Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Customs Reference No.13 of 2024

Rozi Khan

Vs.

The Director, Directorate General Intelligence & Investigation-Customs, Islamabad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
06.	**13.05.2025**	**Barrister Ali Hamza Malik, Advocate for applicant.** **Barrister Ahsan Jamal Pirzada, Ibrahim Khan, Shanzay Kamran and Mohammad Arsal Kamran, Advocates for respondents.**

Babar Sattar, J:- This reference arises from judgment of the Customs Appellate Tribunal **("Tribunal")** dated 22.11.2023. The question proposed for our consideration is whether an Order-in-Original that is barred by limitation in terms of section 179(3) of the Customs Act, 1969, can remain in the field merely because the appeal filed to impugn such order is also barred by limitation.

2. Learned counsel for the applicant submitted that the impugned judgment of the Tribunal dated 22.11.2023 was a split decision, with the Member (Judicial) and Member (Technical) of the Customs Appellate Tribunal disagreeing with each other. The matter was then referred to a Referee Member who agreed with Member (Technical) and dismissed the appeal for being time barred by 176 days. Learned counsel for the applicant submitted that service of the Order-in-Original had not been affected on the applicant's address in accordance with requirements of section 215 of the Customs Act. And no service whatsoever was affected on the applicant's address at Islamabad. The notice purportedly served at the applicant's address in Quetta had been received

back unserved. He submitted that the Member (Judicial) had considered the appeal on merit and had found in view of judgments rendered by the Supreme Court that in terms of section 179(3) of the Customs Act the Order-in-Original was to be passed within a period of 30 days. And consequently, the order passed beyond such limitation period was not sustainable in the eyes of law. He submitted that Member (Technical) on the other hand did not consider the question of whether the Order-in-Original was void for being time barred in terms of section 179(3) of the Customs Act and held that the chassis number of the subject vehicle was cut and welded and consequently, dismissed the appeal. He submitted that the Referee Member dismissed the appeal on the basis that the Order-in-Original had been passed within the period of limitation misconstruing the extensions granted by the Collector and the Federal Board of Revenue **("FBR")** while agreeing with a similar finding of the Member (Technical) who also dismissed the appeal. He submitted that the two Members who dismissed the appeal did not take into account the fact that the allegation against the petitioner in the show-cause notice dated 25.11.2021 was that the applicant was liable for smuggling in terms of section 2(s) of the Customs Act, in relation to which the limitation prescribed in the first proviso to section 179(3) was a period of 30 days. As it is settled law that a proviso provides an exception to the rule stated in the provision, it provides a carve-out to the rule so stated. For this proposition he relied on ***Pakistan Match Industries Pvt. Ltd. vs. Assistant Collector, Sales Tax*** **(2019 SCMR 906)**. Section 179(3) states that an order is to

be passed within a period of 90 days from the issuance of the show-cause notice and vests in the Collector the authority to extend such period by another 60 days. However, the first proviso to section 179(3) provides a carve-out for cases where provisions of section 2(s) of the Customs Act have been invoked and the decision is to be rendered within a period of 30 days. The proviso itself also takes away any power pursuant to section 179(3), conferred on the Collector to grant an extension. And that this aspect of the matter was not appreciated by the Tribunal. For this proposition he relied on ***Director General Intelligence and Investigation (Customs), Karachi vs. M/s. Chase Up*** **(SCRA No.119 of 2024).**

3. Learned counsel for the tax department submitted that the Tribunal correctly found that the appeal was barred by limitation. Once such finding had been rendered the appeal was not maintainable and ought to have been dismissed on this ground alone. He then submitted that the Order-in-Original was within the period prescribed under section 179(3), once the 60-day extension granted by the Collector in terms of section 179(3) and the 120-day extension granted by the Federal Board of Revenue in terms of section 179(4) are taken into account. He submitted that the vehicle-in-question also had a cut and welded plate, which is why the vehicle could not be released.

