upon by the taxpayer. The matter in the cited case arose under s. 179 of the 1969 Act and related to an adjudication, i.e., the issuance of an order-in-original. Relying on *Super Asia* it was held there that since the order-in-original had been issued beyond the stipulated period the same was invalid. The Court in *A.J. Traders* distinguished *Mujahid Soap* in the following terms (pg. 823; emphasis in original):

> "9. ... The material distinguishing point in this case was that the initial *adjudication* with regard to the show cause notice was delayed. In other words the State's functionary, that is, the Deputy Collector (Adjudication), had delayed in deciding the show cause notice. Belatedly adjudicating a show cause notice is not the same as belatedly deciding an appeal preferred against a purported liability, because then the appellate authority's tardiness, whether intentional or otherwise, will frustrate the taxpayer's appeal, which is not the intention of the law, nor could it be as it would violate Articles 4 and 10A of the Constitution."

In our view, the decision in *A.J. Traders* is unexceptionable in the facts and circumstances of that case, and the statutory provisions involved. Firstly, it was concerned with the appellate jurisdiction of the Tribunal (a forum at the apex of (though distinct from) the statutory hierarchy) and not the adjudicatory (i.e., first instance) jurisdiction of the concerned officer. As correctly noted by the Court different considerations applied and were relevant in the exercise of appellate jurisdiction. Secondly, the language used in the first proviso to s. 194B(1) was materially different from the relevant provisions. This was so for two reasons. Firstly, the power of extension lay in the hands of the Tribunal itself and not some other (superior) officer or authority. If the authority that is required to ("shall") issue its order within a stipulated period has also the power to grant itself an extension, it is difficult to conclude that the time period is mandatory.

Secondly, the power granted to the Tribunal to grant itself an extension was not time bound; the only requirement was that reasons for this be recorded in writing. Again, this was materially different from the position in terms of the relevant provisions, as discussed above. There was, in other words, no "edge" (in terms of a specific time period), let alone a hard edge ("in no case") in the statutory language with which the Court was concerned. These differences made the situation in *A.J. Traders* materially different from the one in *Super Asia* and the decision, with respect, has no relevance for present purposes.

31. Before proceeding further, a recent development in relation to the 1969 Act which can, at least for present purposes, serve as a postscript to *A.J. Traders*, may be noted. By the Finance Act, 2024 s. 194B has been wholly substituted. For present purposes, reference may be made to the two provisos to the recast subsection (1):

> "Provided that the appeal shall be decided within ninety days of filing the appeal:
>
> Provided further that where an appeal is not decided within the aforesaid period, the Appellate Tribunal with the consent of both parties and upon reasons to be recorded in writing may extend for a further period of sixty days."

These provisions are of course not in issue here and their correct interpretation and application will fall to be determined in some suitable future case. However, for limited purposes and only by way of a prima facie and tentative observation, the change rendered by these provisos does appear to be extraordinary. While the period in which the appeal is to be decided still uses (in terms of the first proviso) the term "shall", the power of extension, in terms of the second proviso, has been radically altered. It appears now no longer to be in the hands of the Tribunal at all. Rather, it is contingent upon the consent of the parties and is now also time bound. It appears (and again, we emphasize that this is only a tentative observation made solely for present purposes) that the legislative scheme has undergone a substantive change. If so, then presumably the intent identified in *A.J. Traders* may also have been radically recast.

32. This brings us to *Sarwaq Traders II*. That case arose under the 1990 Act and involved the appellate jurisdiction of the

Commissioner (Appeals) under s. 45B. The first two provisos of subsection (2) are relevant and provided as follows:

> "Provided that such order shall be passed not later than one hundred and twenty days from the date of filing of appeal or within such extended period as the Commissioner (Appeals) may, for reasons to be recorded in writing fix:
>
> Provided further that such extended period shall, in no case, exceed sixty days".

An appellate order was made beyond the time limits prescribed and on an appeal against the same was set aside by the Appellate Tribunal as being void for this reason. The Department filed a tax reference which was dismissed by the High Court and against such dismissal a leave petition was presented in this Court. A learned two member Bench, relying inter alia on *Super Asia* and *Mujahid Soap*, concluded that the appellate order, being beyond the stipulated periods of limitation was rightly held to be void for that reason. Leave to appeal was accordingly refused by means of an order reported as *Commissioner Inland Revenue and another v Sarwaq Traders and another* 2022 SCMR 1333, 2022 PTD 1128.

