

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Custom Reference Application Nos. 505 & 506 of 2024

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection No.25 & 26.
2. For hearing of main case.
3. For order on CMA No.2479/2024.

Dated; 7th October 2024

Mr. Shahid Ali Qureshi, Advocate for Applicant.

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Through both these Reference Applications the Applicant has impugned judgment passed in Customs Appeal Nos.K-359 and 360 of 2024 by the Customs Appellate Tribunal, Bench-II at Karachi; proposing following questions of law: -

1. *Whether the learned Customs Appellate Tribunal has fallen in error by arriving at the conclusion in the impugned that the adjudicating authority has rendered the Order-in-Original dated 19.01.2024 beyond the statutory time limitation as provided by Section 179(3) of the Customs Act, 1969 and released the smuggled goods in violation of law?*
2. *Whether the Customs Officer under exceptional circumstances of the case is entitled / permissible to conduct search under Section 163 of the Customs Act, 1969, and facts and circumstances of the instant case justify action under Section 163 of the Customs Act, 1969?*
3. *Whether the learned Customs Appellate Tribunal has disposed of controversy in the impugned judgment by misreading or non-reading of law & facts and released the smuggled / pilfered goods in violation of law and set aside O-in-O on technical grounds instead of determining facts in violation of principles set by Supreme Court of Pakistan?*

Heard learned counsel for the Applicant and perused the record. Insofar as Question No.1 above is concerned, it is not in dispute that the Show Cause Notice was issued on 13.10.2023, whereas Order-in-Original was passed on 19.01.2024 and was admittedly beyond the stipulated period of 30 days as provided the 1st proviso to Section 179(3) of

the Customs Act, 1969. When confronted, learned Counsel for the Applicant submits that extension was granted by the Collector in these matters; hence, the Tribunal was not justified in deciding this issue against the Applicant. However, as per available record, such extension was granted by the Collector himself for which he has not been conferred any such powers. An identical issue came for consideration before this Court in Special Customs Reference Application No.119 of 2024 [*Re: Director, Directorate General, Intelligence & Investigation, Karachi v. M/s. Chase Up*] and vide Order dated 15.03.2024, it has been held that in cases wherein in show cause notices Section 2(s) of the Customs Act, 1969 is invoked by the Adjudicating Authority, no extension can be granted by the Collector for extension in time. The relevant findings are as under: -

“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 proviso¹ 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.

The law to this effect has now been settled against the department as the proposed question No.1 stands decided by the Supreme Court² 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 (“ONO”) within a certain period is concerned. 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.1 proposed on behalf of the Applicant is answered in **negative** against the Applicant and in favour of the Respondent and consequently thereof, the answer to remaining questions is not required. Both these Reference Applications are hereby dismissed in *limine* along with pending application(s).

Let copy of this order be sent to the Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS

² 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),