

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No.180 of 2017

Date	Order with signature of Judge
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1. For order on office objection No.5.
2. For order on CMA No.1783/20 (Condonation)
3. For hearing of main case.
4. For hearing of CMA No.1685/17 (Stay)

23.05.2022.

Ms. Masooda Siraj, Advocate for the applicant.
Mr. Khalid Hidayat Khan, Advocate for the respondent.

The instant Special Customs Reference Application (**SCRA**) was filed on 17.04.2017, which as per the office objection was time barred by more than 60 days.

Before proceeding any further, we deem it appropriate to take up the condonation of delay application bearing CMA No.1783/2020. From the application it is apparent that the reason given for causing the delay was on account of some unprecedented /force majeure and due to misplacement of the order of the Tribunal.

Ms. Masooda Siraj Advocate has appeared on behalf of the applicant /department and submitted that due to the above referred reasons the SCRA could not be filed within time and therefore, the delay caused in this regard may be condoned. In support of her contention, she replied upon the decision in the case of *Sardar Khan V/s. Muhammad Idrees (PLD 2008 Supreme Court 591)*.

Mr. Khalid Hidayat Khan Advocate has appeared on behalf of the respondent and opposed the grant of this application as, according to him, the reasons given in this behalf could hardly be considered as plausible reasons for condonation of delay. He states that on expiry of the limitation period a vested right is created in favour of the respondent and the person filing the condonation application has to explain each day's delay satisfactorily, which in the present case has not been done; hence, according to him, the application may be dismissed.

We have heard both the learned counsel at some length and have also perused the record and the decision relied upon by the learned counsel for the applicant.

In our view the reasons given for condoning the delay could hardly be considered as plausible as on one occasion the reason attributed to delay was force majeure, we are unable to understand that how a plea of force majeure could be taken in the instant matter. Whereas the second reason being that order of the Tribunal was misplaced and in our view the said ground too is unreasonable, as even if the department has misplaced the order of the Tribunal, they could have easily applied to the Tribunal for supplying a certified copy thereof within the time limitation, which was not done. It is apparent that the department in the instant matter has acted in a quite casual and pedantic manner and has taken no pains to file the SCRA in a timely manner.

Moreover, it is a settled proposition of law that in time barred matter each day's delay has to be satisfactorily explained, which aspect too is totally lacking in the instant matter. Reference in this behalf may be made to the following decisions:

- i) *Commissioner of Income-Tax Vs. Rais Ahmad Khan (1981 SCMR 37)*
- ii) *Nakuleswar Sikdar Vs. Barun Chandra Chakravorty and another (1971 SCMR 54)*
- iii) *Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another Vs. Muhammad Saleem (PLD 1995 SC 396)*
- iv) *Province of East Pakistan Vs. Abdul Hamid Darji and others (1970 SCMR 558)*
- v) *The Deputy Director, Food, Lahore Region, Lahore, etc. Vs. Syed Safdar Hussain Shah (1979 SCMR 45)*
- vi) *Sheikh Muhammad Saleem Vs. Faiz Ahmad (PLD 2003 SC 628)*

We were able to lay our hands on a decision given by the Hon'ble Supreme Court in the case of *Food Department, Gujranwala through its Deputy Director and others Vs. Ghulam Farid Awan (2010 SCMR 1899)* wherein it was held as under:

“It is well-settled that the government functionaries are equal before the Courts. No preferential treatment can be shown to the Government/or its agencies. A stock explanation of administrative delays is normally pleaded in the condonation applications. Such explanation does not constitute a sufficient cause or a reasonable ground to be attached any weight or credibility. In fact it constitutes an admission of the guilty neglect of the concerned and thus compounds the ever existing, managerial inefficiency and lack of decision making in the Govt. offices. Those seeking condonation of delay are under legal duty to explain each day's delay and to show their vigilance to avoid such delays which fatally obviates a valuable remedy. Reference is made to:

- (i) *East Pakistan v. Abdul Hamid Darfi and others (1970 SCMR 558)*
- (ii) *Federation of Pakistan v. Niaz Ahmad (1997 SCMR 959)*
- (iii) *Commissioner of Income Tax v. Rais Pir Ahmad Khan (1981 SCMR 37)*”

