

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 176 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection
2. For hearing of CMA No.2080/2025
3. For hearing of main case
4. For hearing of CMA No.2081/2025

11.03.2026

Rana Sakhawat Ali, advocate for the applicant
Mr. Khalid Mehmood Rajpar, advocate for respondent

Following questions of law had been proposed for determination.

“Whether under the facts and circumstances of the case, learned Tribunal was justified to observe that there is no delay of 16 days in light of the computed period of adjournments requested by the appellant when the learned adjudicating authority erred in law to extend 30 days period himself without lawful authority? (Reliance placed on SCRA 505 & 506 of 2024)”

Learned counsel states that the same is covered by the order of the Honourable Supreme Court dated 06.10.2025, passed in the case of Collector of Customs (Enforcement) Islamabad vs. Danish Zaheer and others (Civil Petition No.3110 of 2025), the content is reproduced herein below :-

“We have heard the learned counsel for the parties and perused the material available on record.

2. In this petition the primary question as emerge is of passing of an order-in-original within the requisite time frame in terms of section 179(3) of the Customs Act, 1969 (hereinafter referred to as the “the Act”).

3. There was a split judgment between Member (Judicial) and Member (Technical) of the Customs Appellate Tribunal, Islamabad Bench-II (hereinafter referred to as “the Tribunal”) and therefore the matter was referred to Referee Member of the Tribunal. The Member (Judicial) found that the order-in-original was issued beyond the prescribed period of limitation, whereas, the Member (Technical) considered it to have been passed within time. The Referee Member agreed with the Member (Judicial).

3. The record reflects that the show cause notice was issued on 27.04.2020 and 90 days limitation period for issuing an order-in-original expired on 26.07.2020 (90 days). The order-in-original was passed on 10.08.2020 and hence was time barred. It seems that the Collector (adjudication) granted himself an extension without recording reasons and hence under no stretch of imagination could

be considered as valid extension of time. Even otherwise this extension has no application.

4. The question of the manner in which the limitation under section 179 (3) of the Act is to be determined in a case where section 2(s) of the Act has been invoked, is apparent by plain reading of relevant proviso. Where section 2(s) of the Act has been invoked, the limitation period for issuing an order-in-original after the date of issuance of the show cause notice is 30 days and in such cases the Collector is not vested with any kind of jurisdiction insofar as extension of time in terms of section 179(3) of the Act is concerned. The accusations in the show cause notice revolves around section 2(s) of the Act which was issued on 27.04.2020 and the order-in-original was passed on 10.08.2020. The Collector (Adjudication) and the Tribunal wrongly presumed that the period prescribed under section 179(3) of the Act for the purpose of issuing an order-in-original in respect of cases brought under section 2(s) of the Act is also 90 days which is incorrect. For convenience, we reproduce section 179(3) and its proviso:

“(3) The cases shall be decided within ninety days of the issuance of show cause notice or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed sixty days.

Provided that in cases, wherein the provision of clause (s) of the section 2 have been invoked, such cases shall be decided within a period of thirty days of the issuance of show cause notice:”

5. Thus, the above proviso would make it clear that insofar as goods falling in section 2(s) of the Act are concerned, the requisite time-frame for passing order-in-original is 30 days for which no extension is permitted in the law.

6. For the reasons noted above, we are not inclined to interfere with the impugned judgment of the High Court. Consequently, this petition is dismissed and leave to appeal is refused”

It is further stated that similar view undertaken by the earlier Division Bench of this Court vide order dated 07.10.2024 in SCRA 505 & 506 of 2024. Operative constituent is reproduced herein below :-

Heard learned counsel for the Applicant and perused the record. Insofar as Question No.1 above is concerned, it is not in dispute that the Show Cause Notice was issued on 13.10.2023, whereas Order-in-Original was passed on 19.01.2024 and was admittedly beyond the stipulated period of 30 days as provided the 1st proviso to Section 179(3) of the Customs Act, 1969. When confronted, learned Counsel for the Applicant submits that extension was granted by the Collector in these matters; hence, the Tribunal was not justified in deciding this issue against the Applicant. However, as per available record, such extension was granted by the Collector himself for which he has not been conferred any such powers. An identical issue came for consideration before this Court in Special Customs Reference Application No.119 of 2024 [Re: Director, Directorate General, Intelligence & Investigation, Karachi v. M/s. Chase Up] and vide Order dated 15.03.2024, it has been held that in cases wherein in show cause notices Section 2(s) of the Customs Act, 1969 is invoked by the Adjudicating Authority, no extension can be granted by the Collector for extension in time. The relevant findings are as under: -

