

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 713 & 714 / 2023

Date

Order with signature of Judge

FRESH CASE.

- 1) For orders on CMA No. 736/2025.
- 2) For orders on CMA No. 737/2025.
- 3) For orders on CMA No. 376/2023.
- 4) For hearing of main case.
- 5) For orders on CMA No. 377/2023.

10.03.2025.

Mr. Khalid Mehmood Rajpar, Advocate for Applicant.

Muhammad Junaid Ghaffar J.- Through these Reference Applications, the Applicants have impugned Order dated 16.09.2022 passed in Customs Appeal No. K-8111 of 2021 and K-8112 of 2021 by the Customs Appellate Tribunal at Karachi proposing various Questions of law; however, through statement additional Questions of Law have been framed and the first and foremost question is regarding the order in original being time barred. The proposed Question reads as under:-

- “1. Whether the Appellate Tribunal did not err in law to hold that the impugned order was issued beyond the prescribed limit as provided under Section 179(3) of the Customs Act, 1969, without dilating upon the germane that the Federal Board of Revenue in exercise of the powers under sub Section (4) of Section 179 of the Act, 1969, had twice extended the time limit for adjudication of the case till 31st October 2021?”

Heard learned Counsel for the Applicant and perused the record. In the instant matter Show Cause Notice was issued on 21.08.2020 and the then period provided under Section 179(3) of the Customs Act, 1963 i.e. 90 days within which order was to be passed expired on 29.11.2020; however, no order in original was passed. When confronted, learned Counsel has referred to his statement and the annexures thereon and submits that on 05.01.2021 the Collector Adjudication approached FBR by stating his inability to adjudicate the instant matter as at the relevant time when instant contravention was made, he was

heading the Applicant department. He has also referred to various letters whereby, time and again extension was granted by FBR and finally the said extension was granted on 16.07.2021 by extending the time till 31.10.2021. It is a matter of record that when the first letter was written by the Collector Adjudication the limitation period had already expired and even if the said letter is accepted as a valid reason for seeking extension, even then, the matter was kept pending by subsequent Collector and time and again extension(s) were sought for no justifiable reason. Section 179(4) of the Act, though empowers FBR to extend time, but it is to be done in exceptional circumstances which according to us are lacking in the instant matter, inasmuch as stereo type extensions have been sought which were granted by FBR. The law in this regard is now settled that if the order in original is not passed within the period so provided under Section 179(3) *ibid*, the order would be time barred and of no legal effect. Reliance in this regard may be placed on **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)**.

In view of the above, the proposed Question regarding limitation is answered in negative against the Applicant and in favour of the Respondent and as a consequence thereof, these Reference Applications are ***dismissed*** in limine with pending applications. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

Arshad/