

# **THE HIGH COURT OF SINDH, KARACHI**

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

1.	Spl. Cus. Ref. A. 166/2013	Director I & I FBR, Regional Officer, Karachi VS M/s. J.Z. Enterprises, Karachi another.
2.	Spl. Cus. Ref. A. 129/2013	Collector of Customs VS M/s. Adeel Traders & another
3.	Spl. Cus. Ref. A. 130/2013	Collector of Customs VS M/s. A.S. Paper Converter & Products & another
4.	Spl. Cus. Ref. A. 131/2013	Collector of Customs VS M/s. Computer King & another
5.	Spl. Cus. Ref. A. 132/2013	Collector of Customs VS M/s. Packages Expert (Pvt) Ltd. & another
6.	Spl. Cus. Ref. A. 133/2013	Collector of Customs VS M/s. Esha Trading Company & another
7.	Spl. Cus. Ref. A. 134/2013	Collector of Customs VS M/s. J.Z. Enpterprises & another
8.	Spl. Cus. Ref. A. 135/2013	Collector of Customs VS M/s. Raja & Co. & another
9.	Spl. Cus. Ref. A. 136/2013	Collector of Customs VS M/s. Imran Corporation & another
10.	Spl. Cus. Ref. A. 137/2013	Collector of Customs VS M/s. Maryah Printers & another
11.	Spl. Cus. Ref. A. 138/2013	Collector of Customs VS M/s. Younus Brothers & another
12.	Spl. Cus. Ref. A. 139/2013	Collector of Customs VS M/s. Hamdam Paper Products (Pvt) Ltd. & another
13.	Spl. Cus. Ref. A. 140/2013	Collector of Customs VS M/s. Shayan Printers & Converters & another
14.	Spl. Cus. Ref. A. 141/2013	Collector of Customs VS M/s. Paradise Press (Pvt) Ltd. & another
15.	Spl. Cus. Ref. A. 142/2013	Collector of Customs VS M/s. Okhai Printing Press & Packages & another
16.	Spl. Cus. Ref. A. 143/2013	Collector of Customs VS M/s. UBC Convertic (Pvt) Ltd. & another
17.	Spl. Cus. Ref. A. 144/2013	Collector of Customs VS M/s. Dawn Convertec (Pvt) Ltd. & another
18.	Spl. Cus. Ref. A. 145/2013	Collector of Customs VS M/s. Jilani Enterprises (Pvt) Ltd. & another
19.	Spl. Cus. Ref. A. 146/2013	Collector of Customs VS M/s. Moon Enterprises & another
20.	Spl. Cus. Ref. A. 147/2013	Collector of Customs VS M/s. Mas Paper Company & another
21.	Spl. Cus. Ref. A. 148/2013	Collector of Customs VS Bina Paper Printing Packages & Converting Industry
22.	Spl. Cus. Ref. A. 167/2013	Director Gen. Int. & Inv. FBR VS M/s. Jillani Enterprises & another
23.	Spl. Cus. Ref. A. 168/2013	Director Gen. Int. & Inv. FBR VS M/s. Hamdam Paper Product & another

24.	Spl. Cus. Ref. A. 169/2013	Director Gen. Int. & Inv. FBR VS M/s. Dawn Convertec & another
25.	Spl. Cus. Ref. A. 170/2013	Director Gen. Int. & Inv. FBR VS M/s. Paradise Press (Pvt) Ltd. & another
26.	Spl. Cus. Ref. A. 171/2013	Director Gen. Int. & Inv. FBR VS M/s. Raja & Co. & another
27.	Spl. Cus. Ref. A. 172/2013	Director Gen. Int. & Inv. & another VS M/s. Okhai Printing Press & Packages & another
28.	Spl. Cus. Ref. A. 173/2013	Director Gen. Int. & Inv. FBR VS M/s. Maryah Printers & another
29.	Spl. Cus. Ref. A. 174/2013	Director Gen. Int. & Inv. FBR VS M/s. Younus Brothers & another
30.	Spl. Cus. Ref. A. 175/2013	Director Gen. Int. & Inv. FBR VS M/s. Mas Paper Co. & another

**Applicants:**

Through M/s. Muhammad Khalil  
Dogar, Ghulam Murtaza, Azad Hussain  
holding brief for Mr. Muhammad Bilal  
Bhatti, Pervaiz A. Memon, Advocates

**Respondents:**

Through Mr. Aqeel Ahmed Khan & Mr.  
Muzzamil Hussain, Advocates.

