

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Customs Reference Applications No. 119 of 2024

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Adnan-ul-Karim Memon*

**Applicant:**

**Director, Directorate General,  
Intelligence & Investigation  
(Customs), Karachi,  
Through Mr. Khalid Mehmood  
Rajpar, Advocate.**

**Respondent:**

**M/s. Chase Up.**

**Date of hearing:**

**15.03.2024.**

**Date of Order:**

**15.03.2024.**

## **ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application under Section 196 of the Customs Act, 1969 (“Act”), the Applicant (department) has impugned Judgment dated 10.01.2024 passed in Customs Appeal No. K-1433 of 2023 by the Customs Appellate Tribunal Bench-III at Karachi, proposing various Questions of law; however, on the last date of hearing, Applicant’s Counsel was confronted as to Question No. 2 and was directed to come prepared and assist the Court as the said question now stands decided by the Supreme Court<sup>1</sup> 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 of time is concerned. Proposed Question No.2 reads as under:-

<sup>1</sup> 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),

- “2. Whether the Appellate Tribunal while concluding impugned Judgment has not arrived at an erroneous conclusion to hold that extension of time limit for adjudication of the case in terms of sub-section (3) of Section 179 of the Customs Act, 1969, cannot be granted by the Collector of Customs and that impugned Order-in-Original is void being without lawful authority?”

Heard learned Counsel for the Applicant and perused the record. The relevant finding of the Tribunal in this regard is as under;

16. The Counsel for the appellant vehemently pleaded that the impugned Order-in-Original has been issued in violation of first proviso to section 179(3) of the Customs Act, 1969. The subject proviso prescribes a period of thirty (30) days for deciding cases where section 2(s) *ibid* has been invoked, whereas, the instant case has been decided after ninety (90) days. Hence, the impugned order is void *ab initio* being without lawful authority. To support his argument he cited judgment of the Honorable Supreme Court of Pakistan in case 2007 SCMR 1835 has been held as follows:-

*“it is a settled law that then the basic order is without lawful authority then the superstructure shall have to fall on the ground automatically as law laid down by this Court in Yousuf Alis case PLD 1958 SC 104”*

17. The respondent could give no explanation for this delay nor placed on record any extension by the competent authority i.e. Federal Board of Revenue. We may also observe here that cases to which this proviso is applicable, extension under Section 179(3) *ibid* cannot be granted by the Collector, rather such extension will fall under the purview of Section 179(4) of the Act. We agree with this legal contention of the appellant.

From perusal of the aforesaid finding of fact, which otherwise cannot be disturbed in our Reference jurisdiction, it clearly reflects that insofar as the delay in passing of the Order-in-Original is concerned, the same is not in dispute. The Show Cause Notice was issued on 24.05.2023 and in terms of the first proviso<sup>2</sup> to Section 179(3) of the Customs Act, 1969, wherein the provisions of clause (s) of Section 2 *ibid* have been invoked, such cases shall be decided within a period of thirty days of the issuance of show cause notice. It is not in dispute that the ONO was passed after 92 days from the date of show cause notice. While confronted, learned Counsel for the Applicant has though made an attempt to justify that the

---

<sup>2</sup> Provided that in cases, wherein the provisions of clause (s) of section 2 have been invoked, such cases shall be decided within a period of thirty days of the issuance of show cause notice

Applicant was not at fault and adjournments were sought by the Respondent, hence, the Order was passed within the time period as provided in the 2<sup>nd</sup> proviso to section 179(3) of the Act. However, we are not impressed with his submission inasmuch as the record placed before the Tribunal and as noted in the aforesaid finding does not support this contention. Moreover, the Adjudicating authority has not even bothered to discuss this aspect of the case and has not endorsed the view point of the Applicant in any manner. These are admitted facts and cannot be controverted in such a manner on behalf of the Applicant.

Even if we look into the documents so placed before us today, the ONO is still time barred. As noted, the date of Show Cause Notice is 24.05.2023, whereas, the first date of hearing is 01.06.2023, when as per diary sheet the Respondent had already filed its reply to show cause notice, and next hearing was fixed on 13.6.2023. It is contended that an adjournment was sought by Respondent on 13.6.2023 till 13.07.2023, which was granted; however, surprisingly, the next date was fixed for 20.07.2023, when the representative of Applicant department was called absent. Record further reflects that thereafter on 25.7.2023 instead of conducting hearing the Collector extended the time for completion of proceedings for 60 days in terms of Section 179(3) of the Act, for certain reasons which are not relevant for the present purposes. It needs to be appreciated that the maximum adjournment which could be granted to the Respondent is for 30 days as per the 2<sup>nd</sup> proviso to Section 179(3) *ibid*. When the initial time of 30 days from the show cause notice dated 24.5.2023 is added to this 30 days of adjournment, the last date for passing the ONO was 23.7.2023, whereas the extension was admittedly granted by the Collector to himself on 25.7.2023, by which date the time had already expired. Therefore, even if the Collector had any jurisdiction to extend the time period (which he had not) it was done after the

cut-off date; hence, was meaningless and was without lawful authority.

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 1<sup>st</sup> 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 3<sup>rd</sup> proviso<sup>3</sup> 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 1<sup>st</sup> 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.

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)*.

---

<sup>3</sup> [Provided further that in cases where in goods are lying at sea-port, airport or dryport, these 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, if required so.]

Before parting, we may observe that it is high time for FBR to take some corrective administrative measures in following the mandatory timelines provided in all fiscal statutes as at times slackness and ignorance on the part of the field officers, invariably benefits the tax-payers notwithstanding the fact that they may have evaded the duties and taxes. Such timelines are mandatory as held by the Supreme Court as above, whereas, the tax-payers cannot be granted such long adjournments even if so requested. These timelines must be adhered to and since they are mandatory, the officers concerned are required to pass the Orders within such timeline, notwithstanding adjournments or non-filing of replies to the show cause notices. Moreover, in such like cases, they are also required to record the contents of the diary sheet in their Orders which shall reflect the correct facts as to seeking of adjournments and reasons for delay, if any, in passing the Orders. Let copy of this order be issued to Chairman (FBR), Member, (Legal), Customs and Inland Revenue, FBR, for information and necessary action on their part, if any.

In view of the above, question No. (2) as above, is answered against the Applicant and in favour of the Respondent and as a consequence thereof, answer to remaining Question(s) would be an academic exercise; hence, we deem it appropriate not to answer the same. The Reference Applications is hereby **dismissed** in limine with pending applications. Office is directed to sent copy of this order to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

**J U D G E**

Arshad

**JUDGE**