

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application Nos. 1520 & 1521 of 2023

Date Order with signature of Judge

Hearing of case (Priority).

1. For order on office objection.
2. For order on CMA No.3783/23.
3. For hearing of CMA No. 3784/23.
4. For hearing of main case.

15.01.2024

Mr. Khalid Mehmood Rajpar, Advocate Applicant(s) in both Reference Applications.

Mr. Sardar M. Ishaq along with Mr. Amjad Hayat, Advocate for Respondents.

Mr. Sardar Muhammad Ishaq, Advocate has filed respective Vakalatnamas in both Reference Applications, which are taken on record.

Through both these Reference Applications, the Applicant department has impugned Judgment dated 06.05.2023 passed in Customs Appeal Nos. H-814/2023 and H-815/2023 and had initially proposed various questions of law; however, through Statement dated 13.11.2023, following questions of law were proposed: -

1. Whether learned CAT is justified by concluding that O-N-O No. 31 / 2023 dated 14.04.2023 was passed beyond statutory time period?
2. Whether learned CAT has erred in law while granting relief, which is neither prayed by respondents in memo of appeal nor sustainable in law, hence the same is void ab-initio?
3. Whether CAT has erred in law while setting aside outright confiscation of vehicles used wholly for transportation of smuggled goods in violation of Sec 157 of the Customs Act?
4. Whether CAT was justified to decide that burden of proof was discharged by respondents and such burden was shifted to custom department?
5. Whether CAT erred in law that impugned goods has been legally imported under valid license and payment of duty and taxes leviable thereon has been paid accordingly?

Heard learned Counsel for the parties and perused the record. Insofar as proposed question No.1 is concerned, admittedly, the said question now stands decided by the Supreme Court¹ against the department in various cases under the Sales Tax Act, 1990 as well as The Customs Act, 1969, as both the statutes

¹ Mujahid Soap & Chemical Industries (Pvt.) Ltd., v Customs Appellate Tribunal (2019 SCMR 1735); The Collector of Sales Tax v Super Asia Mohammad Din (2017 SCMR 1427) and respectfully followed in the case of A.J. Traders v Collector of Customs (PLD 2022 SC 817),

have analogous provision insofar as passing of an Order in Original within a certain period of time is concerned. In the instant matter, the Show Cause Notice was issued on 27.02.2023 and the Order-in-Original was passed on 14.04.2023; whereas, in terms of Section 179(3) read with the first proviso, (as admittedly in the show cause notice clause "s" of Section 2 of the Customs Act, 1969, has been invoked) such matters are to be decided within a period of 30 days from the issuance of Show Cause Notice. Perusal of the Order-in-Original does not reflect that any adjournment was sought on behalf of the private Respondents; rather it was the department, which had caused delay in submission of their reply finally on 07.04.2023, whereas, the period of 30 days had already lapsed on 29.3.2023. It is also not the case of the Applicant that any extension was ever granted by the concerned Collector in terms of Section 179(3) *ibid* for passing of the impugned Order in Original.

In *Super Asia (Supra)* it has been held that wherever, the legislature has provided certain period for passing of an Order; then the said direction is mandatory and not directory and in that case non-compliance of such a mandatory provision would invalidate such act. In *Mujahid Soap (Supra)* it was held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the said decision is invalid. Both these views have been followed and affirmed in the case of *A.J. Traders (Supra)*.

In view of the above, question No. (1) as above, is answered against the Applicant and in favour of the Respondents and as a consequence thereof, answer to remaining Question(s) would be an academic exercise; hence, we deem it appropriate not to answer the same. Both these Reference Applications are hereby ***dismissed***. Office to place copy of this order in the connected Reference Application. Office is further directed to sent copy of this order to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

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