

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**SPL. CUST. REF. APPLAN NO. 404 to 482 /2020**

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Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

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**FRESH CASE.**

- 1) For orders on CMA No. 1784/2020.
- 2) For orders on office objection No. 26.
- 3) For orders on CMA No. 1785/2020.
- 4) For hearing of main case.

**19.10.2020.**

Mrs. Masooda Siraj Advocate for Applicant.

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Through this Special Customs Reference Application along with other connected matters the Applicant i.e. Collector of Customs, Port Qasim has impugned a consolidated judgment of the Customs Tribunal dated 22.08.2019 passed in Customs Appeal No. K-688 and 689 of 2012 with all other connected matters and various questions of law have been framed which purportedly arise out of the orders of the Tribunal; however, before we could look into the questions of law so arising out of the order of the Tribunal, there is apparently, a considerable delay in filing of these Reference Applications and for such purpose, the Applicant has filed CMA No. 1784/2020 in SCRA No. 404/2020 with similar applications in all connected matters.

Learned Counsel for the Applicant submits that though admittedly, there is delay in filing of these Reference Applications; but the primary reason is that the impugned order was misplaced in the record of the Applicant, whereas, due to COVID-19 and suspension of work, the Reference Applications could not be filed within time. She submits that huge revenue of the Government is involved; hence, the delay be condoned by allowing the limitation applications.

We have heard the learned Counsel for the Applicant and perused the record. The application for condonation reads as under:-

“It is respectfully submitted that due to some unprecedented / force majeure reasons i.e. the impugned order dated 22.08.2019 is misplace in the record / case / case files of the applicant, therefore, the reference application could not be filed within the stipulated time of (90) days and condonation of excess days is humbly be prayed.

The balance of conveniences and merits of the case are in favour of the Applicant / Appellant. The applications of the single judgment impugned order have far reaching effect and ensuing to perpetual loss of the Government revenue. Thus, in view of the Honourable Supreme Court's judgment reported in 2007 PTCL 152 CL that the merits of the case may not be scraped or annulled on sheer technicalities of time limitation. The instant application, for condonation of delay in filing of the appeal, may kindly be granted as there is neither any malafides nor the same can be attributed to the Appellant. In the light of submissions made above and for the reasons disclosed in the memo of Reference Application it is respectfully prayed on behalf of the applicant Collectorate that this Hon'ble Court may be pleased to suspend operation of the impugned order of the Appellate Tribunal, till final disposal of the subject Special Customs Reference Application.

Prayed in the interest of justice."

The supporting affidavit is silent as to the grounds for delay; hence, we have considered and examined the contents of this application. On perusal of the same, it reflects that it is only one ground which has been taken in the application that the impugned order was misplaced, whereas, the argument regarding COVID restrictions has not even been pleaded. Nonetheless, nothing has been stated in the application as to when the order was received by the Applicant; when it was misplaced; when it was traced again and who was responsible for such conduct resulting in a considerable delay in filing of these Reference Applications. The condonation application is completely silent and appears to have been filed without due application of mind. The limitation for filing of a Reference Application under Section 196 of the Customs Act, 1969 is 90 days and even if the period is counted from the date of issuance of the certified copy of the impugned judgments annexed with these Reference Applications, i.e. dated 11.09.2019, it expired on 10.12.2019, whereas, the Reference Application has been presented on 30.07.2020. that is with delay of almost 230 days. As to the ground for delay due to COVID restrictions, as noted, nothing has been averred in the condonation application as to the delay starting from 10.12.2019 and till 26.03.2020 when the first Circular regarding COVID restrictions was issued by this Court. Even otherwise, the department ought to have been vigilant insofar as any restrictions imposed due to COVID are concerned as they were not absolute.

It is settled law that delay of each day has to be explained which the Applicant in this case has miserably failed to do so. We may mention here that the question of limitation being not mere a technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without

sufficient cause and lawful justification which are lacking in this case<sup>1</sup>. We are afraid the said explanation is neither convincing nor plausible and does not constitute sufficient grounds for condonation of delay for about eleven months<sup>2</sup>. One may also refer to the case of Commissioner of Inland Revenue Legal Division<sup>3</sup>.

In view of the above facts and circumstances of this case, we are unable to agree with the contention / request of the Applicant for condonation of delay as no justifiable ground has been made out. Accordingly, application(s) for condonation of limitation stands dismissed as a consequence thereof, all listed Reference Applications are dismissed in limine as being time barred.

However, we have noticed that and as contended, despite involvement of huge Government Revenue, the Applicant Department has acted in a manner which is prejudicial to the interest of the Government and no effort has been made even to justify causing of such delay nor any responsibility has been fixed upon the delinquent official(s), and therefore, let copy of this order be sent to Chairman F.B.R. as well as Member, Customs (Operations) for their perusal and necessary action, if any.

Office is directed to place copy of this order in all connected files.

**J U D G E**

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Arshad/

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<sup>1</sup> GOVERNMENT OF PAKISTAN V MALBROW BUILDERS, CONTRACTOR, SIALKOT (2006 SCMR 1248)

<sup>2</sup> NOOR MUHAMMAD v CUSTOMS APPELLATE TRIBUNAL, PESHAWAR BENCH (2020 SCMR 246)

<sup>3</sup> Commissioner Inland Revenue Legal Division v Rafeh Limited (PLD 2020 SC 518)