

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications No. 951 of 2024

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant: The Collector of Customs,
Collectorate of Customs
Enforcement,
Custom House, Karachi.
Through Mr. Faheem Raza
Khuhro, Advocate.

Respondents: Abdul Majeed Bowan &
another.

Date of hearing: 21.01.2025.

Date of Order: 21.01.2025.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application under Section 196 of the Customs Act, 1969 (“Act”), the Applicant (department) has impugned Judgment dated 13.09.2024 passed in Customs Appeal No. K-2376/2024 by the Customs Appellate Tribunal Bench-I, Karachi proposing the following question of law:-

“Whether, based on the facts and the circumstances of the case, the Customs Appellate Tribunal failed to appreciate Section 179(3) of the Customs Act, 1969 which designates the Collector as the competent authority to grant extension in the adjudication proceedings beyond the prescribed time limit?”

2. Heard learned Counsel for the Applicant and perused the record. It appears that in this matter Show Cause Notice was issued on 11.03.2024 invoking Section 2(s) of the Customs Act, 1969; whereas Order-in-Original was passed on 06.05.2024 and in terms of first proviso¹ 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

¹ provided that in cases, wherein the provisions of clause (s) of section 2 have been invoked, such cases shall be decided within a period of thirty days of the issuance of show cause notice.

of thirty days of issuance of show cause notice. It is not in dispute that the ONO was passed after 56 days from the date of Show Cause Notice i.e. after delay of 26 days. When confronted, learned Counsel has though referred to the Order-in-Original; wherein, hearings were fixed on various dates; however, it has not been brought on record that how many days adjournment was sought by the Respondent. The ONO in Para 5 states that hearings were fixed on 19.03.2024, 27.03.2024, 02.04.2024, 16.04.2024, 30.04.2024 & 05.04.2024, therefore, the ONO could have been passed even after conclusion of all the hearing including the adjournments as the period of 30 days was expiring on 10.04.2024 and there wasn't any need to seek extension of time. It appears that after expiry of the time so stipulated under Section 179(3) of the Act, 15 days' time was extended by the concerned Collector, which in all fairness ought not to have been granted and the ONO should have been passed immediately after the last date of hearing i.e. 05.04.2024.

3. Lastly, in cases falling under Section 2(s) of the Act, no extension can be granted by the Collector for passing the ONO inasmuch as the authority vested in him is for cases other than of Section 2(s) as the said cases fall within the 1st proviso to Section 179(3) and are excluded from the ambit of Section 179(3) wherein the authority to extend the time period has been provided. This is more clarified if one examines the 3rd proviso² to Section 179(3) of the Act, which provides that in cases wherein goods are lying at sea-port, airport or dry-port, they shall be decided within thirty days of the issuance of show cause notice which can be "*extended by another fifteen days by Collector of Customs*", whereas, in the first proviso the said authority is lacking and if the intention had been otherwise as

² [Provided further that in cases where in goods are lying at sea-port, airport or dryport, these shall be decided within thirty days of the issuance of show cause notice which can be extended by another fifteen days by Collector of Customs, if required so.]

observed above, then in the same manner the Collector would have been authorised to extend the time period in cases falling within the 1st proviso pertaining to cases of Section 2(s) of the Act, which is not the case, and therefore, in such case it is only FBR which can be approached to exercise its powers in terms of Section 179(4) of the Act and not otherwise. In view of such position, the finding of the Tribunal with respect to question in hand is unexceptionable and does not warrant any interference. A similar controversy came up before this Court in SCRA No. 119 of 2024³ and vide Order dated 15.03.2024, the issue has been decided in the following terms:-

“Lastly, in cases falling under Section 2(s) of the Act, no extension can be granted by the Collector for passing the ONO inasmuch as the authority vested in him is for cases other than of Section 2(s) as the said cases fall within the 1st proviso to Section 179(3) and are excluded from the ambit of Section 179(3) wherein the authority to extend the time period has been provided. This is more clarified if one examines the 3rd proviso⁴ to Section 179(3) of the Act, which provides that in cases wherein goods are lying at sea-port, airport or dry-port, they shall be decided within thirty days of the issuance of show cause notice which can be “*extended by another fifteen days by Collector of Customs*”, whereas, in the first proviso the said authority is lacking and if the intention had been otherwise as observed above, then in the same manner the Collector would have been authorised to extend the time period in cases falling within the 1st proviso pertaining to cases of Section 2(s) of the Act, which is not the case, and therefore, in such case it is only FBR which can be approached to exercise its powers in terms of Section 179(4) of the Act and not otherwise. In view of such position, the finding of the Tribunal with respect to question in hand is unexceptionable and does not warrant any interference.

4. The Hon’ble Supreme Court in the case of **Super Asia**⁵ has 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**⁶, it was held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the

³ Director Intelligence v Chase Up

⁴ [Provided further that in cases where in goods are lying at sea-port, airport or dryport, these shall be decided within thirty days of the issuance of show cause notice which can be extended by another fifteen days by Collector of Customs, if required so.]

⁵ reported as The Collector of Sales Tax V. Super Asia Mohammad Din (2017 SCMR 1427)

⁶ Mujahid Soap & Chemical Industries (Pvt.) Ltd. V. Customs Appellate Tribunal (2019 SCMR 1735)

said decision is invalid. Both these views have been followed and affirmed in **A.J. Traders**⁷.

5. In view of the above, proposed Question is answered against the Applicant and in favour of the Respondent and consequently thereof, this 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

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⁷ A.J. Traders V. Collector of Customs (PLD 2022 SC 817)