

Taxhelpline Case No. 155 of 2013

[SINDH HIGH COURT]

**Special Customs Reference Application No.160 and C.M.As.
Nos. 1794, 1297 of 2012, decided on 17th October, 2012**

Before Aqeel Ahmed Abbasi and Farooq Ali Channa, JJ

Ms. Dil Khurram Shaheen for Appellant

COLLECTOR OF CUSTOMS

Vs

NAZEER AHMED

ORDER

AQEEL AHMED ABBASI, J.---Through instant reference application, the applicant has formulated number of Questions, however, she has only pressed the following Question, which according to learned counsel, arises from the order passed by the learned Customs Appellate Tribunal, Karachi.

"IV. Whether in facts and circumstances of the case the Member Technical of Appellate Tribunal, Customs Excise and Sales Tax, Bench-II, Karachi was justified in holding that the appeal was barred by 180 days time when the appeal was never ever communicated to the Adjudicating Authority in terms of section 193(A)(5) of the Customs Act, 1969 which was mandatory requirement of the law?

2. Learned counsel for applicant has argued that findings recorded by the learned Tribunal, whereby it has been held that the appeal filed by department was barred by 180 days is erroneous in fact, as according to learned counsel, order-in-appeal passed by the Collector (Appeals) was not served upon the applicant in time. It has been further stated that the question regarding limitation is a question of law which can be considered by this Court in its

reference jurisdiction.

3. We have heard the learned counsel for the applicant and perused the record as well as findings recorded by the Member Technical. It will be advantageous to reproduce Para 6 of the impugned order, which reads as follows:--

6.1 have examined the case record and heard the arguments placed before me by both sides. The appeal is time barred by 180 days as evident from record. Strangely, the counsel for the appellant has not made any ground for condonation of the time-barred period or made a request for the condonation of the same separately as is required under the prescribed procedure of the Limitation Act. The counsel for the appellant has failed to appreciate that in instant case, the arguments placed in ground for appeal can only be discussed and adjudicated upon unless first the issue of condonation of time barred period is decided. It simply reflects callousness on part of the appellant to ignore such an important issue. Since the appellant has failed to put forth any request for condonation of delay along with cogent reasons for such delay. In accordance with statutory provisions, I had the jurisdiction to observe the specific controversy in accordance with law, justice and equity. Even though such assistance has not been provided nor placed any legal argument on that specific point, its dealt by me under the provisions of law and opinion given above correspond the reflection of statutory obligations. In view of above, I dismiss the appeal of the appellant since it is time barred by 180 days without satisfactory excuse of delay. Order passed accordingly."

4. From perusal of the above finding recorded by the learned Tribunal, it is seen that no such plea regarding late communication of the order passed by the Collector was ever raised before the learned Tribunal nor any material was produced before it to justify or to condone the admitted delay in filing of appeal before the Tribunal.

5. Learned counsel for the applicant, while confronted with such

factual position could not controvert the same nor could explain the reasons for the delay in filing appeal which was barred by 180 days. It is further noted that no application, seeking condonation of delay was filed before the Tribunal nor any explanation in this regard was offered at the time of hearing of appeal before the Tribunal. Such plea for the first time, leading to the factual controversy regarding service of order or otherwise, cannot not be allowed to be raised at this stage as the scope of reference under section 196 of the Customs Act, 1969 is limited only to the extent of deciding a Question of Law arising from the order of Tribunal. Disputed Questions of Facts cannot be resolved by this Court in referral jurisdiction, whereas, any finding recorded by the Tribunal on facts cannot be interfered by this Court unless the same is perverse and contrary to facts on record.

6. In view of hereinabove facts, we are of the opinion that the Question proposed is a Question of Fact which has been decided by the Tribunal after perusal of the record whereas no error in such finding has been pointed out by the learned counsel for the applicant, therefore, no exception can be drawn by this court from such finding on facts.

7. Accordingly, reference application is dismissed in limini along with listed application.

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