

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. 842, 843 & 844 of 2024

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

Applicant (in all SCRAs): The Director,
Directorate General of I & I
Customs, Karachi.
Through Mr. Khalid Mehmood
Rajpar, Advocate.

Respondents (in all SCRAs): Muhammad Zahir & Abdul Ali.

Date of hearing: 06.05.2025.

Date of Judgment: 06.05.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Reference Applications under Section 196 of the Customs Act, 1969 (“Act”), the Applicant (department) has impugned a common Judgment dated 13.08.2024 passed in Customs Appeal No. K-1954/2022 and other connected matters by the Customs Appellate Tribunal Bench-II, Karachi proposing various questions of law. However, for the present purposes answer to question No. 3 i.e. ***Whether in view of the extension granted by Board in terms of sub-section (4) of Section 179 of the Customs Act, 1969, for adjudication of the case, the Appellate Tribunal has not erred in law to hold that the Order-in-Original was passed beyond the time prescribed under Section 179(3) of the Act, ibid, and having no legal effect?*** will decide the issue in hand.

2. Heard learned Counsel for the Applicant and perused the record. It appears that in these matters, Show Cause Notices were issued on 19.01.2022 alleging violation of Section 2(s) of the Customs Act, 1969; and in terms of Section 179(3) of the Act, the adjudication proceedings were required to be completed within 30 days’ time. Admittedly, the Order-in-Original was passed much after the period so provided on

04.08.2022; whereas, the observations of Adjudicating Authority in Para-9 reads as under:-

“9. The case was fixed for the hearings on 27.01.2022, 08.02.2022, 16.02.2022 & 25.07.2022. The time limit for adjudication was extended by the Board in terms of Section 179(4) of the Customs Act, 1969 till 30.09.2022 vide Board's letter No.1(1)(EXT))KHR/CUST/2020 dated 04.07.2022. Mr. Asim Munir Bajwa (Advocate) appeared on behalf of owner/claimant of vehicle and submitted reply to show cause notice. Further he stated that the vehicles are public carriers not involved in smuggling of goods, therefore, may be released to his client as per law. No one appeared on behalf of impugned goods despite several hearing opportunities, nor any written reply has been received in this office. The case cannot be kept pending indefinitely for lack of interest of the respondent to defend the charges, therefore, the same is decided on the basis of evidence available on record. Mr. Umair Ahmed (IO) appeared on behalf of the seizing agency and reiterated the charges leveled in the show cause notice.”

3. From perusal of the aforesaid finding of the Adjudicating Authority, it reflects that for no reason, the matter was kept pending till 25.07.2022 and only thereafter extension was sought; whereas, by that time, the period so provided had already expired.

4. The law to this effect has now been settled against the department as the proposed question stands decided by the Supreme Court¹ 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. It has been held by the Hon’ble Supreme Court in the case of **Super Asia**² 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 **A.J. Traders**³.

¹ 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 reported as The Collector of Sales Tax V. Super Asia Mohammad Din (2017 SCMR 1427)

³ A.J. Traders V. Collector of Customs (PLD 2022 SC 817)

5. In view of the above, proposed Question is answered against the Applicant and in favour of the Respondents. As a consequence thereof, these Reference Applications are 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 (10) of Section 196 of Customs Act, 1969 and a copy shall also be placed in all connected Reference Applications.

ACTING CHIEF JUSTICE

J U D G E

Ayaz