

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

**PRESENT:**

**MR. JUSTICE UMAR ATA BANDIAL**  
**MR. JUSTICE IJAZ UL AHSAN**  
**MR. JUSTICE YAHYA AFRIDI**

53/69

**Civil Appeal No. 1029 of 2019.**  
(On appeal from the judgment/order dated  
29.03.2016 of the Islamabad High Court,  
Islamabad passed in CR No. 4/2015).

**M/s Mujahid Soap and Chemical  
Industries (Pvt) Ltd.**

Appellate(s)

**Versus**

**Customs Appellate Tribunal, Bench-I Islamabad  
and others**

Respondent(s)

For the appellant(s)

Nemo

For the respondent 2

M.D. Shahzad, ASC

For the respondents 4-5

Ms. Misbah Gulnar Sharif, ASC

Date of hearing

25.04.2019

**ORDER**

**UMAR ATA BANDIAL, J.—** The learned counsel  
for the respondents has referred to the leave granting order of  
this Court dated 17.04.2019 in which submissions made by  
the learned counsel for the appellant have been duly recorded.  
The same is reproduced below:

"Learned counsel for the petitioner has relied upon  
the judgment of this Court reported as *The Collector  
of Sales Tax, Gujranwala and others Vs. M/s Super  
Asia Mohammad Din and sons and others* (2017 PTD  
1756), to contend that the period of 120 days for  
rendition of a final order after the date of issuance of  
show cause notice is mandatory condition laid down  
under the Customs Act, 1969. Learned counsel for  
the respondents admits that the order in original  
was issued by the respondent No.4, the Deputy

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Collector (Adjudication) after the lapse of 175 days from the date of show cause notice. However, she contends that the judgment was reserved on 24.04.2013 which is 116 days after the date of the show cause notice.

2. Leave is granted to consider whether the respondents are justified in treating the date of conclusion of hearing and for judgment to be reserved as the date of disposal of the show cause notice. Both learned counsel for the parties are at liberty to file further documents from the record. The appeal arising from this petition be relisted during next week".

2. In the present case, the show cause notice was issued on 28.08.2013. The order-in-original was issued on 19.02.2014 but at the end thereof the adjudicating officer has given the date of his signature as 18.02.2014. One hundred and twenty days after the issuance of the show cause notice expired on 26.12.2013.

3. The legal question arising for determination in this appeal is whether under the provisions of section 179 (3) of the Customs Act, 1969 ("Act") the order-in-original No. 55 of 2014 issued by the respondent Deputy Collector (Adjudication) on 19.02.2014 was decided within the limitation period prescribed in the said provision of the Act. In order to appreciate the manner in which the limitation period is to be ascertained, the said provision of law is reproduced below:

**"179. Power of adjudication.—**

(1)...

(2)...

(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."

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4. The learned counsel for the respondent-department submits that the case was actually decided on 24.12.2013 when the final hearing took place and this is also reflected in the heading of the order-in-original which records the date of judgment to be 24.12.2013. Consequently, it is pleaded that the case was "decided" within a period of 120 days from the issuance of the show cause notice.

5. We asked the learned counsel for the respondents to explain what in her view was the meaning of "decided" in the present case. She said that the matter was decided when it had been heard and the judgment was reserved for release of the reasons. However, it is conceded that on 24.12.2013 no decision was verbally announced by the adjudicating officer nor was any decision communicated to the parties prior to the issuance of the order-in-original dated 19.02.2014. We fail to understand how a decision can be said to have been taken without announcement or communication thereof to the parties. To our understanding the law is quite accommodating for the taxing authority as an extension is available beyond the originally prescribed period of 120 days for rendition of a decision. Even though no decision is communicated within the said period, such an extension can be sought and granted subsequently but in such an event it is mandatory that the decision comes within 180 days after the date of show cause notice. This view is expressed by the Court in its recent judgment reported as Collector of Sales Tax versus Super

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Asia Mohammad Din and sons (2017 SCMR 1427 at paragraph 11).

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.

AR (2p), to please transmit copy of Judgment for  
Publication in Law Journals

Islamabad  
25.04.2019  
Naseer

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Not approved for reporting

1-8-2019