

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Special Customs Reference Application No.869 of 2017**

Date

Order with signature of Judge

PRESENT:

*Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Mohammad Abdur Rahman*

HEARING OF CASE:

For Regular Hearing

**Dated; 27<sup>th</sup> January 2025**

Ms. Fehmida Khanam, Advocate for Applicant.

Ms. Afsheen Aman, Advocate for Respondent.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application the Applicant has impugned Judgment dated 24.07.2017 passed in Customs Appeal No.K-1625 of 2015 by the Customs Appellate Tribunal, Bench-II, Karachi; proposing various questions of law, however, vide order dated 29.09.2022 this Reference Application was admitted for regular hearing on Question No.3, which reads as under:

*“Whether an appeal could be filed under Section 193 of Custom Act in absence of an order to be issued under section 80 of Custom Act?”*

2. Heard learned counsel for the parties and perused the record. It appears that the Applicant was aggrieved by some Assessment Note received through WeBOC System, whereby, the classification of the goods in question as well as values were changed, and the Applicant was required to pay extra duty and taxes. Applicant tried to get the said assessment reviewed, but again it was refused, and some communication was given to the Applicant in a similar manner. The said communications are dated 08.06.2012 and 09.06.2012. Record further reflects that a Constitution Petition bearing No.D-890 of 2013 filed by the Applicant was pending in this Court in respect of some dispute regarding assessment of the goods and on 17.08.2015 same was disposed of in the following terms: -

*“After arguing the matter at length, Counsel for the petitioner contends that he would be satisfied in case his letter dated 9<sup>th</sup> August, 2012 (page 49), be treated as appeal pending before the Collector of Customs (Appeals) and be decided in accordance with law.*

*Counsel for the respondent says that even this appeal which if treated pending before the Collector of Customs (Appeals) since 9<sup>th</sup> August 2012 would yet be time barred. However, the issue of condoning the time is to be decided by Collector of Customs (Appeals) strictly in accordance with law by treating the appeal pending since 9<sup>th</sup> August, 2012.*

*Accordingly, this petition stands disposed of with the directions to the Collector of Customs (Appeals) to treat this letter dated 9<sup>th</sup> August, 2012 as an appeal pending against the assessment order detailed in the stated letter and to first decide the question of limitation in accordance with law, if the period by which the appeal is barred is condoned then to decide the appeal on merits within 60 days.”*

3. The Collector of Customs (Appeals) as well as the Tribunal; both have dismissed the case of the Applicant on a sole ground of limitation by holding that the appeal filed by the Applicant before the Collector of Customs (Appeals) under section 193 of the Customs Act, 1969 against the above communication/messages was time barred. From perusal of the order passed by this Court, as reproduced hereinabove, it reflects that the Collector of Customs (Appeals) was directed to decide the question of limitation in accordance with law and only, thereafter, decide the case on merits. However, the Collector of Customs (Appeals) has been pleased to dismiss the appeal, as being time barred, which order has been maintained by the Tribunal.

4. In our considered view, though the communication through WeBOC System is an order, which can be appealed under section 193 of the Customs Act, 1969, but at the same time, when the said communication/messages are looked into, it reflects that these messages do not state that as to who has passed such one line order(s) and, therefore, the Applicant could not have presumed that in fact, these are the orders passed by an officer of Customs below the

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rank of an Additional Collector and are subject to an Appeal under Section 193 of the Customs Act, 1969. Even if, some order is communicated through WeBOC System or through any other online system, the order must state that it is an appealable assessment order; it should have reasons or at least provide some details as to why the said order is being passed and it must state that who has passed such an order with his designation and rank, so that an aggrieved person can seek further remedy of a proper appeal. If not, then at least an aggrieved person must not be non-suited on limitation.

5. Since, in the instant matter the orders/messages so conveyed do not state that who has passed such order, nor it states that an Appeal lies against it under Section 193 *ibid*, therefore, in the peculiar facts and circumstances of this case, the delay, if any, read with this Courts order dated 17.08.2015 passed in C.P. No.D-890/2013 ought to have been condoned by the concerned Collector of Customs (Appeals).

6. In view of hereinabove facts and circumstances of the case, while setting aside the orders passed by the Tribunal as well as Collector of Customs (Appeals) the matter stands remanded to the Collector of Customs (Appeals) and the limitation stands condoned, whereas the Collector of Customs (Appeals) shall decide the appeal on merits in accordance with law, after affording an opportunity of hearing to all concerned. Let copy of this order be sent to the Collector of Customs (Appeals) for compliance.

**JUDGE**

**JUDGE**