

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application Nos. 295 to 448 of 2014 along with
Special Customs Reference Application Nos. 461 to 532 of 2014

<i>Date</i>	<i>Order with signature of Judge</i>
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Priority

1. For order on office objection/Reply.
2. For Hearing of main case.

15.02.2021:

**M/s Muhammad Khalil Dogar and Mirza Nadeem Taqi,
Advocates for the applicants.**

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Muhammad Junaid Ghaffar, J: - Through listed Special Customs Reference Applications (“**SCRA’s**”), the Applicant department has impugned order dated 17.12.2013 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-1158 of 2013, whereas, the other connected SCRA’s are also in respect of an identical order passed in different Appeals before the Appellate Tribunal.

2. It appears that in all these SCRA’s an objection was raised by the office as to how these SCRA’s are within time inasmuch as the order is dated 17.12.2013 and certified copy of the same has been issued on 30.12.2013; whereas, these SCRA’s were filed in on 3.5.2014 and in some cases on 9.5.2014, and according to the office were time barred. The Applicant’s counsel had replied the office objection by stating that these SCRA’s are within time as the impugned order was received by the Applicant/department through post on 10.02.2014 and counting from that date, all SCRA’s are within the period of 90 days as provided under section 196 of the Customs Act, 1969 (“**Act**”). Thereafter the office had placed these matters before this Court for appropriate orders. When these SCRA’s were fixed before us on 8.2.2021, notwithstanding the fact that in one set of cases we had ordered notice on question Nos.2,3,4 & 7 on 15.12.2020, we were not satisfied with such reply to the objection raised by the office regarding limitation and after

confronting both the learned Counsel we had passed the following order:-

Mr Muhammad Khalil Dogar, Advocate for Applicant in SCRA No.295 to 248 of 2014
Mr. Mirza Nadeem Taqi Advocate for Applicant in SCRA No.461 to 532 of 2014.

“In all these Reference Applications office had raised objection regarding limitation and in response the Applicant/Department submitted that impugned orders were received through post on 10.02.2014. In Para 2 of the Reference Application the same stance has been taken; however, neither any application for condonation of limitation is on record, nor any other supporting document has been placed to justify that the impugned order was received belatedly through post. Mr. Mirza Nadeem Taqi was confronted with this on 18.01.2021 and today, again he needs further time to seek instructions. These Reference Applications are pending since 2014 therefore, only as an indulgence and as a last and final chance, adjourned to 15.02.2021 when both the learned counsel shall come prepared with instructions and to satisfy the objection regarding limitation.”

3. Today, Mr. Muhammad Khalil Dogar, Advocate for the Applicant in one set of cases has made an attempt by arguing that the order was never dispatched on time and as per the inquiry made from the Tribunal, the order was dispatched subsequently. He has referred to some photocopies of dispatch register and has made an effort to get them placed on record; which we owing to the fact that this cannot be permitted in this Reference jurisdiction have refused.

4. Mr. Mirza Nadeem Taqi, the Counsel for the Applicant in second set of SCRA's, on the other hand has made an attempt to argue on merits by referring to one question of law that since the order is without jurisdiction; hence no limitation runs against such a void order.

5. We have heard both the learned counsel and perused the record. At the very outset, we may observe that these SCRA's are pending since 2014 and despite considerable lapse of time no effort has been made on behalf of the Applicant/department to get notices issued; nor any condonation application has been filed despite an objection being raised by the office way back on 15.5.2014.