**Date of hearing:****23.05.2024****Date of Judgment:****23.05.2024****JUDGMENT**

**Muhammad Junaid Ghaffar, J:** Through these Reference Applications, the Applicants have impugned Orders dated 01.02.2013 passed in Customs Appeal No. K-1290 of 2011 and other connected matters proposing various questions of law. However, on perusal of the impugned order it appears that in addition to other issues, the Tribunal has also decided another common legal question which can decide the entire controversy as the same now stands decided by the Honourable Supreme Court. Such question has not been raised by the Applicant despite the same being formulated and settled as an issue by the Tribunal. The said question reads as under:-

(iv). Whether the Order-in-Original dated 07.02.2011 has been passed beyond the mandatory limitation period under Section 179(3) of the Customs Act, 1969 which rendered its being time barred and without jurisdiction for recovery of demanded tax?

2. Heard learned Counsel for the parties and perused the record. Insofar as the above question is concerned, it appears that Show Cause Notice in this matter was issued on 14.07.2010; whereas, the period of 120 days (relevant at that point of time) as provided in Section 179(3) of the Customs Act, 1969) was supposed to expire on 11.11.2010 after deduction of 28 days adjournment by the Respondent. It further appears that before such expiry, a request was submitted by the concerned Additional Collector (Adjudication) on 05.11.2010 to the Collector (Adjudication) for extension of time by a further 60 days' period exercising his powers under Section 179(3) (ibid). The concerned Collector without assigning any reasons has merely signed such request of the Additional Collector and as per the Order-in-Original ("ONO"), time stood extended up till 07.02.2011; on which date the ONO has been passed.

3. Firstly, it has been stated in the ONO that the Respondents sought adjournment for 28 days vide its letters dated 27.07.2010 and 24.09.2010 (wrongly typed as 24.09.2009) and these 28 days have been excluded while computing the total period of passing of the ONO. If that was the case, then in fact the original time period of 120 days had not expired when extension was being sought as these 28 days were to be excluded by the Adjudicating Authority itself. Accordingly, there was no occasion to seek any extension and the ONO ought to have been passed within such period. This contradiction has not been justified or controverted in any manner by the Applicants' Counsel. It further reflects that as per ONO itself, the last date of hearing is 21.10.2010, which further reflects that the matter was kept pending by the concerned

Adjudicating Authority for no justifiable reason as he could have easily passed the order by or before 11.11.2010. It is also a matter of fact that despite directions, the adjournment request of the Respondent has not been placed on record. Now if the final hearing was concluded on 21.10.2010, and as contended, adjournment was also sought for 28 days during such period, then why the ONO was not passed from 21.10.2010 till 5.11.2010. It is very strange as well as surprising that the matter was kept pending and as to why a need arose to seek extension in time when there was neither any adjournment request after such date; nor any further hearing was granted; therefore, observation and events recorded in Para-5 of the ONO do not appear to be justified or supported by the material available on record. It may also be noted that this timeline is mandatory and therefore, has to be followed by the department without any delay or laxness as it creates rights in favour of the Respondents.

4. It further reflect that while granting extension no independent reasons of its own have been assigned by the Collector; and instead the request of the Additional Collector (Adjudication) has been signed without any comments, endorsement or reasons. If the Collector had applied his mind, it would have been noticed that after deducting 28 days adjournment, there was no need for an extension as the time had not expired by that time when it was so requested. Regretfully, the Collector has failed to apply his mind and has casually signed the request in a routine manner. This is an incorrect approach as the Collector 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*<sup>1</sup>, the Hon'ble Supreme Court while dealing with a somewhat

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<sup>1</sup> Order dated 28.09.2021 in Civil Petition No.2734 & 2735 of 2020

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.

5. As to the argument of the Applicant that such period of limitation is directory and not mandatory, it would suffice to observe that this issue now stands settled by the Supreme Court<sup>2</sup> by deciding 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 decision is invalid. Both these views have been followed and affirmed in the case of A.J. Traders (Supra).

6. Accordingly, the proposed question as above, is answered in the **affirmative** against the Applicant and in favour of the Respondents and as a consequence thereof, answer to

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

the remaining Question(s) would be an academic exercise; hence, we deem it appropriate not to answer the same. The Reference Applications are hereby **dismissed**. 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.