

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application No.216 of 2020

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Date	Order with signature of Judge(s)
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1. For orders on CMA No.2564/2023.
2. For orders on office objection No.01.
3. For orders on CMA No.1120/2020.
4. For hearing of main case.
5. For orders on CMA No.1121/2020.
6. For orders on CMA No.2565/2023.

**01.06.2023**

Mr. Muhammad Khalil Dogar, advocate for the applicant.

1. Granted. 3. Granted; subject to all just exceptions. 2,4,5&6. Briefly stated, the respondent's consignment was assessed per order dated 27.08.2018. The assessment was reviewed vide order dated 09.10.2018, presumably in exercise of powers under section 195 of the Customs Act 1969. Subsequently, yet another reassessment was made vide order dated 07.12.2018. The appeal<sup>1</sup> led to orders for yet another assessment, however, the appeal there against was allowed vide the learned Customs Appellate Tribunal's judgment dated 07.01.2020 rendered in Customs Appeal K-711 of 2019 ("Impugned Judgment"). The Tribunal was pleased to set aside the assessment alert dated 26.10.2018, the reassessment order dated 07.12.2018 and the order in appeal dated 03.05.2019. The present reference was preferred on 02.05.2020 and since that time it has remained pending with the office objection stipulating that the reference is *prima facie* time barred.

At the very onset, the applicant's counsel was confronted with the issue of limitation, however, he failed to address the same and admitted that no application seeking to condone the delay has ever been preferred.

Learned counsel initially sought to argue that the Impugned Order was received by the department on 23.01.2020, however, failed to demonstrate the authoritative stamp demonstrating such receipt or a copy of the inward register signifying the same. Notwithstanding the foregoing, even if the claim for belated receipt was sustained, even then the reference was preferred beyond the pale of limitation.

As a fall back argument, it was suggested that a covid related circular would be attracted in the present matter, however, the notification dated 28.03.2020 placed on record merely demonstrated that courts were to be considered as closed from 22.03.2020 till 15.04.2020. A bare perusal of the said notification demonstrated that there was no impediment to institution of proceedings *within the period of limitation stipulated by the Act or any other law*. In view hereof, the reliance of the counsel upon the sole notification placed on record does no merit the applicant's case.

Finally, it was argued that the case ought to be determined on merit and not on *mere technicalities* of limitation. We remain of the view that the requirements of limitation are not *mere technicalities* and disregard thereof

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<sup>1</sup> Vide order dated 03.05.2019.

would render entire law of limitation otiose<sup>2</sup>. The Courts have consistently maintained that it is incumbent to first determine whether the proceedings filed were within time and such an exercise ought to be conducted by the Court regardless of whether or not an objection has been taken in such regard<sup>3</sup>. It has been maintained by the honorable Supreme Court<sup>4</sup> that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. In the present case, no application seeking to condone any delay has ever been preferred.

In view hereof, the office objection regarding the reference being time barred is upheld and the present proceedings are found to be barred by limitation, therefore, hereby dismissed in *limine*.

It is considered pertinent to denote that, despite our query, the applicant's counsel failed to demonstrate the requisite sanction for reviewing the initial assessment under section 195 of the Customs Act 1969 and further remained unable to justify as to how an assessment once made and reassessed per section 195 could then be unilaterally reassessed in the manner as apparent from the present facts and circumstances. The counsel was queried that if the department interpreted section 80 of the Customs Act 1969 to empower them to continually reassess a consignment *ad infinitum* then *inter alia* would section 195 not be rendered redundant. Learned counsel remained unable to articulate a cogent response. Since we have already dismissed the reference on account of being time barred, therefore, it is considered proper to address this issue in another appropriate case.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

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<sup>2</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

<sup>3</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>4</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.