

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application No. 207 OF 2012

*Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rhaman*

Applicant: **M/s. Dewan Salman Fibre Limited**
Through Mr. Imran Iqbal Khan,
Advocate.

Respondents: **The Collector of Customs,
Collectorate of Customs (Appeals)
& others**
Through M/s. Faheem Raza Khuhro
and Khalilullah Jakhro, Advocates.

Date of hearing: **21.01.2025**
Date of Judgment: **21.01.2025**

JUDGMENT

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned judgment dated 03.01.2012 passed in Customs Appeal No. K-561/2011 proposing various questions of law. However, there is only question which can decide the entire controversy. The said question reads as under:-

- (i) Whether the Order-in-Original No. 73/2010 dated 02.11.2010 passed by the Deputy Collector of Customs, Appraisement, Karachi under Section 179 of the Customs Act, 1969 was time barred?

2. Heard learned Counsel for the parties and perused the record. In the instant matter the Show Cause Notice was issued on 05.05.2008; whereas Order-in-Original was passed on 02.11.2010 i.e. after a period of about 2 and a half years, therefore the same is hopelessly time barred in terms of Section 179(3) of the Customs Act, 1969, whereas the ONO is totally silent as to passing it so belatedly.

3. This issue has already been decided by the Supreme Court¹ against the department in various cases under the Sales

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

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 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)**.

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 Application is hereby **allowed** by setting aside the impugned orders, whereas the surety furnished before the Nazir of this Court vide order dated 22.05.2023 stands discharged and shall be returned / refunded to the Applicant along with profit if any. 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.

JUDGE

JUDGE

Ayaz P.S.