6. Record reflects that the impugned order is dated 17.12.2013 and certified copy has been issued by the Assistant Registrar concerned on 30.12.2013 and counting from such date the limitation period of 90 days as provided in section 196 of the Act expired on 30.03.2014; whereas these SCRA's have been filed either on 3.5.2014 or 9.5.2014. In fact, none of them have been filed before 30.03.2014. Perusal of the Reference Applications reflects that in paragraph No.2 it has been stated that the order was served upon the Applicant on 10.02.2014. There is no other supporting material except this statement to justify as to the receiving of the order belatedly. Even if it is assumed that the impugned order was received on 10.2.2014, there was ample time for the Applicant to file these SCRA's before 30.3.2014 (48 days at least). However, no such effort has been made. And if the order was received as contended, and despite sufficient time being available to file the SCRA's within time by or before 30.3.2014, if they were not filed then it was incumbent upon the Applicant to place on record the postal envelope through which purportedly the order in question was received. In our view it ought to have been placed on record in original so as to discharge the initial burden in overcoming the objection of limitation; or in the alternative, these SCRA's ought to have been filed on or before 30.3.2014. No such effort has been made and as noted earlier, not even a condonation Application has been filed. And while confronted, both learned Counsel have contended that record of the Tribunal may be summoned to verify such fact. We are afraid this course cannot be adopted by us in our Reference jurisdiction as and when pleaded, and can only be adopted (though remotely) when there is at least some material before the Court of which the verification is to be sought. Here in this case we have time and again confronted both the learned Counsel to show us the postal envelope through which the impugned order was received, as it would clearly show the dispatch and receiving date; however, both of them have shown their inability on the ground that since years have passed; therefore, the same are not available with the department. Such callous attitude on the part of the Applicant department cannot be appreciated.

7. It is settled law that the Applicant Being a Government Department cannot be given any special treatment or priority in respect of an issue of limitation. In these SCRA's no effort has been made to justify for getting the delay condoned; not even after office had raised an objection. In our view a mere statement of Applicants authorized person would not suffice. Neither there is any application for condonation nor even any supporting document so as to show that these SCRA's were filed within time. The Court having jurisdiction to entertain a case after expiry of limitation has to apply its mind in considering the request for condonation after going through the facts of the case. There is no general rule or precedent that in each and every case, where the Government interest or revenue is involved, the delay must necessarily be condoned. We may mention here that the question of limitation being not mere a technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification which are lacking in this case¹. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen². This Court has repeatedly laid down that so far as the limitation is concerned, the Government cannot claim to be treated in any manner differently from an ordinary litigant. In fact, the Government enjoys unusual facilities for the preparation and conduct of their cases and its resources are much larger than those possessed by ordinary litigants³.

8. As to the argument that since the impugned order is void; hence, no limitation runs, it would suffice to observe that insofar as the Applicant is concerned, according to them these SCRA's are in time, and therefore, they have not even sought condonation of delay. In that case, it does not seem to be

¹ (2006 S.C.M.R. 1248) Govt. of PAKISTAN V. MALBROW BUILDERS, CONTRACTOR.

² (PLD 2002 SC 436) CHAIRMAN, DISTRICT EVACUEE TRUST, JHELUM V ABDUL KHALIQ

³ (1996 SCMR 727) FEDERATION OF PAKISTAN V JAMALUDDIN and others

justified to argue that no limitation runs against a void order. It could only have been a valid ground once it is admitted that there is delay in filing of these SCRA's and condonation of such delay on this ground. This is not the case of the Applicant. Lastly, even otherwise a mere statement to the effect that an order is void; hence, no limitation would run, is by itself not sufficient, whereas, have otherwise gone through the order and do not think that merely on such a bald statement we can exercise our discretion in favor of the Applicant.

9. In view of hereinabove facts and circumstances of the case, in our considered view apparently these SCRA's are time barred, whereas, we have not been persuaded in any manner by the conduct and on the basis of the record before us, to exercise any discretion in favor of the Applicant; as neither any supporting application has been filed seeking condonation of delay; nor we have been assisted with any supporting material till today so as to give any indulgence to the contentions so raised by both the Counsel of the Applicant department. Accordingly, all these SCRA's are hereby dismissed as being time barred. Let copy of this order be sent to the Customs Appellate Tribunal as required under section 196(5) of the Act; whereas office is directed to place copy of this order in all connected SCRA's listed at Serial No. 39 of today's cause list.

J U D G E

Aamir, PS

J U D G E