

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Custom Reference No. 17 of 2011**

**M/s Khyber Tea & Food Company Peshawar.**

**Vs.**

**Collector Customs, Model Custom Collectorate, Islamabad, etc.**

**Custom Reference No. 18 of 2011**

**M/s Khyber Tea & Food Company Peshawar**

**Vs.**

**Collector Customs, Model Custom Collectorate, Islamabad, etc.**

**Applicant by : Mr. Zahid Idris Mufti, Advocate.**

**Respondents by : Ch. Mohammad Nawaz, Advocate.  
Ch. M. Nawaz Gondal, Advocate on  
behalf of Mrs. Naziran Malik, Advocate.**

**Date of hearing : 28.01.2021.**

**LUBNA SALEEM PERVEZ, J.** Through this common judgment we intend to dispose of the captioned Reference Applications filed u/s 194-B of the Customs Act, 1969, (*hereinafter referred to as the Act, 1969*) by the applicant company, whereby number of questions were formulated, however, after going through all the questions proposed by the applicant, we are of the view that answer to the following question of law would be suffice to resolve the controversy in the instant reference applications as it involve question of limitation of adjudication and passing of Order-in-Original by Custom Officers u/s 179(3) of the Act, 1969:-

*“Whether the order passed in violation of mandatory provisions of section 179(3) of the Customs Act 1969 and passed after 120 days and without obtaining extension is sustainable in the eyes of law?”.*

**Facts in Custom Reference No. 17 of 2011.**

2. The respondent on the information of informer intercepted and seized Mazda Titan Truck, bearing registration No. RLG 4183, allegedly transporting huge quantity of smuggled black tea. The case for violation of sections 2s, 16, 157, 168 & 178 of the Act, 1969, punishable u/s 156 (1) (89) (90) of the Act, 1969, read with section 3(1) of the Import & Export Control Act, 1950, was registered against the applicant, vide Seizure Case No. 71 of 2009, dated 09.05.2009. The case was forwarded to the Deputy Collector Customs (Preventive/Adjudication), Islamabad (*hereinafter the Adjudication Officer*), for adjudication, who initiated proceedings by issuing show cause notice dated 18.05.2009, and concluded the same vide Order-in-Original No. 31 of 2009 (*hereinafter referred as ONO dated 17.10.2009*). The applicant challenged the said Order-in-Original before the Collector of Customs (Appeals), who vide Order in Appeal No. 58/2010, dated 06.07.2010, upheld ONO dated 17.10.2009, against which the applicant preferred appeal before the Customs Appellate Tribunal (*hereinafter referred to as the Tribunal*). The Tribunal, vide judgment in Appeal No. 54/CU/IB/2010, dated 29.06.2011 confirmed ONO dated 17.10.2009 as well as Order in appealable order dated 06.07.2010. Hence, present Custom Reference Application No. 17/2011.

**Facts in Custom Reference No. 18 of 2011.**

3. The Deputy Superintendent Customs Preventive, on receipt of information intercepted the Isuzu Truck, bearing Registration No. MLN-1262, and allegedly recovered huge quantity of foreign origin goods/black tea. The goods were seized in terms of section 2s, 16, 168 and 178 of the Act, 1969, punishable u/s 156(1) (89) (90) of the Act, 1969, read with

section 3(1) of the Import & Export Control Act, 1950. The case was sent to Deputy Collector (Customs), for adjudication, who vide show cause notice dated 27.01.2010 initiated adjudication proceeding and finalized Order-in-Original No. 08 of 2010, on 23.06.2010 (*hereinafter referred to as the ONO dated 23.06.2010*). The appeal before Collector of Customs (Appeals) No. 86 of 2010 dated 15.10.2010, was decided against the applicant and subsequently the Tribunal, vide judgment in Appeal No. 68/CU/IB/2010, dated 23.06.2011, upheld ONO dated 23.06.2010 and appellate order dated 15.10.2010. Hence, instant Custom Reference No. 18/2011.

4. Learned counsel for the applicant submitted that the law with regard to the limitation of passing adjudication orders by the Custom Officers has already been settled by the Hon'ble Apex Court and referred judgments titled as *The Collector of Sales Tax Gujranwala, etc. vs. Super Asia Mohammad Din & Sons (2017 SCMR 1427)* and *Messrs Mujahid Soap and chemical Industries (Pvt.) Ltd. Vs. Customs Appellate Tribunal, Bench-I, Islamabad (2019 PTD 1961 Supreme Court)*. He also relied on an unreported judgment of this court, passed in case titled as *M/s Lunar Technologies (Pvt.) Ltd. Vs. Appellate Tribunal of Customs (Custom Reference No. 33/2017)*. Learned counsel submitted that, vide section 179(3) of the Act, 1969, the limitation for passing Order-in-Original is 120 days from the issuance of show cause notice or within extended period of 60 days by the Collector for which he shall record reasons in writing. He submitted that in the present cases no extension of time of 60 days was sought by the Deputy Collector, for passing order after expiry of 120 days

thus, both the impugned ONOs dated 17.10.2009 & 23.06.2010, are illegal orders having been passed in violation of section 179(3) of the Act, 1969.

