

THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Jawad Akbar Sarwana

1.	Spl. Cus. Ref. A. 1640/2023	M/s. Pako Computers, Karachi VS Custom Appellate Tribunal, Karachi & Others
2.	Spl. Cus. Ref. A. 1641/2023	M/s. Pako Computers, Karachi VS Custom Appellate Tribunal, Karachi & Others
3.	Spl. Cus. Ref. A. 1669/2023	M/s. Decent Computers, Lahore & another VS Custom Appellate Tribunal, Karachi & others
4.	Spl. Cus. Ref. A. 1670/2023	M/s. Decent Computers, Lahore & another VS Custom Appellate Tribunal, Karachi & others
5.	Spl. Cus. Ref. A. 1671/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
6.	Spl. Cus. Ref. A. 1672/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
7.	Spl. Cus. Ref. A. 1673/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
8.	Spl. Cus. Ref. A. 1674/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
9.	Spl. Cus. Ref. A. 1675/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
10.	Spl. Cus. Ref. A. 1676/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
11.	Spl. Cus. Ref. A. 1677/2023	M/s. Decent Computers, Lahore VS The Custom Appellate Tribunal, Karachi & others
12.	Spl. Cus. Ref. A. 1678/2023	M/s. Decent Computers, Lahore VS The Custom Appellate Tribunal, Karachi & others
13.	Spl. Cus. Ref. A. 1679/2023	M/s. Decent Computers, Lahore & another VS The Custom Appellate Tribunal, Karachi & others
14.	Spl. Cus. Ref. A. 1680/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
15.	Spl. Cus. Ref. A. 1681/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
16.	Spl. Cus. Ref. A. 1682/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
17.	Spl. Cus. Ref. A. 1683/2023	M/s. Decent Computers, Lahore & another VS Custom Appellate Tribunal, Karachi & others
18.	Spl. Cus. Ref. A. 1684/2023	M/s. Decent Computers, Lahore & another VS Custom Appellate Tribunal, Karachi & others
19.	Spl. Cus. Ref. A. 1685/2023	M/s. Decent Computers, Lahore & another VS Custom Appellate Tribunal, Karachi & others
20.	Spl. Cus. Ref. A. 1686/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
21.	Spl. Cus. Ref. A. 1687/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
22.	Spl. Cus. Ref. A. 1688/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others
23.	Spl. Cus. Ref. A. 1689/2023	M/s. Decent Computers, Lahore VS Custom Appellate Tribunal, Karachi & others

50.	Spl. Cus. Ref. A. 1737/2023	M/s. POP Global Distribution, Lahore & another VS Custom Appellate Tribunal, Karachi & others
51.	Spl. Cus. Ref. A. 1738/2023	M/s. POP Global Distribution, Lahore & another VS Custom Appellate Tribunal, Karachi & others
52.	Spl. Cus. Ref. A. 1739/2023	M/s. POP Global Distribution, Lahore VS Custom Appellate Tribunal, Karachi & others
53.	Spl. Cus. Ref. A. 1740/2023	M/s. POP Global Distribution, Lahore VS Custom Appellate Tribunal, Karachi & others
54.	Spl. Cus. Ref. A. 1741/2023	M/s. POP Global Distribution, Lahore VS Custom Appellate Tribunal, Karachi & others
55.	Spl. Cus. Ref. A. 1742/2023	M/s. POP Global Distribution, Lahore VS Custom Appellate Tribunal, Karachi & others
56.	Spl. Cus. Ref. A. 1743/2023	M/s. POP Global Distribution, Lahore & another VS Custom Appellate Tribunal, Karachi & others
57.	Spl. Cus. Ref. A. 1744/2023	M/s. POP Global Distribution, Lahore & another VS Custom Appellate Tribunal, Karachi & others
58.	Spl. Cus. Ref. A. 1745/2023	M/s. POP Global Distribution, Lahore VS Custom Appellate Tribunal, Karachi & others
59.	Spl. Cus. Ref. A. 1746/2023	M/s. POP Global Distribution, Lahore & another VS Custom Appellate Tribunal, Karachi & others

For the Applicants: Through Waseem Ahmad Malik,
Advocate.