Similar observations were also made by the Hon’ble Apex

Court in the following decisions:

- i) *Pakistan through Secretary, Ministry of Defence Vs. Messrs Azhar Brothers Limited (1990 SCMR 1059)*
- ii) *The Province of West Pakistan, Lahore Vs. Mian Noor Ahmad and others (1975 SCMR 91)*
- iii) *Government of Baluchistan Vs. Abdul Nabi and another (1988 SCMR 1906)*
- iv) *Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others Vs. Jamaluddin and others (1996 SCMR 727)*
- v) *The Inspector General of Police, Punjab through District Police Officer Vs. Abdus Salam and another (2019 CLC 1156)*

In the case of *Chairman, District Evacuee Trust, Jhelum Vs.*

Abdul Khaliq through Legal Heirs and others (PLD 2002 SC 436) the

Hon’ble Apex Court observed as under:

“4. It has been pointed out number of times that cases pertaining to Federal/Provincial Government or autonomous bodies instituted beyond limitation prescribed by law before subordinate Court, High Court and this Court without assigning any justification acceptable under the law for not approaching the Court within time and in the applications seeking condonation of delay, if filed, invariably the plea is taken that time has been spent in completion of departmental proceedings, therefore, delay may be condoned. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the

Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen. In this behalf, reliance is placed on Central Board of Revenue, Islamabad through Collector of Customs, Sialkot Dry Port, Samberial, District Sialkot and others v. Messrs Raja Industries (Pvt.) Ltd. through General Manager and 3 others (1998 SCMR 307), Lahore High Court, Lahore through Registrar v. Nazar Muhammad Fatiana and others 1998 SCMR 2376, Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad and 5 others v. Jamaluddin and others 1996 SCMR 727, Pakistan through Secretary, Ministry of Defence v. Messrs Azhar Brothers Ltd. 1990 SCMR 1059 and Government of the Punjab through Secretary (Services), Services General Administration and Information Department, Lahore and another v. Muhammad Saleem PLD 1995 SC 396.”

In the case of *Collector, Land Acquisition, Chashma Right Bank Canal Project, WAPDA, D.I. Khan and others Vs. Ghulam Sadiq and others (2002 SCMR 677)*, the Hon’ble Supreme Court of Pakistan dismissed the appeal filed by the government with the delay of seven days by quoting a number of judgments of the Hon’ble Apex Court by observing that no sufficient cause was shown in the application filed under Section 5 of the Limitation Act.

Delay is to be condoned where the Court comes to the conclusion that there was sufficient cause shown in the application for condonation of delay. However, perusal of the present application clearly reveals that the reason has been attributed to unprecedented /force majeure and misplacement of the Tribunal’s order and in our view the said reasons could neither be considered to be sufficient cause nor reasonable or plausible so as to justify the condonation of delay, since the applicant does not seem to have shown diligence in filing the SCRA.

It is thus apparent that no sufficient cause existed which prevented the applicant in filing the SCRA in time, as the issue of limitation is always a mixed question of law and fact and has to be decided on the ground of circumstances obtaining in the matter and in the instant matter, as apparent from the application, the reasons for delay are not found to be plausible. It is a settled proposition of law that the government departments or autonomous bodies and their cases had to be dealt with in the same manner as that of an ordinary litigant/citizen.

The decision relied upon by Ms. Masooda Siraj is found to be quite distinguishable from the facts obtaining in the instant matter.

The upshot of the above discussion is that the SCRA is found to be barred by limitation therefore; the application for condonation under Section 5 of the Limitation Act (CMA No.1780/2020) stands dismissed. Consequently, the SCRA is also dismissed along with the listed /pending application(s).

Before parting with the order we would like to state that some responsibility has to be attributed to the officer who was instrumental in getting this matter time barred. Let a copy of this order be sent to the Chairman, Federal Board of Revenue, for ascertaining the facts and to form a Committee to carry out an extensive enquiry as to who was the officer or the officers who were responsible for causing the delay in filing the instant SCRA.

JUDGE

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