

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 304 of 2013

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant : **The Collector of Customs,
Through Ms. Afsheen Aman,
Advocate.**

Respondent : **M/s. Al-Waleed PVC Plastic & Metal
Industries.**

Date of hearing : **23.01.2025.**
Date of Judgment : **23.01.2025.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Order dated 08.07.2013 passed in Customs Appeal No. K-513 of 2011 by the Customs Appellate Tribunal Bench-III, at Karachi proposing various questions of law. However, vide Order dated 12.11.2013 notice was ordered on the following question of law:-

"Whether based on the facts and circumstances of the case and considering the provisions of Sections 32 & 180 of the Act, Appellate Tribunal erred law to scrap the show cause notice as being time barred?"

2. None has affected appearance on behalf of the Respondent though they have been served through publication ordered on 07.11.2022. Heard learned Counsel for the Applicant and perused the record. It is an admitted position that the goods in question were seized on 05.07.2010 by Directorate of Intelligence & Investigation FBR after the GD had been processed and out of charged by the Applicant, whereas no Show Cause Notice was issued within the stipulated period as provided under Section 168(2) of the Customs Act, 1969. Record further reflects that one Deputy Collector of Customs issued a letter to the Director Intelligence & Investigation on 30.08.2010 informing the Director that the competent authority has been pleased to grant requisite extension for a further period of two months starting from 02.09.2010 for issuance of

Show Cause Notice. Though we have not been assisted in any manner as to the Order passed by the Collector; whereby, extension was granted; but even if for the sake of arguments such an extension is accepted, the Show Cause Notice was still beyond the stipulated / extended period as it was issued on 27.11.2010. After adjudication, the Respondent filed an appeal before the Collector of Customs (Appeals) and such appeal was allowed to the extent that the Show Cause Notice was time barred as such a nullity in the eyes of law; however, the goods were ordered to be released on payment of duties and taxes already assessed; whereas, the applicant was still aggrieved and preferred appeal before the Tribunal, which has been dismissed in the following terms:-

“10. After going through the record of case, verbal submissions by the parties. It is an evident fact that the goods were assessed by an appropriate officer of Customs and duty taxes paid accordingly. The impugned consignment was seized on 05.07.2010 by the Directorate of Intelligence & Investigation and show cause notice issued on 27.11.2010 which is time barred in terms of time limit prescribed under sub-section (2) of the sections 168 of the Act and the impugned order based on the same is unlawful under the law. The issue of time barred show cause was decided by the Hon’ble High Court of Sindh in a judgment reported as 2003 PTD 2821 wherein the Hon’ble Court has flatly refused to look into the merit of the case and declared the show notice unlawful and ordered for return of goods to the owner forthwith after recovery of customs duty and other taxes as assessed by the customs officials. In view of judgments passed by the superior courts on the issue of time barred show cause and going through the facts and circumstances of the case. We are inclined not to interfere in the order passed by the respondent No.2 as it does not suffer from any illegality or infirmity. The appeal is disallowed without any merit in it as no order to cost.”

3. From perusal of the above order, it seems that the Tribunal has not given any reasoning of its own and has instead relied upon the judgement of this Court in the case of **Muhammad Razi**¹ wherein, the words “detained” and “seized” have been explained and interpreted. The Tribunal has further held that they are not inclined to interfere with the order passed by the Collector of Customs (Appeals). When confronted, Applicant’s Counsel has placed reliance on the case of

¹ Muhammad Razi v. The Collector of Customs (Appraisalment) Customs House Karachi (2003 PTD 2821),

Mazhar-ul-Islam², wherein, a somewhat similar question has been dealt with and decided by a learned Division Bench of this Court by holding that in such a situation show cause notice would not become time barred, but the person from whom the goods have been seized becomes entitled for its return. When the order of the Collector of Customs (Appeals) is perused and read with finding of the Tribunal, in our considered view no exception can be drawn on such finding to the effect that the Show Cause Notice was issued beyond the stipulated period, whereas, the goods in question had already been released on payment of duty and taxes at the time of adjudication and therefore, penalty was imposed, as there was no possibility of confiscation of goods. However, as to the observation of the Collector (Appeals) and maintained by the Tribunal that the show cause itself was a nullity in law being time barred, the same appears not to be in accordance with law as interpreted by this Court in the case of ***Mazhar-ul-Islam (Supra)***. Accordingly, the question noted in order dated 12.11.2013 is reframed in the following manner: -

“Whether in the facts and circumstances of the case, the Show Cause Notice in question was issued beyond the stipulated period as provided under Section 168(2) of the Customs Act, 1969 entitling the Respondents for release of the goods?”

4. In view of hereinabove facts and circumstances of this case, the question is answered in the *affirmative*, against the Applicant and in favour of the Respondent. However, the orders of the forums below stand modified in line with the dicta laid down in ***Mazhar-ul-Islam (Supra)***. This Reference Application is hereby ***disposed of*** in these terms. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

J U D G E

Ayaz /PS

J U D G E

² Collector of Customs, Karachi v. Mazhar-ul-Islam (2011 PTD 2577).