

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application 1039 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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Fresh case

1. For order on CMA No.1950 of 2023
2. For order on office objection No.1, 13, 18 & 25
3. For order on CMA No.1941 of 2023
4. For hearing of main case
5. For order on CMA No.1951/2023

20.04.2023

Mr. Adnan Moton, advocate for the applicant

1. Granted. 3. Granted, subject to all just exceptions. 2, 4 & 5. The applicant has assailed the order of the learned Customs Appellate Tribunal at Karachi dated 24.12.2022 in Customs Appeal K-1062 of 2022 (“Impugned Order”), whereby the appeal was dismissed as being time barred.

Per the Impugned Order, the order there before was issued on 16.02.2022 and the appeal was filed on 01.04.2022, instead of on or before 18.03.2022, hence, time barred. It is also recorded that the appellant failed to provide any cogent reasons for the delay to be condoned.

The applicant’s counsel adopted a novel plea that the order impugned before the learned Tribunal was dated 31.03.2022, and not 16.02.2022, hence, the Impugned Order misread the record and in any event the learned Tribunal ought to have determined the matter on merit and not on mere technicalities.

Perusal of the record demonstrated that the order appealed was *in fact* dated 16.02.2022 and the appeal preferred by the appellant (now applicant) also sought for the order of the said date to be set aside. The *letter* dated 31.03.2022, being portrayed as the order under appeal before us, was *prima facie* extraneous to the order impugned before the learned Tribunal, hence, found no mention in the prayer clause of the relevant memorandum of appeal. Therefore, the argument articulated before us by the applicant’s counsel was observed to be misleading and *prima facie* contrary to the admitted record.

In so far as the issue of limitation is concerned, we remain of the view that the requirements of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation otiose¹. 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 regard². It has been maintained by the honorable Supreme Court³ 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

¹ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 *MLD* 249; *PLD* 2010 *SC* 705.

² *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 *CLD* 732.

³ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 *SCMR* 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 *PLC* 155.

dismissed. The chronology listed in the Impugned Order is a matter of record and could not be controverted by the applicant's counsel. The learned Tribunal has explicitly observed that no reason for the delay could be made out there before. It is settled law that each day of delay has to be explained, however, in the present circumstances no reasonable explanation appears to have been provided. Applicant's counsel has remained unable to demonstrate before us that the Impugned Order could not have been rested upon the ground relied upon.

The office objections also highlight that even the present reference is time barred, however, there appears to be no appurtenant application seeking to condone the delay and the applicant's counsel made no endeavor to satisfy the court in such regard either.

Notwithstanding the foregoing, the applicant's counsel remained unable to articulate any question of law, arising from the Impugned Order, therefore, this reference application, and pending applications, is hereby dismissed in *limine*.

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.

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