

THE HIGH COURT OF SINDH, KARACHI
Special Custom Reference Application Nos. 404, 405 & 406 of 2024

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

Applicants: Collector of Customs Jinnah
International Airport, Karachi
Through Mr. Irfan Mir Holepota,
Advocate.

Respondents. **Muhammad Maaz Ali & another**
(SCRA No. 404/24)
Noor Muhammad Sangani & another
(SCRA No. 405/24)
Muhammad Waseem & another
(SCRA No. 406/24)

Date of hearing: 05.11.2024
Date of Judgment: 05.11.2024

JUDGMENT

Muhammad Junaid Ghaffar, J: In response to Order passed on 22.10.2024, learned Counsel for the Applicant has filed statement along with copies of letters and correspondence between the Collectorate and FBR regarding extension of time in terms of Section 179 of the Customs Act, 1969.

2. Through these Reference Applications, the Applicant has impugned a common judgment dated 22.03.2024 passed in Customs Appeal Nos. K-362/2023, K-2315/2022, K- 246/2022 by the Customs Appellate Tribunal, Bench-III at Karachi proposing various questions of law. However, on perusal of record apparently the first and foremost question is that ***“Whether the Order-in-Original passed by the Adjudicating Authority was beyond the limitation period as provided in Section 179(3) of the Customs Act, 1969?”***

3. Heard learned Counsel for the Applicant and perused the record. It appears that Show Cause Notices were issued in these matters on 29.1.2021; wherein, Section 2(s) of the Customs Act, 1969 has been invoked; and therefore, pursuant to the 1st Proviso to Section 179(3) (ibid) the case had to be decided within a period of 30 from the date of Show Cause

Notice. Admittedly, the adjudicating process was not completed within such period; whereas initially the matter was placed before the concerned Collector for extension of time on 10.04.2021; and by that time the period of 30 days had already expired.

4. 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 the show cause notice 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.

5. The law to this effect has now been settled against the department as the proposed question stands decided by the Supreme Court² against the department in various cases under the Sales Tax Act, 1990 as well as The

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),

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).

6. In view of the above, the question is answered in **affirmative** against the Applicant and in favour of the Respondent and consequently thereof, the answer to remaining questions is not required. All these Reference Applications are hereby dismissed in *limine* along with pending application(s). Let copy of this order be sent to the Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Customs Act, 1969. Office is directed to pace copy of the order in all connected files.

JUDGE

JUDGE

Ayaz P.S.