5. On the other hand, learned counsel for the respondent department submitted that proviso to section 179(3) of the Act, 1969, is also of significance which provides that the time period, when the proceedings are adjourned, is to be excluded while computing limitation for adjudication. He submitted that the documents produced by the applicant were sent for verification by the Deputy Collector (Adjudication) which process consumes more than 30 days and legally the time consumed in verification of the documents of the applicant should be excluded from prescribed limitation period in terms of proviso to Section 179(3) of the Act, 1969 and submitted that both the ONOs are, therefore, finalized within the statutory period of 180 days, hence, are not barred by limitation.

6. Arguments of both the learned counsel for the parties have been heard and relevant record has also been perused.

7. Perusal of the record revealed that proceedings in Custom Reference No. 17/2001 were commenced with the issuance of show cause notice dated 18.05.2009, and the ONO was passed on 17.10.2009, which means that order was passed after 147 days. The proceedings in Customs Reference No. 18/2011 were initiated through show cause notice dated 27.01.2010 and finalized, vide ONO dated 23.06.2010, as such, adjudication proceedings were finalized after 152 days.

8. The statutory time provided for deciding the case under section 179(3) of the Act 1969 is 120 days from the issuance of show cause notice and it is

mandatory on the adjudicating officer to pass the order within this period but to facilitate the Officer, this provision also provides for granting extension of 60 days to conclude the proceedings subject to the condition that there should be a written order by the Collector containing reasons for granting the Officer further 60 days to decide the case. Thus, any order passed by adjudicating authority after statutory limit of 120 days without having written approval of extension of further 60 days for passing order is hit by limitation under section 179(3) of the Act 1969. Section 179(3) of the Act, 1969, and its proviso is reproduced hereunder for ready reference:-

*“179 (3) The cases shall be decided within one hundred and twenty days of the issuance of show cause notice]or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed sixty days:*

*Provided that any period during which the proceedings are adjourned on account of a stay order or alternative dispute resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days, shall be excluded for the computation of aforesaid periods.”.*

9. The contention of the learned counsel for the respondent department that the time period, when the documents of the applicant were sent to verification, shall be excluded from the limitation of adjudication in terms of ‘proviso’ to section 179(3) of the Act, 1969, has been considered and found contrary to law. ‘Proviso’ to Section 179(3) of the Act, 1969 has been perused carefully. In our opinion plain language of ‘proviso’ provides exclusion of such time when the case is adjourned on account of stay of proceedings or for alternate dispute resolution or when the proceedings are adjourned on the request of the applicant which shall not exceed 30 days.

10. In the present cases, admittedly both the ONOs have been passed after the initial period of 120 days and no extension of time for further 60 days was sought by the Deputy Collector (Adjudication) in terms of section

179(3) of the Act, 1969, from the concerned Collector. The law does not permit the Adjudication Officer to extend the period of passing order on his whims without obtaining written sanction regarding extension of further 60 days from the Collector as held by the Hon'ble Supreme Court in the case of ***Mujahid Soap and Chemical Industries (Pvt.) Ltd. Supra***, wherein their lordships by referring judgment passed in case titled "*The Collector of Sales Tax Gujranwala, etc. vs. Super Asia Mohammad Din & Sons (2017 SCMR 1427)*" has observed that:-

*"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."*

11. We are of the considered opinion that the 'proviso' to section 179(3) of the Act, 1969, which have been strongly relied upon by the learned counsel for the respondent department does not provide for automatic extension of 60 days after expiry of 120 days, therefore, the argument that intent of 'proviso' to Section 179(3) of the Act, 1969 is to grant automatic extension to finalize order in every case is misconceived and not applicable to the facts and circumstances of the cases under consideration as neither there was stay of proceedings in operation nor any dispute resolution proceedings were going on.

12. In the present reference applications since, both the ONOs have not been passed within the statutory period of 120 days and admittedly no

extension of time for further 60 days was granted by Collector, therefore, the ONOs are time barred having been invalidly passed after expiry of statutory limitation under section 179(3) of the Act, 1969, hence, are not sustainable in the eye of law.

13. In view of the above discussion, the answer to the proposed question in both the titled Custom Reference Applications is in **affirmative** in favour of the applicant and against the respondent department.

14. Copy of this order be sent to the Registrar, Customs Appellate Tribunal, Islamabad.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

ADNAN/.