

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 157 / 2024
(Director, D.G. I & I (Customs) v. M/s Ramzan Steel Traders)

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Adnan-ul-Karim Memon

FRESH CASE.

- 1) For orders on CMA No. 646/2024.
- 2) For orders on CMA No. 647/2024.
- 3) For hearing of main case.
- 4) For orders on CMA No. 648/2024.

13.03.2024.

Dr. Shah Nawaz Memon, Advocate for Applicant.

- 1) Granted.
- 2) Granted subject to all exceptions.
- 3 & 4) Through this Special Customs Reference Application, the Applicant (department) has impugned Judgment dated 02.01.2024 passed in Customs Appeal No. H-1681 of 2023 by the Customs Appellate Tribunal Bench-I, Karachi, proposing various questions of law; however, for the present purposes only one question i.e. Question No.3 is relevant as 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 have analogous provision insofar as passing of an Order in Original within a certain period of time is concerned. Proposed Question No.3 reads as under:-

“3) Whether the learned Appellate Tribunal while concluding impugned Judgment has not erred in law to conclude that Order-in-Original was time barred, having been issued beyond the prescribed period of limitation as provided under Section 179(3) of the Customs Act, 1969?”

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),

Heard learned Counsel for the Applicant and perused the record. The learned Tribunal in Para 5 of the impugned Judgment has dealt with this issue and the relevant finding reads as under:-

"05. We heard the rival parties besides examining the record of the case and the submission of the Appellant contained in the Memo of Appeal and counter comments by the department. The counsel of the Appellant at the very outset stated that Respondent has invoked section 2(s) in the impugned show cause notice and the stipulated period for the issuance of Order-in-Original for such cases is 30 days after the issuance of show cause notice as provided in 1st proviso of sub-section (3) of section 179 of the Customs Act, 1969. He argued that show cause notice was issued on 16.08.2023 and impugned Order-in-Original was issued on 05.10.2023 i.e after 51 days of issuance of show cause notice whereas the same ought to have been issued by 14.09.2023 i.e within 30 days of issuance of show cause notice. The impugned Order-in-Original has been issued after 21 days of the statutory period envisaged in section 179 of the Customs Act, 1969 and no extension in time period by the competent authority is on record. The DR in reply stated that "In the instant case the show cause notice was issued on 16.08.2023 and subsequently case was heard on (i) 24.08.2023, (ii) 05.09.2023 (iii) 28.09.2023 and (iv) 02.10.2023 when the learned Counsels for the appellant (herein and the vehicle furnished written replies to the referred show cause notice on behalf of Respondents (para 14 page 2 of impugned order is referred). The DR was directed to submit para-wise comments on the contentions of Respondents. Since, number of controversies were raised in the replies, the DR on 08.09.2023 sought thirty days-time to file comments. Subsequently, comments on the reply of Ms. Ramzan Steel (appellant herein) were furnished on 13.09.2023 and similarly comments in relation to vehicle used for the carriage of goods were filed on 02.10.2023 (para 15 page 8 & 9 of the impugned order is referred). In view of above, it is, abundantly clear that the case has been adjudicated vide impugned order within the prescribed limit as provided under 1 and 2nd proviso of sub-section (3) of Section 179 of the Customs Act, 1969. Reliance of the appellant on various case law is hence mis-placed."

From perusal of the aforesaid finding of fact, which otherwise cannot be disturbed by this Court in its Reference jurisdiction reflects that it is the department which sought two adjournments and even requested for a period of 30 days to file comments. It further appears that first set of comments was furnished on 13.09.2023 and thereafter, in respect of the vehicle in question the comments were filed on 02.10.2023, whereas, the Order-in-Original was passed on 05.10.2023. The Show Cause Notice was issued on 16.08.2023 and in terms of the first proviso to Section 179(3) of the Customs Act, 1969, wherein the provisions of clause (s) of Section 2 ibid have been invoked, such cases shall be decided within a period of thirty days of the issuance of show cause notice. It is not in dispute that the ONO was passed after 50 days from the

date of show cause notice. While confronted, learned Counsel for the Applicant has though made an attempt to justify that the Applicant was not at fault and adjournments were sought by the Respondent; hence, the Order was passed within the time period as provided in the 2nd proviso to section 179(3) of the Act. However, we are not impressed with his submission inasmuch as the record placed before the Tribunal and as noted in the aforesaid finding does not support this contention. Moreover, the Adjudicating authority has also not endorsed the view point of the Applicant in any manner. These are admitted facts and have not been controverted in any manner on behalf of the Applicant.

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. (3) 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. The Reference Applications is hereby **dismissed** in limine with pending applications. 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.

J U D G E

Arshad/

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