

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications No. 917 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,
Advocate.

Respondent: Syed Naseebullah.

Date of hearing: 06.12.2024.

Date of Order: 06.12.2024.

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-2684/2024 by the Customs Appellate Tribunal Bench-I, Karachi proposing the following question of law:-

“Whether the Customs Appellate Tribunal has fallen in error by arriving at the conclusion in the impugned judgment that the adjudicating authority has rendered the Order-in-Original dated 03.06.2023 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?”

Heard learned Counsel for the Applicant and perused the record. It appears that in this matter Show Cause Notice was issued on 20.03.2024 invoking Section 2(s) of the Customs Act, 1969; whereas Order-in-Original was passed on 03.06.2024 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 of thirty days of issuance of show cause notice. It is not in

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.

dispute that the ONO was passed after 75 days from the date of Show Cause Notice i.e. after delay of 44 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 the Respondent had sought any adjournments. It appears that after expiry of the time so stipulated under Section 179(3) of the Act, 45 days' time was extended by the concerned Collector; however, it needs to be appreciated that the maximum adjournment which could be granted to the Respondent is for 30 days as per the 2nd proviso to Section 179(3) *ibid*.

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 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.

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.]

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.

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, proposed Question is answered against the Applicant and in favour of the Respondent and as a consequence 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.

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J U D G E

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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.]