ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 643 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of CMA No.3002/2024.
3. For hearing of main case.
4. For hearing of CMA No.3003/2024.

05.08.2026

Mr. Khalid Mahmood Rajpar, advocate for the applicant.
Sardar Muhammad Ishaque, advocate for the respondent.

Primary question proposed before the court was whether the adjudication was time barred in the said case. Following question had been proposed:

> "Whether in the facts and circumstances of the case the Appellate Tribunal has not erred in law to hold that the impugned Order-in-Original is time barred."

The issue has been addressed by the Appellate Tribunal in paragraph 12 of the judgment which reads as follows:

> 12. That the Respondent seized the vehicle on 28-04-2021, the seizure report dated 05-05-2021 the Adjudication Authority issued the show cause notice on 10-06-2021 under Section 180 of the Custom Act, 1969 and NO order under the provision of Sub-Section (3) of Section 179 of the Custom Act, 1969 should had been passed upon 09-07-2021 by the Adjudication Authority and passed the Order-in-Original dated 18-09-2021 after the expiry of 30 days from the date of show cause notice, i.e. even after the extended period of 30 days without giving any reason of such extension by the Collector and further by the Board under Sub-section 4 of the Section 179 of the Customs Act, 1969, for some exceptional circumstances and recording of the exceptional circumstance by the Collector or Board after giving notice to the person/importer, against whom the order has to be passed as held by the Hon'ble Supreme Court of Pakistan, reported in 1991 SCMR 1881. So, the case did not decide by the Respondent within 30 days original time. Now the case is time bar, for no explanation, and is an exercise without jurisdiction. The super structure of proceedings and all action are thus rendered it is illegal, null and void as well as nullity in law, whereas it is very surprising for the Department that the Adjudication Officer was so technical in the implementation of law, then the too should had bound herself with the rules framed with as proviso to sub-Section 3 of Section 179 of the Custom Act, 1969. The identical matter already decided by the Hon'ble Supreme Court of Pakistan reported in 2021 SCMR 328, 2019 SCMR 1735, 2018 SCMR 1474, 2017 SCMR 1427, 2015 SCMR 1550, and decided another case, Larger Bench, on 12-10-2022, vide CA Nos.354 to 356/2020, in respect of M/s A. J. Traders i.e. "Article 4 of the Constitution accords the protection of law and to be treated in accordance with law to be the inalienable right of every citizen and also of every other person for the time being in Pakistan, The right to be deal with in accordance with the law in further fortified by Article 10A of the constitution with stipulates a fair trial and due

process as a Fundamental Right. The right cannot be negated or diluted by statute, and if any law purports to do so it shall to such extent be void, as stipulated in Article 8(1) & (2) of the constitution. Therefore, it cannot be stated that an order belatedly passed on a taxpayer's appeal is a vold order and or a nullity." Another case, Divisional Bench decided on 12-05-2022 vide CP No. 4599/2021, in respect of Commissioner Inland Revenue, i.e., "where the time frame is set out in the statute for deciding the case are Endatory and if decided beyond the given time, being 180 days, in this case it makes the order void." The Hon'ble Islamabad High Court, in SCRA No.43/2017, decided on 18-12-2019, 19 reported in 2020 PTD 568, i.e., "the Collector could not extend time according to his choice and whim, he could only do so by applying his mind after recording reasons for such extension. Order passed beyond the stipulated period was invalid." The learned Tribunal, decided the various Appeals No.237 & 238/LB/2012, reported in PTCL 2012 CL 722, Appeal No.7144/2021, on 20-12-2021, i.e., "the appeal succeeds on this account without touching the merit of the case in synchronization with respectfully following the above-mentioned ratio. The show cause notice and resulting Order-in-Original are set-aside." Also Appeal No.400/2003 dated 06.04.2023 upheld by the Hon'ble Sindh High Court vide SCRA No. 1303/2023, Appeal No.814 & 815/2023 dated 06.05.2023 upheld by the Hon'ble Sindh High Court vide SCRA No.1520 & 1521/2023, Appeal No.H-1905/2022 dated 23.11.2022 upheld by the Hon'ble Sindh High Court vide SCRA No.811/2023, Appeal No. 1479-1480/2016 dated 07.06.2017 upheld by the Hon'ble Sindh High Court vide SCRA No.550 & 551/2017, Appeal No.1433/2023 dated 10.01.2024 upheld by the Hon'ble Sindh High Court vide SCRA No.119/2024, Appeal No.1681/2003 dated 02.01.2024 upheld by the Hon'ble Sindh High Court vide SCRA No.157/2024, therefore Rule of Consistency applied on the above case, hence contention that the adjudication proceeding in the instant case has been found to be barred by time. The Hon'ble Supreme Court of Pakistan in case reported 2007 SCMR 1835 held as follows:-

> "It is a settled law that when the basic order is without lawful authority then the superstructure shall have to fall on the ground automatically as law laid down by this court in Yousaf Ali's case reported in PLD 1958 SC 104".

The narrative with respect to the relevant dates in adjudication are stated to be as per the record and the same have not been disputed. Under such circumstances, it is virtually admitted that adjudication was in fact time barred and no case for interference therein was made out especially in view of the judgment of the Supreme Court reported as 2025 SCMR 1280, therefore, question framed is decided in favour of the respondent and against the applicant department. Reference application stands disposed of accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS