ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 171 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on CMA No.1738/2026.
2. For orders on office objection No.02.
3. For orders on CMA No.1739/2026.
4. For hearing of main case.
5. For orders on CMA No.1740/2026.

<u>24.08.2026</u>

Sardar Zafar Hussain, advocate for the applicant.

The impugned order has been rendered on the premise that appeal was blatantly time barred. The operative part whereof reads as follows:

> "07. After going through the timeline of the case, it transpired that there is a delay of 61 days in filing of this appeal on the part of department. This is not a small delay. When these timelines are strictly to be followed as prescribed by the law and it is the prime duty of the department to abide by the law under which they execute their duties. It is also a settled proposition that law helps the vigilant and not the indolent and after expiry of the limitation period, a vested right is created in favour of the other side. This view supports the decision rendered by the Hon'ble Supreme Court in the case of M/s SKB-KNK Joint Venture Contractors through Regional Director Vs. Water and Power Development Authority and others (reported as 2022 SCMR 1615) wherein it was held that:- "the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party".
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> 08. In another case, namely The Collector, Land Acquisition, Chashma Right Bank Canal Project, WAPDA, D.I. Khan, and others Vs. Ghulam Sadiq and others (reported as 2002 SCMR 677), the Hon'ble Supreme Court of Pakistan dismissed the appeal filed by the Government with a delay of seven days. This Bench also disallowed Appeal Nos. K-150 & 151/2025 M/s Syed Sami ullah & another -Vs- Collector of Customs, MCC Enforcement, Karachi simply on the point of time bar of 90 days delay vide its judgment dated 16.06.2025.
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> 09. The appellant department has given cause of delay that the impugned Order-in-Appeal was not communicated to them and that they came to know of the said order only upon the filing of an implementation application by the owner of the vehicle. The record reveals that the appellant department was the aggrieved party before the learned Collector (Appeals). This reason cannot be taken into consideration especially when the appellant department itself had filed an appeal before the learned Collector (Appeals) and appellant department itself remained unknown about the outcome of its appeal. Moreover, the order against which the department has to file appeal is a departmental forum and their representative continuously appears before that forum, therefore, the appellant department cannot hide itself behind the lame excuse that the order was not received at their office in time. According to the amended law, commutation of limitation period shall commence from the date of judgment, not from the date of

> receiving of the order. This order had been passed on 30.09.2024 well after the amendment of the Act. In my view, the reason given for condoning the delay could neither be considered to be sufficient cause nor reasonable or plausible to justify the condonation of delay, since the appellant department does not seem to have shown diligence and proper administration in filing the Appeal. It is apparent that the department in the instant matter STEAs has acted quite casually and has taken no pains to file the appeal. The responsibility of ensuring compliance with procedural requirements lies squarely on the shoulders of the Collector of Customs, who is the head of the department; such negligence amounts to inefficiency on the part of the concerned Collector in the allocation of work to the subordinate officers and his failure to properly monitor the same. This causal attitude / action is completely undesirable from the Department if they are really interested in following their cases. This delay needs a proper enquiry. Hence, following the ratio decidendi, set in the judgments of the Hon'ble Apex Court and inference made that no sufficient cause was given in the application for condonation of 61 days delay by the appellant department, the condonation of delay application is hereby dismissed.
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> 10. The appeal being barred by time limitation does not warrant discussion of merits in the light of the judgment of the Hon'ble Supreme Court of Pakistan in the case of Muhammad Faisal vs. Commissioner IR reported as 2025 SCMR 930 wherein the Hon'ble apex court has held as under:
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>> *10. It is also a settled proposition of law that limitation is not a mere technicality, as once limitation expires a vested right is created in favour of other side by operation of law which cannot be taken away lightly.
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> 11. Be that as it may, the instant appeal being miserably barred by time limitation is dismissed. Accordingly, the Impugned Order holds the field.
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> 12. Judgment passed and announced accordingly.
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> 13. A copy of this order is to be sent to the Member (Legal-Customs), Member Operations, and Chief collector, Islamabad, for information."

The impugned order carefully elaborates the delay and the reasons articulated in support thereof, especially in paragraph 9 thereof. It is maintained that no such cause would be demonstrated to condone the delay, hence, the appeal was dismissed.

It is the considered opinion of the Court that the prescriptions of limitation are not mere technicalities and disregard thereof would render entire law of limitation otiose[1]. The Superior Courts have consistently maintained that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such regard[2]. The Superior Courts have held

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1 *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *2019 MLD 249*.
2 *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as *2004 CLD 732.*

that proceedings barred by even a day could be dismissed[3]; once time begins to run, it runs continuously[4]; a bar of limitation creates vested rights in favour of the other party[5]; if a matter was time barred then it is to be dismissed without touching upon merits[6]; and once limitation has lapsed the door of adjudication is closed irrespective of pleas of hardship, injustice or ignorance[7]. It has been maintained by the honorable Supreme Court[8] that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. It is pertinent to observe that the preponderant bar of limitation could not be dispelled by the applicant.

It is settled law that question of limitation has to be addressed by the court at the very onset, each day of delay has to be justified by the applicant. Learned counsel is unable to demonstrate any actionable infirmity insofar as the impugned order is concerned and unable to articulate any question of law arising here from meriting interference in reference jurisdiction. Therefore, reference application is dismissed in limine.

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(10) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS

[3] *2001 PLC 272*; *2001 PLC 143*; *2001 PLC 156*; *2020 PLC 82*.
[4] *Shafaatullah Qureshi vs. Pakistan* reported as *PLD 2001 SC 142*; *Khizar Hayat vs. Pakistan Railways* reported as *1993 PLC 106*.
[5] *Dr. Anwar Ali Sahito vs. Pakistan* reported as *2002 PLC CS 526*; *DPO vs. Punjab Labour Tribunal* reported as *NLR 1987 Labour 212*.
[6] *Muhammad Tufail Danish vs. Deputy Director FIA* reported as *1991 SCMR 1841*; *Mirza Muhammad Saeed vs. Shahabudin* reported as *PLD 1983 SC 385*; *Ch Muhammad Sharif vs. Muhammad Ali Khan* reported as *1975 SCMR 259*.
[7] *WAPDA vs. Aurangzeb* reported as *1988 SCMR 1354*.
[8] *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as *2016 SCMR 1821*; *Qamar Jahan vs. United Liner Agencies* reported as *2004 PLC 155*.