

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE MUNIB AKHTAR
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

C.P.L.A.466-K of 2025

(Against order dated 17.01.2025 of the High Court of Sindh, Karachi passed in S.C.R.A. No.1518/2023).

Director, Directorate General, Intelligence
& Investigation (Customs)

...Petitioner

Versus

Altaf Hussain & another

...Respondents

For the Petitioner: Dr. Farhat Zafar, ASC (at Islamabad)
Mr. Imran Afzal, Addl: Dir (via video link
(Karachi).

For the Respondents: Not represented.

Date of Hearing: 29.05.2025

ORDER

MUNIB AKHTAR, J.- With the assistance of learned counsel for the petitioner we have gone through the impugned order of the learned High Court and also seen the last order made by this Court. Since then, the decision of the Larger Bench of this Court has been announced, which upholds the principles laid down in the case of *Collector of Sales Tax, Gujranwala and others v Messrs Super Asia Mohammad Din and Sons and others* 2017 SCMR 1427 ("*Super Asia*"). Learned counsel for the petitioner seeks to place reliance on paragraphs 11 and 12 of the said judgment. These dealt with s. 74 of the Sales Tax Act, 1990 ("1990 Act"), and considered the possibility of the grant of an extension of time in terms thereof. Section 74 was held to apply in terms as stated in para 12 of the judgment in *Super Asia*. Learned counsel submits that in this case an extension of time was granted by the Federal Board of Revenue ("Board") and therefore the impugned decision is not sustainable.

2. We have considered this point. Firstly, this matter has arisen under the Customs Act, 1969 and the relevant statutory power which is claimed was exercised by the Board was conferred by subsection (4) of s. 179 of the said Act, which is reproduced below:

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

As is obvious from a perusal of the said provision the power to grant an extension is circumscribed, and is to be exercised only in “exceptional circumstances”. Section 74 of the 1990 Act on the other hand provides that the Board is empowered to grant an extension to the extent found “appropriate”. There is an obvious and clear difference between the two provisions and, as here relevant, the power under s. 179(4) is much narrower and circumscribed. Therefore, the paragraphs of *Super Asia* sought to be relied upon by learned counsel for the petitioner, with respect, have no relevance. Furthermore, we may also note that the Larger Bench has also made some observations with regard to s. 74 of the 1990 Act.

3. Secondly, it must also be noted that on a query from the Court learned counsel for the petitioner has candidly (and quite properly) stated that the permission/letter of extension that was granted by the Board was not placed on the record before the Appellate Tribunal. Indeed, this was specifically noted by the learned Tribunal in its order as follows: “However, the plea taken by the respondents is that they have taken approval from FBR as mentioned in section 179(4) but no such approval was placed before the Honourable Tribunal”.

4. This matter comes to this Court from a tax reference and it is well established that beyond the stage of the Appellate Tribunal (at any rate, in terms of the law as it stood at the relevant time), it is only questions of law that can be taken to the High Court. It is well settled that (again with reference to the law as it stood at the relevant time) the record on the basis of which the questions of law

can be decided is in terms of the record as it stood before the Appellate Tribunal. That record cannot be added to and certainly not on a point that requires factual determination (here, the existence and content of any extension granted by the Board). Since the position is that the aforesaid letter by which it is claimed extension of time was granted by the Board was never placed on the record before the Appellate Tribunal, it is impermissible for any reliance to be placed on the same in this Court (or indeed, for that matter, before the learned High Court). The settled position being what it is we are, with respect, not inclined to entertain the point now being taken. Any departure from the well settled position would allow a party to a tax reference to alter the record either before the High Court or this Court which is not permissible. Accordingly, the contention of learned counsel for the petitioner, with respect, cannot be accepted. This petition fails and is accordingly dismissed.

Judge

Judge

Judge

Islamabad, the
29th May, 2025
Approved for reporting
*Sanaullah**