33. Against the aforesaid order the Department filed a review petition which was (partly) allowed by a majority of 2:1, as noted above, in *Sarwaq Traders II*. The test laid down in *Super Asia* to determine whether a provision was to regarded as mandatory or directory was referred to and applied (pg. 348, para 6). However, it was observed that *Super Asia* was distinguishable insofar as the actual determination with regard to whether the provisos of s. 45B(2) were mandatory or directory for the following reasons (pg. 349; internal citations omitted, emphasis in original):

> "6. ... With this understanding when we examine the relevant provisions of the Act. The object, policy and purpose of *original adjudication* under the erstwhile section 36(3) of the Act which requires that the order shall be made within a maximum statutory period of 180 days is to ensure that the show cause notice issued by the tax department is decided expeditiously so that tax recovery can be effected at the earliest and also the sword of alleged tax liability must not hang on the head of a taxpayer indefinitely. Therefore, if the tax department fails to decide the show cause notice within the maximum period provided under the law, the proceedings so initiated against a taxpayer come to an end. It is for this reason that section 36(3) of the Act has already be declared to be a mandatory provision by this Court in *Super Asia*.

> 7. The object, policy and purpose of the first and second provisos to section 45(B)(2) of the Act is totally different as it deals with the appellate adjudication. The said provision is invoked by a taxpayer by filing an appeal against the order-in-original. Appellate adjudication, as opposed to original adjudication, takes a different focus, as it deals with the right to appeal of a taxpayer.... It is axiomatic that no statute can muffle fundamental rights and must at all times advance public interest and remain Constitution compliant. While the action of the tax department against a citizen can be regulated through a timeframe, it is not permissible to do so when the citizen has approached the tax department in an appeal. The fundamental rights of the citizen stand invoked and come to his rescue which is not so in the case of a tax department. With these considerations in mind the statutory timeframe provided for the appellate adjudication under section 45(B)(2) can only be directory, and to conceive it otherwise, would cause injustice and irreparable harm to a taxpayer who is deprived of the right to appeal. We, therefore hold that the first and second provisos to section 45(B)(2) are directory provisions and lapse of the statutory timeframe will not affect the proceedings before the Commissioner (Appeals) who shall conclude the appeal in accordance with law by deciding the appeal on its merits. We also hold that inspite of the first and second provisos to section 45(B)(2) being directory provisions, the Commissioner (Appeals) must make reasonable effort to decide the appeal of the taxpayer within the maximum statutory timeframe, subject to the third proviso to section 45B(2). In case the taxpayer unduly delays the prosecution of the appeal without sufficient cause, the Commissioner (Appeals) is well within its power to proceed *ex-parte* against the taxpayer. Commissioner (Appeals) must also give reasons if the appeal is not decided within the statutory timeframe under the proviso to section 45(B)(2), so that the legislative aspiration to achieve effective and efficient tax governance is also realized even though such a timeframe is only directory in nature."

34. When the provisions involved in the three cases, *A.J. Traders*, *Sarwaq Traders II* and *Super Asia*, are compared in terms of the actual statutory language, the second mentioned case can in a sense be regarded as holding an intermediate position between the first and the third. There were certain similarities between the first and second cases. Thus, the jurisdiction involved in both was appellate while in *Super Asia* it was adjudicatory or first instance. In the first two cases the power of extension lay with the authority/forum itself that had to make the order within the stipulated period whereas in *Super Asia* the adjudicating authority had no such power, which was vested in a different (and superior) officer. On the other hand, there were also certain similarities between the second and third cases. Unlike in *A.J. Traders* in both of them the power of extension was not only time

bound but the "shall" used there was coupled with strongly negative words ("in no case"). These aspects were perhaps not fully recognized in *Sarwaq Traders II* and in our view, with respect, the findings recorded by the majority could be regarded as open for reconsideration. However, the correctness or otherwise of the view that ultimately prevailed in that litigation is not the question before us. It suffices for present purposes simply to note that the principles enunciated in *Super Asia* were not doubted and, indeed, their application in its own context was acknowledged. The decision was distinguished, however, as being inapplicable to the provisions actually in issue in *Sarwaq Traders II*. This decision therefore, with respect, does not advance the case of the Department. If at all, it tends to go in favor of the taxpayers.

