

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 1518 / 2023
(Director, Directorate General, Intelligence and Investigation (Customs),
Vs. Altaf Hussain)

Date	Order with signature of Judge
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FRESH CASE

- 1) For hearing of main case.
- 2) For orders on Misc. No. 3780/2023.

17.01.2025.

Mr. Khalid Rajpar, Advocate for Applicant.

In response to order passed on 19.08.2024, learned Counsel for the Applicant has filed statement along with copy of Letter dated 28.09.2022 issued by the concerned Collector to FBR seeking extension of time under Section 179(4) of the Customs Act, 1979. The same is taken on record.

Through this Reference Application, the Applicant (department) has impugned Judgment dated 25.05.2023 passed in Customs Appeal No. K-282 of 2023 by the Customs Appellate Tribunal Bench-I, Karachi proposing various questions of law; however, for the present purposes, only Question No. 2 is relevant and reads as under:-

- “2. Whether in consideration of extension granted by FBR in terms of Section 179(4) of the Customs Act. 1969, the Appellate Tribunal has not erred in law to conclude that the Order-in-Original was passed beyond time as prescribed in Section 179(3) of the Act *ibid*?”

Heard learned for the Applicant and perused the record. The record reflects that Show Cause Notice was issued on 31.01.2022 whereby, it was alleged that the Respondent had indulged into smuggling under Section 2(s) of the Customs Act, 1969. The said Show Cause Notice was not adjudicated within the limitation period of 30 days as provided under Section 179(3) *ibid* and on 28.09.2022 when such period had lapsed and was

time barred hopelessly, a request was made by the concerned Collector to FBR for extension of time to complete adjudication proceedings. Though the extension was granted; but since the extension request was sent much beyond the limitation period itself, the same cannot be justified. Moreover, an extension was sought for a total number of 27 cases with generic reasons and without specifying as to why in each case the matter was delayed, and extension was required.

The Hon'ble Supreme Court in the case reported as **The Collector of Sales Tax V. Super Asia Mohammad Din (2017 SCMR 1427)** has 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 the case of **Mujahid Soap & Chemical Industries (Pvt.) Ltd. V. Customs Appellate Tribunal (2019 SCMR 1735)**, 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 V. Collector of Customs (PLD 2022 SC 817)**.

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 send copy of this order to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

J U D G E

Arshad/