

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.913 of 2017

Parkash Lal
Vesus
Deputy Collector of Customs & others

Date	Order with signature of Judge
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1. For orders on office objection Nos.3 and 20
2. For hearing of main case

Dated: 20.09.2021

Mr. Madan Lal for applicant.

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Applicant has attempted to agitate only a solitary question that the Tribunal has failed to deliver its decision within the time frame as provided under proviso to Section 194-B of Customs Act, 1969 and this alone would render the impugned judgment/decision as nullity.

We have heard the learned counsel and perused material available on record.

This provision has undergone some changes including but not limited to a time frame to render a decision by the Tribunal, however nothing would turn on such counts, as far as this case is concerned.

Critical examination of ibid provision reveals that there are no consequential effects provided under Section 194-B of Customs Act, 1969 to a decision beyond 60 days' time or within such extended period, as the Tribunal may, for reasons to be recorded in writing, fix.

The word 'shall' alone cannot demonstrate the mandatory test of the provision. What is more essential is the consequences and further test such as penal action, if prescribed. In the absence of such

consequences or penal action the word ‘shall’ alone cannot be construed as the time frame being mandatory when the Tribunal itself has been given authority to extend the period as deemed fit by it.

Earlier steps that traces the mandatory and directory test of a provision is of 1974 when Hon’ble Supreme Court in Niaz Ahmed¹ considered consequential effects in the relevant provisions as a litmus sign. It held that a provision is understood to be directory when it contains matter merely of direction, but not when those one followed by an express consequence that in default of such requirement, the actions taken shall be null and void. It further provides that if the act is directory its non-compliance or strict adherence does not entail invalidity and conversely if the act is mandatory, its disobedience ended up in serious legal consequences and leads to invalidity of such action.

Recently this test was also applied on the under considered provision i.e. 194-B of Customs Act, 1969 in the cases of M/s Gold Trade Impex² when Division Bench concluded that there are no consequential effect to a time frame in deciding the appeal by Tribunal hence its non-compliance would not vitiate the proceedings of the order passed by Appellate Tribunal.

In the case of Collector of Sales Tax v. M/s Super Asia³, same view was concluded that the intention of the legislature is of paramount consideration and the word ‘shall’ alone is not the sole factor to determine the mandatory and directory nature of the provision and other factors such as penal consequences in case of non-compliance is also consequential.

Accordingly, instant Special Customs Reference Application is dismissed in limine.

¹ PLD 1974 SC 134

² Special Customs Reference Application No.159/2010 (unreported - decided by the Court 23.12.2016 Para-17)

³ PTCL 2017 CL 736

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 196(5) of Customs Act, 1969.

Judge
Judge