35. We now turn to consider s. 74 of the 1990 Act. As noted above, the conclusions arrived at in *Super Asia* with regard to its application to the relevant provisions (as set out in para 12 thereof, at pp. 1440-1) were strongly contested on behalf of the Department by the learned Director General. We are of course here concerned with the correctness or otherwise of the principles enunciated in *Super Asia*. But that is in the context of the referral order. The first question that needs to be considered therefore is whether that order requires also a reappraisal of the conclusions arrived at in *Super Asia* with regard to s. 74? In our view, the answer to this question ought to be in the negative. Strictly speaking therefore there is no need to consider this provision or the manner in which it is dealt with in *Super Asia*. However, since the point was fully argued by the learned Director General we would like to say something with regard to the same.

36. The basic submission made by the learned Director General was there was a contradiction in *Super Asia* in its treatment of the relevant provisions on the one hand and s. 74 on the other. The former had specific time periods prescribed in the statute itself (which were found to be mandatory) whereas the latter had none, and yet a timeframe (of six months) was imposed by judicial fiat on the exercise of the powers thereby conferred. Reliance was placed in this regard, as noted, on two cases (set out in the table given in para 13) in which the Federal Board of Revenue ("FBR") had granted extensions in time beyond six months and yet the same were accepted by the Court. With respect, we are unable to

agree with these submissions. We begin by setting out the section, which is also to be found (in almost the same terms) in the 1969 Act (s. 224) and the 2005 Act (s. 43(2)):

> "**74. Condonation of time-limit**.– Where any time or period has been specified under any of the provisions of the Act or rules made there under within which any application is to be made or any act or thing is to be done, the Board may, [at any time before or after the expiry of such time or period,] 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 any Commissioner to exercise the powers under this section in any case or class of cases.
>
> Explanation.– For the purpose of this section, the expression "any act or thing is to be done" includes any act or thing to be done by the registered person or by the authorities specified in section 30 of this Act."

We may note that the words in square brackets were added by the Finance Act, 2022. Otherwise, the section as reproduced is as it stood at the time *Super Asia* was decided.

37. Section 74 statutorily empowers (but does not bind, i.e., confers a discretion on) the FBR to, as here relevant, allow an adjudicating officer (since he is one of the officers specified in s. 30) to do the act or thing required of him (i.e., issue the order-in-original) for which a time period has been specified (i.e., the relevant provisions) to do that act or thing within such time or period as FBR may consider appropriate. The first point to note is that, in terms of well settled principles, like all statutory powers the one conferred by s. 74 has to be exercised objectively. In other words, what is the period of extension appropriate in a given case or class of cases is not to be determined subjectively by FBR, but objectively and in accordance with settled principles of law. Secondly, the power confers a discretion (i.e., it is not a statutory duty) and the law is well settled how a statutory discretion is to be exercised by the authority or officer on which it is conferred. Most fundamentally, it must be exercised reasonably. Thirdly, it must be kept in mind that *Super Asia* was concerned with, and therefore the principles enunciated in para 12 thereof were in relation to, a specific aspect of s. 74: that act or class of acts or

things, namely the issuance of an order-in-original by an adjudicating officer at first instance, when the mandatory periods specified in the relevant provisions had been, were or could be breached. Whether those principles are to have a broader application remains to be decided in a suitable future case where such question actually arises.

38. For present purposes, the crucial term is “appropriate”. That defines the limit beyond which FBR cannot go; if, as a matter of law, the extension granted by FBR is not “appropriate” then that would be an impermissible and unlawful exercise of the discretionary power. The legal “appropriateness” of the extension can have different aspects and dimensions of which the most important (though certainly not the only one) is the length or duration of it. It follows that there will, as a matter of law, always be an outer limit or boundary of the period for which FBR can grant an extension; anything beyond that would not be “appropriate”. Section 74 does not, because as a matter of law it cannot, confer an open-ended power in this regard. In other words, FBR cannot, on the basis of its own subjective assessment, grant an extension for however long a period it thinks fit. The matter must, and if it comes before a court certainly will, be looked at objectively. If, as a matter of law, the period is excessive (in the sense that it is not “appropriate” within the frame of the section) it will be declared to be unlawful and quashed.

