

105/12

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

8 *AFR*
CIVIL PETITION NO.3855 OF 2019.
(Against the judgment dated 18.09.2019
passed by the Peshawar High Court, Peshawar
in Custom Reference No.600-P of 2017).

Noor Muhammad.

...Petitioner(s).

Versus

Customs Appellate Tribunal, Peshawar
Bench through its Chairman and others.

...Respondent(s)

For the petitioner(s): Mr. Arbab Shabbir Ahmed, ASC.

For the respondent(s): N.R.

Date of Hearing: 29.11.2019.

ORDER

IJAZ UL AHSAN, J.- Leave to appeal is sought against a judgment of the Peshawar High Court, Peshawar dated 18.09.2019 ("***impugned judgment***"). Through the impugned judgment, Customs Reference No.600-P of 2017 filed by the petitioner was dismissed on the ground of being barred by time.

2. Brief facts necessary for decision of this *lis* are that on 14.11.2015, Customs officials intercepted a Toyota Land Cruiser Jeep bearing Registration No.5799-Peshawar. Search of the vehicle revealed presence of foreign origin medicines of different kinds. On demand, the driver of the vehicle failed to produce any document with regard to legal import or lawful possession of aforesaid goods. The vehicle

was brought to the Office of Customs Intelligence and Special Checking Squad, Hayatabad, Peshawar for detailed checking where additional medicines of different kinds were recovered. The vehicle was referred to Forensic Science Laboratory, Peshawar ("**FSL**") which reported that the vehicle was not only non duty paid but its chassis had been tampered with. Consequently, the contraband goods as well as the vehicle in question were confiscated. Aggrieved of the order of confiscation by the Deputy Collector, the petitioner challenged the same before the Collector of Customs (Appeals), Peshawar. Vide order dated 30.02.2016, the appeal in question was dismissed. A second appeal before the Customs Appellate Tribunal did not succeed either. The petitioner challenged the said order before the High Court by way of the Customs Reference which met the same fate, through the impugned judgment *inter alia* on the point of limitation.

3. Learned counsel for the petitioner has mainly argued that the vehicle had initially been apprehended by the police officials who had also sent the vehicle for inspection before the FSL which had given it a clean chit. He therefore submits that in the presence of two contradictory reports by the same Laboratory, the petitioner was entitled to a more favourable treatment. On the question of limitation, the learned ASC submits that the petitioner had moved an application for condonation of delay which disclosed a

plausible reason for condonation but it had unjustly been refused.

4. Having heard the learned counsel for the petitioner and going through the record, we find that the petitioner had ample opportunities to take up all his defences during proceedings before the Deputy Collector (Adjudication), Collector of Customs (Appeals) as well as the Customs Appellate Tribunal. However, before all *fora* below he failed to rebut the report of the FSL that chassis number of the vehicle had been tampered with. Further, the question of two contradictory reports has been raised as an afterthought in view of the fact that it was never raised before the lower *fora*.

5. After dismissal of his appeal before the Tribunal, the petitioner waited for eleven months to file the Customs Reference which was hopelessly barred by time. We have gone through the application for condonation of delay which states that the entire process was followed up by a Special Attorney of the petitioner. The said Special Attorney was allegedly a chronic patient of some disease and was therefore unable to file the Reference within time. We have specifically asked the learned counsel to explain why the petitioner did not pursue the matter himself and why was he not following up the same. No plausible or reasonable explanation has been offered. The learned ASC has however half-heartedly pleaded that the petitioner was not available and his Special Attorney was

unwell. We are afraid the said explanation is neither convincing nor plausible and does not constitute sufficient grounds for condonation of delay for about eleven months. No other argument has been advanced by the learned ASC that may furnish basis for interference in the matter or persuade us for grant of leave to appeal.

6. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD.

29.11.2019.

ZR/*

~~Not Approved For Reporting~~



18/11/19