4. In rebuttal, the learned counsel for the petitioner submitted that there was no consistent factual determination that the chassis plate of the vehicle was cut and welded. He

submitted that the first report was generated the day on which the vehicle was seized i.e. 08.09.2021 without undertaking any forensic examination of the vehicle. This report was issued by the Forensic Science Laboratory of Islamabad Capital Territory Police and stated that the chassis was cut and welded. A second report was generated by the National Forensic Science Agency in Islamabad dated 19.01.2022, which stated that the chassis number had not been tampered and the chassis frame had not been cut and welded. A third report was then generated by the Punjab Forensic Science Agency dated 02.03.2022 which stated that the chassis frame had been cut and welded. The discrepancy in the reports had not been addressed by the Tribunal, and there was no consistent factual determination that the chassis frame was cut and welded the benefit of which would flow to the applicant.

5. The facts in the instant matter are not in dispute. The vehicle seized is a 2017 model Toyota Lexus LX-570 (5700cc). The vehicle was seized on 08.09.2021. A show-cause notice was issued to the applicant on 25.11.2021 invoking section 2(s) of the Customs Act. Prior to the expiry of 30 day period after issuance of the SCN, the Collector granted an extension for a period of 60 days purportedly in exercise of authority under section 179(3) of the Customs Act on 23.12.2021. On 15.02.2022, the FBR granted an extension for a period of 120 days in exercise of authority under section 179(4) of the Customs Act. The Order-in-Original was ultimately passed on 18.05.2022.

6. Section 179(3) provides that an order is to be passed within 90 days of the issuance of a show-cause notice, which period may be extended by the Collector for reasons to be recorded in writing for a period not exceeding 60 days. The first proviso to section 179(3) then provides that, *"provided further that in cases, wherein the provisions of clause (s) of section 2 have been invoked, such case shall be decided within a period of thirty days of the issuance of show-cause notice."* The proviso is an exception to the rule stated in section 179(3) in two contexts. One, as opposed to the requirement to render a decision within 90 days of the issuance of the show-cause notice, the first proviso provides that a decision, in a case where section 2(s) of the Customs Act has been invoked, must be rendered within a period of 30 days. And two, while the general rule is that the 90-day period can be extended by the Collector up to a further period of 60 days, by recording reasons in writing, the proviso that regulates the limitation period for rendering a decision in relation to a case where section 2(s) of the Customs Act has been invoked, vests no such authority in the Collector to grant any extension. This Court agrees with the contention of the learned counsel for the petitioner. As held in ***Pakistan Match Industries*** and ***Dr. Muhammad Anwar Kurd vs. The State*** **(2011 SCMR 1560),** a proviso provides an exception to the rule stated in the primary statutory provision and has to be understood accordingly. When the first proviso is read together with section 179(3) it becomes evident that the proviso reduces the period prescribed for issuing an Order-in-Original after the issuance of a show-

cause notice in a case where section 2(s) of the Customs Act has been invoked. And while reducing the time period from 90 days to 30 days, it also takes away the discretion vested in the Collector in ordinary case not involving section 2(s) to grant an extension of upto 60 days.

7. In rendering the above finding we have also taken note of a similar conclusion drawn by the Sindh High Court while interpreting Section 179(3) of the Customs Act in relation to the question as to whether an extension could be granted by the Collector of Customs in terms of section 179(3) of the Customs Act in a case where section 2(s) of the Customs Act had been invoked. The Sindh High Court in ***Director General Intelligence and Investigation (Customs), Karachi vs. M/s. Chase Up*** **(SCRA No.119 of 2024)** by order dated 15.03.2024, held that *"[I]n cases falling under Section 2(s) of the Act, no extension can be granted by the Collector for passing the ONO inasmuch as the authority vested in him is for cases other than of Section 2(s) as the said cases fall within the 1st proviso to Section 179(3) and are excluded from the ambit of Section 179(3) wherein the authority to extend the time period has been provided."* Such finding has subsequently been reiterated by the Sindh High Court in ***Directorate of Intelligence and Investigation Customs vs. Ajab Khan*** **(2025 PTD 226).**

