

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
SCRA Nos.70 to 108 of 2013

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| Date | Order with signature of Judge |
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For hearing of main case

**08.3.2024**

Mr. Muhammad Khalil Dogar advocate for the applicant  
Mian Ashfaq Ahmed advocate for respondents in SCRA Nos.85 to 96 of 2013

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Through these Reference Applications, the Applicant-department has impugned a common order dated 21.12.2012 passed in Customs Appeal Nos.K-666/2011 and 703/2011, K-670 to 677/2011 by the Customs Appellate Tribunal Karachi. Though various questions of law have been proposed on behalf of the applicant-department, however, on perusal of the record and the impugned order, it reflects that admittedly the Appeals filed by the present Applicant before the Customs Appellate Tribunal against the order of the Collector of Customs (Appeals) were time barred by 74 days. The relevant finding of the learned Tribunal in this regard is available at paragraphs 6 and 7, which reads as under; -

6. *These Appeals are barred by time by 74 days as pointed out by the office. The appellant had not filed any request for condonation of delay at the time of filing of Appeal. When the Tribunal pointed out the said deficiency, the appellant filed applications for condonation, which are not permissible under law. Nevertheless despite of the fact that the applications for condonation are not permissible at this stage, these are taken up for disposal along with the main Appeals for the sake of regularization and justice.*

7. *The Judgments by the respondent no.5 were passed on 07.02.2011 and were dispatched through TCS consignment note No.167840 171 on 08.02.2011 and were received in the office of appellant on 09.02.2011 as evident from the copy of the consignment note supplied by the learned of respondents. The appellant has failed to advance cogent reasons not filing Appeal timely except with plea that the order was misplaced and so the case filed consequent to which they obtained an attested copy from respondent no.5 on 28.04.2011 and filed the instant Appeal therefore the computation of time limit is to be taken from 28.04.2011. The plea taken by the appellant is contrary to the provision of Sub section (3) of Section 194-A and Section 215 of the*

Custom Act 1969. I am of the considered view that simply relying on loss of received order, record of the case, receipt of the certifying copy and does not suffice for enough to be considered a valid argument and that too without fixing the responsibility for lapse after scrutiny of record. Whereas the argument as to the delay in filing Appeal being a technical defect and that it does not wash away the right of appellant. It is not valid as the limitation is provided in the statute specifically and one has to adhere to those non-adherence to the mandatory requirement of law is always fatal it has been held in a plethora of reported Judgments that time limitation is mandatory obligation and any order passed in deviation thereof is nullity in law. In **1990 SCMR 1059 FOP V/S M/s Azhar Brothers Ltd and PLD 1995 Supreme Court 396, Government of Punjab and another V/S Muhammad Saleem** the Hon'ble Supreme Court dismissed the Appeal while holding that High Court rightly declined the condonation of delay. As delay of each day had to be explained and Govt could not be treated differently than private litigants on the question of limitation U/S 5, Limitation Act 1908. Whereas in **PTCL 2008 CL. 1012 M/s Nida-e-Millat Lahore V/S Commissioner Income Tax, Zone-I Lahore** the Hon'ble Supreme Court refused leave for Appeal by holding that the Supreme court in exercise of jurisdiction under Article 185(3) cannot condone delay occurring in filing of Appeal before Income Tax appellate authority as limitation creates a right in favour of opposite party. In **2011 SCMR 1424 Munir Hussain V/S Changaz Khan** the Hon'ble Supreme Court held that the petitioner had not particularized in application for condonation of delay by raising any plausible ground or disclosing date and day of his knowledge about dismissal of his Appeal. Such indolence would cultivate a right in opposite party which could not be lightly dislocated to maintain judicial balance. Again in **2011 SCMR 1341 Amanullah Soomro V/S P.I.A through Managing Director/Chairman and another**, the Hon'ble Supreme Court refused to condone the delay while observing that "Line has to be drawn between negligence and bonafide mistake, plea raised by the petitioner might be attractive on moral plain but there was no justification for depriving opposite party of legal rights acquired owing to negligence of petitioner. The High Court of Sindh in **PTCL 2008 CL. 173 M/s Collector of Sales Tax and Central Excise V/S Evian Fats and Oil (Pvt) Ltd** held that where the officials of the sales tax dept were not vigilant enough to file Appeal before High Court within period of limitation and were negligent, the respondent cannot be penalized, non filing of Appeal within limitation period creates a vested right in favour of respondent. In **2010 PTD 1183 Collector of Custom, MCC of Preventive Karachi V/S Sheikh Nasir Ali** it was held "that the respondent had neither infringed any law nor transgressed any circular/scheme, therefore the impugned order cannot be termed as a void order. After expiry of limitation period, vested rights had been created in favour of respondents which could not be taken away and dismissed the reference in limine for being hopelessly barred by limitation. In **2010 PTD 1739 Star Corporation (Pvt) Ltd Karachi V/S Collector of Customs Karachi** the Hon'ble High Court held that u/s 3 of the Limitation Act, if an Appeal is barred by time and no condonation is sought, then the Appeal is to be dismissed. The said proposition of law was also validated in the reported Judgments **PLD 1953 Dacca 209, 1997 CLC Karachi 1332, 2007 PTD 1337, 2008 PTD 60, 2008 PTD 169, 2008 PTD 981, 2008 PTD 2025, PTCL 2008 CL.1, PTCL 2010 CL.444, PTCL 2010 CL.12 and PTCL 2010 CL. 141."**

From perusal of the aforesaid finding of the Tribunal it reflects that a finding of fact has been recorded inasmuch as the order of the Collector of Customs (Appeals) was dispatched through TCS and was duly received on 09.2.2011, whereas, the Appeal was

preferred on 24.6.2011 and was found to be time barred. It is also a matter of record as noted by the Tribunal that while filing the Appeal no application for condonation of delay was ever filed and it was only subsequently that an attempt was made to seek condonation.

In view of the above, in our considered view, the Tribunal has come to a just, fair and legal conclusion and has rightly dismissed the Appeals as being time barred. No case for indulgence is made out. Accordingly, all these Reference Applications being misconceived are hereby dismissed.

Office to place a copy of this order in all connected SCRA's. Office shall also a copy of this order to the Tribunal as per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE