

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI  
MR. JUSTICE MIANGUL HASSAN AURANGZEB

**C.P.L.A.2475-L/2024**

(Against order dated 15.10.2024 passed by the  
Lahore High Court, Multan Bench, Multan in  
Customs Reference No.1/2015.)

Additional Collector of Customs, ... **Petitioner**  
Faisalabad through Collector of Customs  
Vs  
M/s. Fatima Enterprises, Multan & ... **Respondents**  
another

For the Petitioner : Mr. Sultan Mahmood, ASC  
(via video-link, Lahore)

Mr. Rizwan Basharat, Collector  
(Faisalabad)

For the Respondents : N.R.

Date of Hearing : 26.05.2025

**ORDER**

**Munib Akhtar, J.:** At the conclusion of the hearing it was announced that leave to appeal was refused and the petition stood dismissed. The following are the reasons for our decision.

2. The case arises under the Customs Act, 1969 ("Customs Act") and the facts necessary for its disposal can be stated with brevity. A show-cause notice was issued on 08.05.2012 to the contesting respondent. The adjudicating authority had to decide the matter (i.e., make the order-in-original) within the timeframe set by subsection (3) of s. 179. This provided at the relevant time as follows:

"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."

The order-in-original was made on 14.11.2012 and it was specifically noted therein as follows (emphasis in original):

"32. Mr. Abid Hussain, Manager Taxation contested the allegations leveled against the DTRE user orally too. On the other hand, the detecting agency was represented by Mr. Imtiaz Ahmed Sheikh, Deputy Superintendent, who reiterated the charges against the said DTRE user as already discussed in detail in the show cause notice. A copy of written reply along with enclosures was directed to the Assistant Collector, Customs Dryport, Multan vide C.No.315/2011/Adj/Cus/Addl/3044 dated 30.05.2012 with the request to furnish parawise legal comments thereon. The case was adjourned and refixed for 20.06.2012, 26.07.2012, 27.09.2012 repeatedly.

33. On all the aforesaid dates no one appeared from the defense to contest the charges anymore. However, applications for adjournments stating different reasons therein were received from the DTRE user through their representative. On the other hand, the detecting agency was again directed to expedite the requisite parawise comments as the statutory time limit to finalize the instant case (even after considering the adjournments sought by the DTRE user) was going to expire on 30.09.2012. Accordingly, an extension of 60 days (w.e.from 01.10.2012) the time limit for passing the Order-In-Original in the instant case was requested from the Board vide C.No.315/2011/Adj/Cus/Addl/5314 dated 27.09.2012, in terms of section 179(4) of the Customs Act, 1969. The requisite extension was granted by the Board vide C.No 2(6)/Cus.Jud/2012 dated 10.10.2012."

Subsection (4) of s. 179 was in the following terms:

"The Board shall have the powers to regulate the system of adjudication including transfer of cases and extension of time-limit in exceptional circumstances."

3. The adjudicating authority having decided against the respondent, there was an appeal to the Appellate Tribunal which succeeded. One of the grounds on which the learned Tribunal decided in favor of the respondent was that the time limits imposed by subsection (3) were breached and the extension in

time granted by the Federal Board of Revenue ("Board") under subsection (4), having been sought after the period of limitation under the former provision had expired, was of no effect. Thus the order-in-original was beyond time and could not be sustained. The Collector (herein after referred to as the "Department") took the matter in tax reference to the High Court, where the conclusion of the learned Tribunal on the ground just noted was upheld. This was the sole question considered and decided by the learned High Court and was regarded as sufficient for purposes of dismissing the reference. It is against this decision that the Department sought leave to appeal in this Court.

4. Before us learned counsel for the Department, relying on the paragraphs from the order-in-original reproduced above, submitted that the learned High Court erred materially inasmuch as the record showed that the order-in-original was timely made, on a combined reading of subsections (3) and (4). The learned Collector (who sought, and was granted, permission to make submissions) contended further that the facts and circumstances of the case constituted "exceptional circumstances" within the meaning of subsection (4) inasmuch as the amount of the evaded/non-paid duties was huge.

5. After having considered the matter, we were of the view that the impugned judgment ought not to be disturbed. The timelines set by s. 179(3) are to be found, in virtually identical terms, in the laws relating to the other indirect taxes, being the Sales Tax Act, 1990 ("1990 Act") and the Federal Excise Act, 2005. The correct interpretation of the provisions as set out in the 1990 Act—more precisely, as to whether the stated periods were mandatory or directory—came up for consideration by this Court in *Collector of Sales Tax, Gujranwala and others v Super Asia Mohammad Din and others* 2017 SCMR 1427, 2017 PTD 1756 ("*Super Asia*"). It was held that the timelines were mandatory and not directory and any breach thereof invalidated the order-in-original. The timelines could, however, be extended in terms of s. 74 of the 1990 Act, within the framework set out in para 12 of the judgment. Later, some doubt was expressed in this Court as to the correctness of the principles enunciated in *Super Asia*. However, a Larger Bench

of this Court has recently, by judgment dated 14.05.2025 in *Wak Ltd. v Commissioner Inland Revenue CA 634/2018* and other connected matters, upheld the decision in *Super Asia* and has reaffirmed the correctness of the views expressed and principles enunciated therein.

6. The principles set out in *Super Asia* were applied by this Court in relation to s. 179(3) in *Mujahid Soap and Chemical Industries Ltd. v Customs Appellate Tribunal* 2019 SCMR 1735. On such basis, the order of the adjudicating authority there was found to be unsustainable. In view of these decisions there can be no doubt that the timelines set in subsection (3) of s. 179 are mandatory and not directory.

7. Now, in the case at hand the learned High Court concluded that the period within which the order-in-original had to be made expired on 05.09.2012 (being 120 days from the date of issuance of the show cause notice, which was 08.05.2012). The request for an extension was made to the Board on 27.09.2012 and granted on 10.10.2012 (with effect from 01.10.2012). By then the period within which the order-in-original had to be made had already expired. It was held that the learned Tribunal had on such basis correctly set aside the order-in-original. On the other hand, the Collector's position, as reflected from the passages of his order reproduced above, was that the period for the making of the order expired on 30.09.2012, once the effect of the proviso to s. 179(3) was taken into account. On this basis, the request for an extension, made to the Board on 27.09.2012, was within time and the order-in-original was passed within the period so granted. Thus, learned counsel for the Department and the learned Collector submitted, the order-in-original could not be invalidated on this ground.

8. In our view, even if we proceed on the basis that the contentions of the Department are be accepted (as to which we do not, however, record any conclusive finding), even then the making of the order-in-original did not pass muster. The reason is that the power of the Board to grant an extension is not open ended or untrammelled. It can only be exercised in "exceptional

circumstances". Now, the Customs Act does have another provision which confers more generally a power of extension. This is s. 224, which provides as follows:

**"224. Extension of time limit.-** The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made thereunder."

As is obvious, this section (which was in any case not relied upon) had no application in the facts and circumstances of the present case since it can only be invoked by an "aggrieved party", which certainly did not, and could not possibly, include a Collector of Customs. The provision for extension of time given in the 1990 Act, s. 74, may also be referred to. This provides as follows:

**"74. Condonation of time-limit.-** Where any time or period has been specified under any of the provisions of the Act or rules made there under within which any application is to be made or any act or thing is to be done, the Board may, [at any time before or after the expiry of such time or period,] in any case or class of cases, permit such application to be made or such act or thing to be done within such time or period as it may consider appropriate:

Provided that the Board may, by notification in the official Gazette, and subject to such limitations or conditions as may be specified therein, empower any Commissioner to exercise the powers under this section in any case or class of cases.

Explanation.- For the purpose of this section, the expression "any act or thing is to be done" includes any act or thing to be done by the registered person or by the authorities specified in section 30 of this Act."

This was the provision that was considered in *Super Asia*. It will be seen that the power to extend was conditioned by the use of the term "appropriate". The meaning of this term in the context of s. 74 was also considered to a certain extent by the Larger Bench in the judgment referred to above.

9. For present purposes, the point is that there is clearly a difference between a power of extension to allow the doing of the requisite act or thing within an “appropriate” time period on the one hand, and a power to extend a time-limit in “exceptional circumstances” on the other. The latter expression is more restricted than the former term. The power of the Board, in other words, to grant an extension under s. 179(4) of the Customs Act is much narrower and more circumscribed. It must also be kept in mind that s. 74 is a general provision, applying to “any” act or thing required to be done within a specified timeframe, whereas s. 179(4) moves within a much more circumscribed locus, being relatable only to matters of adjudication within the four corners of the section itself. Furthermore, the power to extend a time-limit under subsection (4) must be understood and applied while keeping in mind that the timelines set out in subsection (3) have been held to be mandatory and not directory, in terms of the decisions noted above.

10. When all of these factors are taken into consideration, it is our view that there was nothing on the record to show that any “exceptional circumstances” existed as would have allowed for a lawful exercise by the Board of the power of extension. Indeed, from the record as available it seems that the Board did not apply itself to this aspect at all. It appears to have simply assumed that it had the power to grant an extension and proceeded accordingly. That however, could not be so at all. A statutory power can only be exercised in terms as granted and for the purposes granted. The terms of the grant may include conditions and limitations which have to be complied with and applied as required (and even if the grant is ostensibly in open and untrammelled form, it will nonetheless be subject to the well established principles enunciated, in particular, in administrative law for the exercise of statutory powers). It had to be shown objectively that “exceptional circumstances” existed for the exercise of the power; it would be quite insufficient (and indeed unlawful) for the Board or the Collector to claim that the matter turned entirely on the Board’s subjective satisfaction or conclusion. There is however nothing on the record that indicates that there was a proper (or, indeed, any)

consideration of the factors involved. Therefore, the extension granted by the Board was an unlawful exercise of the power conferred. The submission by the learned Collector that a large amount of taxes and duties was involved is, with respect, not persuasive. Indeed, the submission can be held against the Department inasmuch as if such a large amount was at stake it behooved the Collector to act speedily and make his order in a timely manner. If that did not happen, then it is for the State to bear the burden and consequences of such tardiness.

11. For completeness, we may note that a letter of the Board dated 22.10.2012 was placed on the record of the leave petition as being an "extension letter" in terms of s. 179(4). As is clear from the passages of the order-in-original reproduced above, this letter was not relied upon by the Collector when claiming that an extension was granted by the Board. Indeed, the Collector referred to an entirely different stream of correspondence. This letter was therefore wholly irrelevant in the facts and circumstances of the present case.

12. For the foregoing reasons, leave to appeal was refused and the petition accordingly dismissed.

Judge

Judge

Judge

Islamabad, the  
26<sup>th</sup> May, 2025  
Naveed/\*

Approved for reporting