

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.08 of 2010  
Additional Collector of Customs, Model Customs Collectorate of Preventive  
Versus  
M/s. AGP (Pvt.) Ltd.

ALONG WITH

SCRAs No.175, 176 & 177 of 2011  
Collector of Customs (Preventive)  
Versus  
M/s. AGP (Pvt.) Ltd.

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hearing case  
For hearing of main case.

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**Dated 21.03.2023**

Ms. Masooda Siraj, Advocate for Applicants.  
Mr. Uzair Qadir Shoro, Advocate for Respondents.

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These references proposes some common questions, however only question which is of some relevance is; whether the emphasis by the Tribunal on the point of limitation, that concerns with order-in-original, despite its (Tribunal's) own lacking as to mandatory time frame for its decision, as stipulated under Section 194-B of the Customs Act, 1969, is justified?

The order of the Tribunal, impugned in these references provides that the order-in-original passed on a particular date with reference to the respective show cause notices is/are time barred and additionally no valid and lawful reason for the extension, in terms of proviso to section 179(3) of the Customs Act, 1969 has been provided or produced. With different dates of the show cause notices and orders-in-original, the same question has been raised before the Tribunal in connected References as well.

We have not been able to satisfy ourselves as far as contention of the applicants on the count that the order of the Tribunal was also

barred by time therefore order-in-original shall remain intact despite it being time barred. We have enquired from the learned counsel for the applicants that even if the order of the Tribunal is brushed aside, will the time barred order-in-original be enforceable under the law, she remained unexpressive. She has categorically conceded that no doubt the orders-in-original were barred by time with reference to show cause notices issued, however, she insisted that even Tribunal's order was time barred.

Learned counsel for the applicants has not been able to satisfy us that for an order, which is nullity in the eyes of law, no limitation would run as in all these references the order-in-original, impugned before Tribunal were patently barred by time, rather admitted by Ms. Masooda Siraj, and hence would be covered by those judgments/orders which are patently unlawful and void ab initio, unless a valid and lawful reason for the extension in terms of the proviso to section 179(3) of the *ibid* Act is provided, which in these cases have not been provided. Needless to explain that such timeframe in passing order-in-original from the date of the show cause notice is mandatory which can only be avoided subject to proviso referred above. With this understanding of law these Special Customs Reference Applications merit no consideration and are accordingly dismissed. The question referred above is thus answered against appellant and in favour of respondent.

Copy of this order be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969 and additional copies be made available in above connected references.

JUDGE

JUDGE

Ayaz Gul