

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No.378 of 2020

Date	Order with signature of Judge
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Fresh Case:

1. For orders on CMA No.1541/2020 (Condonation of delay)
 2. For order on CMA No.1542/2020 (Exemption)
 3. For hearing of main case
 4. For order on CMA No.1543/2020 (Stay)
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01.12.2022.

Mr. Khalid Rajpar, Advocate for the applicant.
Ms. Dil Khurram Shaheen, Advocate for the respondent.

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The instant Special Customs Reference Application (**SCRA**) was filed on 30.07.2020, which as per the learned counsel is time barred by more than 46 days.

Before proceeding any further, we deem it appropriate to take up the condonation of delay application bearing CMA No.1541 of 2020. From the application it is apparent that the reason given for causing the delay was on account of spreading of corona virus, lockdown, shortage of stationary and printing cartridge for computer.

Mr. Khalid Rajpar, Advocate has appeared on behalf of the applicant /department and submitted that due to Corona Virus and non-availability of computer paper, printing cartridge the SCRA could not be filed within time and therefore, the delay caused in this regard may be condoned being unintentional.

Heard and perused the record.

In our view the reasons given for condoning the delay, 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

apparent that the department in the instant matter has acted in a quite casual and has taken no pains to file the SCRA in a timely manner.

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, as stated above, clearly reveals that the reason has been attributed as Corona virus, lockdown, shortage of stationary and printing cartridge for computer, which in our view could neither be considered to be sufficient nor reasonable or plausible so as to justify the condonation of delay as no material was brought on record to prove such assertions and to submit the details of the dates and the period when according to the department, the office was closed due to Corona Virus or lockdown etc. as averred by them.

Moreover, we have also observed that the Tribunal has decided eleven appeals by a common judgment and the instant SCRA in respect of judgment rendered by the Tribunal in Customs Appeal No.1441 of 2019 has been filed, whereas no SCRA in respect of various other importers has been filed by the department. In our view, the delay has been caused in filing the instant SCRA due to lethargic attitude on the basis of which the delay cannot be condoned, as the reasons advance by the department for condoning the delay are not persuasive.

It is thus apparent that no sufficient cause existed which prevented the applicant in filling 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 reason for delay is 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.

It is also a settled proposition that law helps the vigilant and not the indolent and after the expiry of the limitation period a vested right

is created in favour of the other side. This view finds support by the decision rendered by the Hon'ble Supreme Court in the case of *Messrs SKB-KNK Joint Venture Contractors through Regional Director Vs. Water and Power Development Authority and others (2022 SCMR 1615)* wherein it was held that “*the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party*”.

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.

Moreover, 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)*

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.1541/2020) stands dismissed. Consequently, the SCRA is also dismissed along with the listed /pending application(s).

JUDGE

JUDGE