39. From the foregoing it follows that there will always be the potential (and, to be practical about it, the inevitable reality) of taxpayers challenging the grant of an extension by FBR as being not “appropriate” if that exceeds (as, by definition, it will if s. 74 is resorted to) the mandatory periods set out in the relevant provisions. Now, in such a situation there would inevitably be uncertainty in this regard. That would clearly work to the advantage of neither the State nor the taxpayer. Time would be consumed in legal challenges and appeals, which may drag on for years and (more likely than not) end up in this Court. It was to obviate such possibilities that the Court in *Super Asia* set the outer limit, in terms of para 12, at six months. There is now certainty and clarity. At least in terms of the “appropriate” period of extension (and, as noted, that is but one of the dimensions of the statutory “appropriateness”) every one knows that it cannot be

more than six months at the outside. But, and this is the other side of the coin, everyone also knows that, at least in terms of the period involved, anything beyond the periods stipulated in the relevant provisions and up to what is made permissible by *Super Asia* (if s. 74 is resorted to) is "appropriate". Clarity and certainty in the law is a desirable objective and this is all the more so for fiscal statutes. It is therefore in our view well within the scope of the judicial power, and certainly of this Court at the apex of the judiciary system, to bring about this welcome result.

40. But, and this was part of the submissions made by the learned Director General, where did the six month period come from? In other words, why six months and not some other period? In para 12 of *Super Asia*, the Court took benefit from an earlier decision but the learned Director General submitted that that case had no relevance for fiscal matters, and a statutory power of the nature as s. 74. It may be noted that the principle enunciated in that decision, *Federal Land Commission through Chairman v Rais Habib Ahmed and others* PLD 2011 SC 842 ("*FLC*"), has in fact been relied upon in the context of the Wealth Tax Act, 1963—clearly a fiscal law: *Commissioner Inland Revenue v Yasmeen Bano and others* 2020 SCMR 1120. It was held at para 5, referencing the decision in *FLC*, as follows:

> "We have perused the entire Act but have found no limitation period for Section 25(2) ibid. It is trite law that when a statute is silent about limitation, a reasonable time limit is to be supplied by the Courts. In carrying out this exercise, 'no general standards can be set out, and such time is and shall be dependant again on the purpose of the law to be achieved by an act or function to be performed'..."

In our view therefore the timeframe settled by *Super Asia* for purposes of s. 74 in the context of the relevant provisions was unexceptionable.

41. The matter can also be looked at from another angle. It will be recalled (see para 11 herein above) that one of the learned counsel appearing for the taxpayers had submitted with reference to the erstwhile s. 45 of the 1990 Act, which had related to adjudicatory matters, that a subsection (2) had been inserted by the Finance Act, 2006. That subsection has also been set out in para 11. That subsection, which was with specific reference to the relevant provisions had, in effect, extended the period in which the

orders-in-original could be made by a period of up to six months (from 01.07.2006 to 31.12.2006). Now the point for present purposes is this: if, in "appropriate" exercise of powers under s. 74, FBR could in any case have extended the relevant period by up to six months, what was the need for legislative intervention? In our view, it can be reasonably inferred from the insertion of the subsection in s. 45 that either it was not "appropriate" (as a matter of law) for FBR to extend the period to six months in terms of s. 74 or, at the very least, there was grave doubt and difficulty in this regard. When viewed from this angle, the timeframe established in para 12 of *Super Asia* can therefore even be regarded as over-generous. Certainly, it cannot be faulted as placing a curb or limit on a power that would otherwise have been regarded, as a matter of law, to be within the scope of s. 74 without any doubt, ambiguity or uncertainty. We are therefore, with respect, unable to subscribe to the objections taken by the learned Director General with regard to the treatment of the section in *Super Asia*.

42. We are therefore of the view that for the reasons as set out in paras 7 to 9 of *Super Asia* (with which we are in complete agreement) and those given herein above the principles enunciated in that decision as regards the relevant provisions are correct. They are hereby affirmed. Furthermore, para 12 of the decision is also affirmed. The doubts expressed in the referral order in relation to any aspect of *Super Asia* were, with respect, misconceived and stand withdrawn.

43. Accordingly, the question referred to this larger Bench is answered and decided in the following terms:

a. The decision of this Court in *Collector of Sales Tax, Gujranwala and others v Super Asia Mohammad Din and others* 2017 SCMR 1427, 2017 PTD 1756 is hereby confirmed and the principles enunciated therein are affirmed as correctly stating the law on all points;

b. The appeals and leave petitions are remitted to the office to be fixed in the normal course before respective Benches, there to be decided in light of this judgment and such other questions of law (if any) as may have

been raised therein by the respective parties and/or for which leave to appeal may be, or has been, granted; and

c. The review petitions against *Super Asia* are hereby dismissed.

Judge

Judge

Judge

Judge

Judge

Announced in the Court on 14/5/2025 at Islamabad.

Judge

Approved for reporting.