“Lastly, in cases falling under Section 2(s) of the Act, no extension can be granted by the Collector for passing the ONO inasmuch as the authority vested in him is for cases other than of Section 2(s)

as the said cases fall within the 1st proviso to Section 179(3) and are excluded from the ambit of Section 179(3) wherein the authority to extend the time period has been provided. This is more clarified if one examines the 3rd proviso¹ to Section 179(3) of the Act, which provides that in cases wherein goods are lying at sea-port, airport or dry-port, they shall be decided within thirty days of the issuance of show cause notice which can be “extended by another fifteen days by Collector of Customs”, whereas, in the first proviso the said authority is lacking and if the intention had been otherwise as observed above, then in the same manner the Collector would have been authorised to extend the time period in cases falling within the 1st proviso pertaining to cases of Section 2(s) of the Act, which is not the case, and therefore, in such case it is only FBR which can be approached to exercise its powers in terms of Section 179(4) of the Act and not otherwise. In view of such position, the finding of the Tribunal with respect to question in hand is unexceptionable and does not warrant any interference.

The law to this effect has now been settled against the department as the proposed question No.1 stands decided by the Supreme Court² against the department in various cases under the Sales Tax Act, 1990 as well as The Customs Act, 1969, as both the statutes have analogous provision insofar as passing of an Order in Original (“ONO”) within a certain period is concerned. In *Super Asia (Supra)* it has been held that wherever, the legislature has provided certain period for passing of an Order; then the said direction is mandatory and not directory and in that case non-compliance of such a mandatory provision would invalidate such act. In *Mujahid Soap (Supra)* it was held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the said decision is invalid. Both these views have been followed and affirmed in the case of *A.J. Traders (Supra)*.

Learned counsel also relies upon order dated 03.02.2022 passed by the Hon’ble Supreme Court in the case of *Commissioner Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd. Faisalabad etc (Civil Petition No.757-L of 2021)*. Operative part whereof is reproduced herein below :-

3. We have heard the learned counsel for the department and have examined the record of the case. It is now well established that the Tribunal is the final forum for determination of facts in tax matters. The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures³. Further, the High Court cannot go behind any finding of fact recorded by the Appellate Tribunal even on such grounds, unless it has been expressly challenged by raising a ‘question of law’ relating thereto in the application. Without raising a ‘question of law’ in the terms, like, ‘whether there was evidence to support the finding of the Appellate Tribunal on such and such fact’, the High Court is bound by the finding of fact recorded by the Tribunal. Thus in a case, where no question of law is raised to challenge the finding of fact recorded by the Appellate Tribunal as being not supported by any evidence or being perverse, the finding recorded by the

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² *Mujahid Soap & Chemical Industries (Pvt.) Ltd., v Customs Appellate Tribunal (2019 SCMR 1735); The Collector of Sales Tax v Super Asia Mohammad Din (2017 SCMR 1427)* and respectfully followed in the case of *A.J. Traders v Collector of Customs (PLD 2022 SC 817)*

³ *M/s Shah Nawaz v. Commissioner of I.T. 1969 SCMR 123; Commissioner of I.T. v. M/s Smith, Kline & French 1991 SCMR 2374; Commissioner of I.T. v. M/s Farrokh Chemical 1992 SCMR 523; Ibrahim Ishaq v. Commissioner of I.T. 1993 SCMR 287; M/s Irum Ghee Mills v. I.T. A.T. 2000 SCMR 1871.*

Tribunal attains finality⁴. It has also been established and clearly borne out from section 47(1) of the Act that the “question of law” must arise from the decision of the Appellate Tribunal and in the absence thereof, any such reference is not maintainable⁵.

4. In the present case, the High Court has clearly noted in the impugned order that the Tribunal has settled the factual controversy and the department has failed to produce or establish that the tax receipts from the suppliers were illegal or no tax was deposited against them by the suppliers in the Government Treasury. In this background the High Court held that no “question of law” arose from the order of the Tribunal and declined to exercise advisory jurisdiction.

Learned counsel for the applicant states that in view of the binding authorities cited supra, the question framed for determination may be decided in favour of the applicant and against the respondent department. Learned counsel for respondent articulates no cavil to the aforesaid and states that the judgments speaks for themselves and are binding in nature. In view hereof the question framed for determination is answered in favour of the applicant and against the respondent department.

The reference application stands disposed of. A copy of this order may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

Amjad

⁴ Commissioner of I.T. v. Muhammad Ismail & CO. 1986 SCMR 968; Oriental investment co. v. Commissioner of I.T. 1972 PTD 181 [SCI]

⁵ M/s Mohammad Akbar v. I.T.A.T. 1972 SCMR 409; M/s F.M.Y. Industries V. Deputy Commissioner I. T. 2014 SCMR 907; M/s PTV Corporation Ltd. V. Commissioner Inland Revenue 2017 SCMR 1136; M/s Squibb Pakistan v. Commissioner of I.T. 2017 SCMR 1006.