

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 856 / 2024

Date

Order with signature of Judge

FRESH CASE.

- 1) For orders on CMA No. 3891/2024.
- 2) For orders on CMA No. 3835/2024.
- 3) For orders on office objection No. 01, 02, 27 & 30.
- 4) For orders on CMA No. 3836/2024.
- 5) For hearing of main case.
- 6) For orders on CMA No. 3837/2024.

29.10.2024.

Mr. Ghulam Rasool Korai, Advocate for Applicant.

- 1) Granted.
- 2) This is an application under Section 5 of the Limitation Act, 1908 seeking condonation of delay in filing this Reference Application which is admittedly time barred by 74 days. When confronted, learned Counsel has taken us to the supporting affidavit to this application specially Para 3 thereof which reads as under:-

“3. That during the period of limitation, the Collector of Customs, JIAP, Karachi, had relinquished the charge on 23.07.2024 and the new Collector assumed the charge on 25.07.2024. Thus, due to change of charge, it was over looked by the relevant staff that due to the statutory change recently introduced, the period of limitation for filing of SCRA has been drastically reduced from 90 days to 30 days.”

We have gone through the above submissions of the authorized officer of the Applicant and are not convinced that this can be a valid ground to condone the delay in filing of these Reference Applications. We are also shocked and unable to comprehend as to how an officer of the rank of Deputy Collector can state that she was not aware of the statutory change introduced through Finance Act, 2024; whereby, the period of limitation for filing a Reference Application has been reduced from 90 days to 30 days. In our opinion, if this plea

was to be taken, it could only be done by a private litigant and not by an officer of the Customs department as they are required to be well aware of the changes so introduced through Finance Act on yearly basis. As to the argument of the learned Counsel that the impugned order is illegal and has been passed without lawful authority and jurisdiction, it would suffice to state that this alone cannot be a ground on its own to condone the delay. Notwithstanding the above, it is a matter of record that Applicant was aware of the impugned order since it was issued and served, whereas thereafter another order for implementation of the impugned judgment was also passed and against that a Reference Application was filed. Despite this, the Applicant had failed to file a Reference Application against the main judgment and when the Reference against the order of implementation was dismissed as withdrawn, instant Reference Application has been filed. We do not see as to how under these facts and circumstances any discretion can be exercised by us to condone the delay in question.

Per settled law, the Court having jurisdiction to entertain a case after expiry of limitation has to apply its mind in considering the request for condonation after going through the facts of the case. There is no general rule or precedent that in each and every case, where the Government interest or revenue is involved, the delay must necessarily be condoned. We may mention here that the question of limitation being not mere a technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification which are lacking in this case¹. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential

¹ (2006 S C M R 1248) Govt. of PAKISTAN V. MALBROW BUILDERS, CONTRACTOR.

treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with in the same manner as the cases of an ordinary litigant/citizen². This Court has repeatedly laid down that so far as the limitation is concerned, the Government cannot claim to be treated in any manner differently from an ordinary litigant. In fact, the Government enjoys unusual facilities for the preparation and conduct of their cases and its resources are much larger than those possessed by ordinary litigants³.

In view of such position, we do not see any cogent reason to entertain such an application for condonation of delay; hence, the application is dismissed, and as a consequence thereof, this Reference Application being hopelessly barred by time is hereby dismissed along with pending applications. Let copy of this order be issued to the Tribunal as required in terms of Section 196(5) of the Customs Act, 1969.

J U D G E

J U D G E

Arshad/

² (PLD 2002 SC 436) CHAIRMAN, DISTRICT EVACUEE TRUST, JHELUM V ABDUL KHALIQ

³ (1996 SCMR 727) FEDERATION OF PAKISTAN V JAMALUDDIN and others