

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 696 of 2022
alongwith
Special Customs Reference Applications 757 to 759 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objection No.28
- 2. For hearing of CMA No.3923/2022
- 3. For hearing of main case
- 4. For hearing of CMA No.3924/2022

23.10.2025

Sardar Zafar Hussain, advocate for applicant in SCRA 696/2022
Mr. Khalid Mehmood Rajpar, advocate for applicant in SCRA 757-759/2022
Mr. Amjad Hayat, advocate for the respondent.

In these reference applications, the appeals before the learned Customs Tribunal were admittedly time barred by 164 days. The constituent of the impugned order dealing with the issue is at paragraphs 10 and 11 thereof, reproduced herein below:

- “10. We have perused section 215 of Customs Act, 1969, which is being reproduced as under.-
- (a) by tendering the order, decision, summons or notice or sending it by registered post or the courier service or by any other mode of transmission subject to acknowledgement receipt to the person for whom it is intended or to his agent; or
 - (b) if the order, decision, summons or notice cannot be served in any manner provided in clause (a), by affixing it on the notice board of the custom-house or
 - (c) in case of electronic orders, decisions, notices or summons, when these have been sent to the recipient from the Customs Computerized System.

11. The Customs Department was unable to produce service of the order by registered post as courier service along with acknowledgment receipt as contemplated in terms of section 215 of Customs Act, 1969. Keeping in view this scenario, we condone the delay in filing the instant Appeal in the interest of justice and in order to decide the matter on its merits.”

Learned counsel for the applicant demonstrates from the record, *inter alia*, available at page 243 of the file¹, that the department had *in fact* placed all the relevant record pertaining to service there before and had also taken the plea in their respective comments, including as denoted in paragraph 2 hereof. Learned counsel states that the pleadings and record have been disregarded in the impugned judgment and the issue of limitation has been unceremoniously brushed aside. He states that the question of limitation cannot be disregarded in the manner as aforesaid, therefore, it is just and proper for the impugned judgment to be *set aside* and the matter remanded back to the learned Tribunal to determine the question of limitation at the very onset based on the record available there before and in the light of settled law including the judgment reported as 2025 PTD 883.

¹ SCRA No.757/2022.

Learned counsel for the respondent states that the issue of limitation is a mere technicality, hence, this Court may be pleased to disregard the same and hear the matter on merit.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose². The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard³. The Superior Courts have held that proceedings barred by even a day could be dismissed⁴; once time begins to run, it runs continuously⁵; a bar of limitation creates vested rights in favour of the other party⁶; if a matter was time barred then it is to be dismissed without touching upon merits⁷; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance⁸. It has been maintained by the honorable Supreme Court⁹ that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed.

Prima facie the issue of limitation has been addressed in the impugned judgment in a perfunctory manner and the same has not even been controverted by the respondent's learned counsel. It is settled law, as reiterated vide judgment of a Division Bench of this Court dated 14.05.2024 in ITRA 82 of 2024, that the proper course to adopt in such circumstances is to remand the matter and enable the tribunal to address the issue of limitation afresh before proceeding further, if at all. Therefore, no case is set forth to sustain the impugned judgment and the same is hereby set aside; the matter is remanded back to the Appellate Tribunal for adjudication afresh per the law. The learned tribunal may be pleased to deliberate the issue of limitation at the very onset and determine the same per law.

A copy of this decision may also be sent under the seal of this Court and signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969. Office is instructed to place a copy of this order in the connected SCRA's listed above.

Judge

Judge

B-K Soomro

² *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as 2019 MLD 249.

³ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁴ 2001 PLC 272; 2001 PLC 143; 2001 PLC 156; 2020 PLC 82.

⁵ *Shafaatullah Qureshi vs. Pakistan* reported as PLD 2001 SC 142; *Khizar Hayat vs. Pakistan Railways* reported as 1993 PLC 106.

⁶ *Dr. Anwar Ali Sahito vs. Pakistan* reported as 2002 PLC CS 526; *DPO vs. Punjab Labour Tribunal* reported as NLR 1987 Labour 212.

⁷ *Muhammad Tufail Danish vs. Deputy Director FIA* reported as 1991 SCMR 1841; *Mirza Muhammad Saeed vs. Shahabudin* reported as PLD 1983 SC 385; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as 1975 SCMR 259.

⁸ *WAPDA vs. Aurangzeb* reported as 1988 SCMR 1354.

⁹ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.