

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications No. 1029 of 2024

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant: The Collector of Customs,
Appraisement (West), Custom
House Karachi
Through Sardar Zafar Hussain,
Advocate.

Respondent: M/s. Hadi Industrial Material,
Lahore through Mr. Rana
Sakhawat Ali, Advocate.

Date of hearing: 14.03.2025.

Date of Judgment: 14.03.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, Acting Chief Justice: Through this Reference Application under Section 196 of the Customs Act, 1969 (“Act”), the Applicant (department) has impugned Judgment dated 19.10.2024 passed in Customs Appeal No. K-3179/2024 by the Customs Appellate Tribunal Bench-II, Karachi proposing the following questions of law:-

1) Whether in view of the facts and circumstances of the case, the Customs Appellate Tribunal has not erred in law to hold that the impugned Order-in-Original, passed within 45 days, is time-barred in terms of Section 179(3) of the Customs Act, 1969?

2) Whether in view of the facts and circumstances of the case, the Customs Appellate Tribunal has not erred in law to hold that the Applicant Collectorate of Customs (Appraisement-West) has no jurisdiction so forward contravention to adjudicating officers for violation of Section 32 of the Customs Act, 1969?

3) Whether in view of the facts and circumstances of the case, the Customs Appellate Tribunal has not erred in law to allow re-export of the goods which are liable for confiscation for mis-declaration in terms of Section 32 read with Section 79 and 121 of the Customs Act, 1969?

4) Whether in view of the facts and circumstances of the case, the Customs Appellate Tribunal, despite not denying the mis-declaration in terms of Section 32 of the Customs Act, 1969, can allow re-export of consignment in terms of Section 138 if the Customs Act, 1969?

5) Whether in view of the facts and circumstances of the case, request for re-export, filed after discovery of mis-declaration under Section 32 of the Customs Act, 1969, can be allowed in terms of Section 138 of the Customs Act, 1969?

6) Whether in view of the facts and circumstances of the case, the Customs Appellate Tribunal has not erred in law to condone / absolve the Respondent importer from the charge of mis-declaration on the basis of previous consignments imported by the Respondent Importer?

2. Heard learned Counsel for the parties and perused the record. Insofar as question No.1 is concerned, the finding of the Tribunal in this regard is contained in para Nos. 11 & 12 of the impugned judgment, which reads as under:-

11. In the instant case, the Show-Cause Notice was issued on 29.08.2024 whereas the Impugned Order was passed on 02.10.2024 i.e. after four days of time limitation as it was required to be passed latest by 28.09.2024. According to Section 179(3) of the Customs Act, 1969, the Show Cause Notice has to be decided within 30 days of its issuance where the goods are lying at the port. The Collector is empowered to extend the time period for a maximum period of 15 days by recording reasons in writing. In the instant matter no extension was given where the last hearing was held on 20.09.2024 and the adjudicating authority still had eight days time to decide the matter. However, in this case, the impugned Order has been passed on 02.10.2024 after almost four days from the expiry of a mandatory period of 30 days, which renders the impugned order barred by time limitation. The Impugned Order loses its legal standing in the light of the provisions of the Customs Act, 1969, cited supra read with the judgment of hon'ble Supreme Court of Pakistan passed in the case of Mujahid Soap vs. Customs Appellate Tribunal, Islamabad reported as 2019 SCMR 1735 wherein it has categorically been held that -

"To our understanding the law is quite accommodating for the taxing authority as an extension is available beyond the originally prescribed period of 120 days for rendition of a decision. Even though no decision is communicated within the said period, such an extension can be sought and granted subsequently but in such an event it is mandatory that the decision comes within 180 days after the date of show cause notice. This view is expressed by the Court in its recent judgment reported as Collector of Sales Tax v. Super Asia Mohammad Din and Sons (2017 SCMR 1427 at paragraph 11).

6. In the present case however, the respondent-Deputy Collector did not even apply for an extension but consumed 157 days to record the reasons for his judgment and to communicate the same to the parties. We cannot accept the proposition that such decision had taken place as and when the hearing was concluded. It is necessary that an adjudicatory decision be recorded and duly communicated to the parties. That has not happened in the present case. Therefore, according to the record of the case, the decision took place on 19.02.2014 and not on 24.12.2013 as contended by the learned counsel for the respondents.

7. As a result, the impugned decision given in the case by the respondent was beyond time as prescribed in section 179(3) of the Act. Therefore, the said decision is invalid. Consequently, the impugned judgment is set aside and this appeal is allowed."

12. Clearly, the Hon'ble apex court has declared the decision passed beyond the time prescribed under Section 179(3) as invalid. This judgment squarely applies to the instant case. From the foregoing factual and legal position, it is concluded that the impugned Order-in-Original fails the test of Section-179(3) of Customs Act, 1969, and the ratio set by the superior courts hence loses its legal standing. Hence, the Impugned Order is held to be time barred.

3. From the perusal of the aforesaid observation and record placed before us, it is an admitted position that Show Cause Notice was issued on 29.08.2024 and in terms of the third proviso to Section 179(3) of the Customs Act, 1969, the matter was required to be decided within 30 days, as the goods are detained at port. Though, the third proviso also provides an extension of 15 days to be granted by the concerned Collector; however, admittedly in this matter no extension was granted; and therefore, no exception can be drawn to the finding of the Tribunal as above in view of the dicta laid by the Honourable Supreme Court in the cases reported as ***The Collector of Sales Tax V. Super Asia Mohammad Din*** (2017 SCMR 1427) ***Mujahid Soap & Chemical Industries (Pvt.) Ltd. V. Customs Appellate Tribunal*** (2019 SCMR 1735) and ***A.J. Traders V. Collector of Customs*** (PLD 2022 SC 817).

4. When confronted, Counsel submits that notwithstanding this question, the other proposed questions are valid questions of law, which are also required to be answered. However, we are not inclined to answer those questions as the proposed

question No. 1 is a legal question and once an order is time barred, the merits of the case are not required to adjudicated upon by us.

5. In view of the above facts and circumstances, Question No.1 is answered against the Applicant and in favour of the Respondent. As a consequence thereof, this Reference Application is ***dismissed***. 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.

ACTING CHIEF JUSTICE

J U D G E

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