

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Custom Reference Application Nos.550 & 551 of 2017

Date	Order with signature of Judge
	1. For hearing of CMA No.3277 of 2017 2. For regular hearing

**27.09.2023**

Mr. Khalid Rajpar, Advocate for the applicant and respondent in CP No. D-251 of 2016  
Mr. Sardar Muhammad Ishaque, Advocate for respondent in SCRAAs  
Mr. Tahir Khalil Dogar, Advocate holding brief for  
Mr. M. Khalil Dogar, Advocate for respondent No.3 in CP No.D-251 of 2016  
Mr. Waqar Ahmed Metlo, Advocate  
Mr. Muhammad Mustafa, Advocate for respondent  
Mr. Aamir Raza, Advocate for respondent

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Through both these Reference Applications, the Applicant-department has impugned a common judgment dated 7.6.2017, passed in Customs Appeal Nos.K-1479/2016 and K-1480 of 2016 by the Customs Appellate Tribunal, Karachi and has proposed various questions of law; however, first we would like to deal one of such questions i.e. question No. VIII as it now stands decided against the department by the Supreme Court. The question reads as under:

*“Whether on the facts and the circumstances of the case the learned Customs Appellate Tribunal did not err in law and set aside the Order-in-Original dated 03.06.2016 being time barred inasmuch as the period of that order was extended by the Collector in terms of section 179(3) of the Customs Act, 1969?”*

We have confronted the Applicant’s counsel on the above question as apparently the show cause notice was issued on 7.12.2015, whereas, the Order in Original was passed on 3.6.2016, and appears to be barred by time under Section 179 (3) of the Customs Act, 1969. Despite best efforts, the Counsel could not take us to any document on record to substantiate his stance that delay was on the part of Respondent who had sought adjournments. Moreover, on perusal of the proposed question, it appears that Applicant’s case is that though the order was time barred; however, an extension was granted by the Collector under Section 179(3) ibid; however, again no supporting order to that effect has been placed on record; nor we have been assisted in any manner even otherwise as to any extension thereof.

Admittedly, the proposed question as above, now stands decided by the Supreme Court<sup>1</sup> against the department in various cases under the Sales Tax Act, 1990 as well as The Customs Act, 1969, as both the statutes have analogous provision insofar as passing of an Order in Original is concerned. It further appears that in the Order-in-Original it does not reflect that any observation was recorded by the Adjudicating Officer with any specific dates of issuance of show cause notice and adjournments sought by the Respondent. In that case, even otherwise we cannot look into this and examine the factual aspect of the matter, as now the Appellate Tribunal, being the last fact finding forum, has been pleased to consider this and has held that Order-in-Original was passed beyond the limitation period as provided under Section 179 *ibid*.

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. (viii) 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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<sup>1</sup> *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),*