For the Respondents: M/s. Ali Tahir and Khalilullah Jakhro,
Advocates.

Date of hearing: 22.05.2024

Date of Judgment: 22.05.2024

JUDGMENT

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicants have impugned judgments dated 08.06.2023 & 09.06.2023 passed in Customs Appeal No. K-111 of 2021 and other connected matters proposing various questions of law. All impugned judgments are verbatim same, and therefore, all these Reference Applications have been heard together and are being decided through this common judgment. In all these Reference Applications there is only one common legal question which can decide the entire controversy as the same now stands decided by the Honourable Supreme Court. The said question reads as under:-

“III. Whether the learned Tribunal has fallen into error of law by not taking into account that the impugned order in original is hit by limitation prescribed in sub section (3) of Section 179 of Customs Act, 1969?”

2. Heard learned Counsel for the parties and perused the record. In the instant matter the show cause notice was issued on 29.5.2020 and the last date for passing the Order in Original (“ONO”) in terms of Section 179(3) of the Customs Act, 1969 was 28.08.2020, whereas, the adjudicating authority has stated in the ONO that time was extended by FBR till 30.11.2020. Insofar as the case of the Respondents is concerned, Mr. Ali Tahir, Advocate appearing on behalf of Post Clearance Audit has today placed on record, copy of Letter dated 22.09.2020 issued by FBR; whereby, certain extension was granted exercising powers under Section 179(4) of the Customs Act, 1969. He has contended that since an extension had been granted by FBR as above, the Tribunal was fully justified in holding that the ONO was not time barred. However, perusal of the said letter of FBR dated 22.09.2020 reflects that undisputedly such extension was granted after the mandatory period provided under Section 179(3) of the Act had already expired. To that there appears to be no dispute. Not only this, the request for extension was also made by the Adjudicating Authority on 14.09.2020; when the period for passing the ONO had already expired on 28.08.2020. Therefore, even if FBR had any jurisdiction to extend the time period it was done after the cut-off date; hence, was meaningless and was without lawful authority. It further appears that extension letter does not seem to have been issued in consonance with the powers conferred upon FBR under Section 179(4) *ibid*, whereas, no independent reasons of its own have been assigned by FBR; rather, the reasons stated by the Collector in his extension letter have been found to be justified. This is an incorrect approach as FBR cannot abdicate its authority so conferred under the Act in such

a manner and ought to have given its own reasoning in line with Section 179(4) of the Act. In *Collector of Customs Lahore v HNR Company (Pvt) Limited*¹, the Hon'ble Supreme Court while dealing with a somewhat similar extension of time under Section 179(4) of the Act, without assigning cogent reasons has held that the provision of reasons for granting an extension of time is necessary so as to ensure that discretion has been exercised by the FBR on valid grounds transparently and in a structured manner.

3. As to the finding of the Tribunal that such period of limitation is directory and not mandatory, with respect are unable to agree with it as the Supreme Court² has already decided it 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 provisions insofar as passing of ONO within a certain period of time is concerned. 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. It has been further held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the said decision is invalid. 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

¹ Order dated 28.09.2021 in Civil Petition No.2734 & 2735 of 2020

² *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), followed by this Court in SCRA No. 119 of 2024 (*Director, Directorate General, Intelligence & Investigation (Customs), Karachi Vs. M/s. Chase Up.*)

decision is invalid. Both these views have been followed and affirmed in the case of A.J. Traders (Supra).

4. Accordingly, the proposed question as above, is answered in the affirmative in favour of the Applicant and against the Respondents and as a consequence thereof, answer to the remaining Question(s) would be an academic exercise; hence, we deem it appropriate not to answer the same. The Reference Applications are hereby **allowed** by setting aside the impugned order(s) to the extent of the present Applicants. Office is 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. Office shall also place copy of this order in the connected Reference Applications.

JUDGE

JUDGE

Ayaz P.S.