8. The second question that arises is whether the FBR is vested with authority to grant an extension in relation to a case where section 2(s) of the Customs Act has been invoked, while exercising its authority under section 179(4)

of the Customs Act. The analysis in relation to the proviso to be read as a carveout to the rule stated in the main statutory provision applies equally to section 179(4), but produces the opposite result. The first proviso to section 179(3) only creates a carve-out to the rule stated in section 179(3). It does not provide a carveout against the rule stated in section 179(4). Consequently, the proviso doesn't oust the jurisdiction vested in FBR in terms of section 179(4) to grant an extension of time limit in exceptional circumstances. The manner in which such extension is to be granted has been enumerated by the Supreme Court in ***The Collector of Sales Tax, Gujranwala vs. M/S Super Asia Mohammad Din & Sons*** **(PTCL 2017 CL 736)**. It has however also been clarified by the Supreme Court in ***Super Asia Mohammad Din***, ***M/S Mujahid Soap And Chemical Industries vs. Customs Appellate Tribunal*** **(2019 SCMR 1735)** *and* by this court in ***The Collector of Customs vs. Israr & others*** **(2021 PTD 501),** that where the period of limitation prescribed under section 179(3) stands expired, the FBR is vested with no jurisdiction to bring back the expired period to life by granting an extension which can then be applied retrospectively.

9. In the facts of the present case it is not in dispute that the first extension was granted by the Collector on 23.12.2021, in exercise of authority under section 179(3) of the Customs Act. We have already held above that the Collector was vested with no authority to grant such extension in view of the first proviso to section 179(3) of the Customs Act as the case involved section 2(s) of the Customs

Act. The limitation period therefore stood expired on 24.12.2021 by when an Order-in-Original had not been issued. The FBR then exercised its discretion under section 179(4) of the Customs Act to grant extension for a period of 120 days. Such extension would apply prospectively with effect from 23.02.2022 i.e. the date when such extension was granted. However, on 23.02.2022 the limitation period prescribed under the first proviso to section 179(3) of the Customs Act already stood expired by almost two months. Such extension was therefore of no avail to the Customs Department to bring the Order-in-Original issued on 18.05.2022 within the time prescribed under the first proviso to section 179(3) of the Customs Act.

10. Once it is decided that the Order-in-Original has been issued beyond the period of limitation, the consequence is that such order is found to be void and unenforceable (See for example ***Super Asia Mohammad Din*** *and* ***Israr & others***)

11. It is also a settled proposition that no limitation runs against a void order (See for example ***Mst. Rehmat Bibi vs. Punnu Khan*** **(1986 SCMR 962)**, ***Muhammad Shafi vs. Mushtaque Ahmed*** **(1996 SCMR 856)**, ***Land Acquisition Collector, Nowshera vs. Sarfaraz Khan*** **(PLD 2001 SC 514)** and ***Chairman Pakistan Agricultural Research Council (PARC), Islamabad vs. Dr. Abdul Rashid, Scientific Officer*** **(2005 SCMR 69)**). And an exception to this general rule is that limitation would run against a void order from the date of knowledge of the individual i.e., a

person who is aware of a void order cannot sleep on his rights (See for example ***Blue Star Spinning Mills Ltd. vs. Collector Of Sales Tax*** **(2013 SCMR 587)**, ***Chief Engineer, Gujranwala Electric Power Company (GEPCO) vs. Khalid Mehmood*** **(2023 SCMR 291)** and ***Kiramat Khan vs. IG, Frontier Corps*** **(2023 SCMR 866)**).

12. It is in view of the settled law on the aforesaid propositions that we find that the Member (Judicial) who found himself in minority in the Tribunal was correct in finding that an Order-in-Original was void having been issued beyond the period of limitation and could not be acted upon. Even otherwise the exception to the general rule of limitation against a void order would not be applicable since the department failed to rebut the argument of appellant regarding lack of service of the order in terms of section 215 of the Customs Act. There is nothing on record to establish that such service was affected. It was only after the appellant wrote a letter seeking the certified copies vide letter dated 21.12.2022 that the Order-in-Original and other reports were handed over to him on 22.12.2022. And if the limitation in view of the second set of judgments pertaining to the exception to the general rule are considered, the limitation against a void order would run from the date of knowledge and the appeal would not be deemed time-barred.

13. Once it is declared that the Order-in-Original was barred by limitation and thus void, the question of whether the Customs Department correctly determined that the chassis plate of the confiscated vehicle was cut and welded

does not remain a question that is open for adjudication as a factual matter or as a matter of law. The question of whether a vehicle whose chassis plate is cut and welded can be released to the owner of the vehicle and can be allowed to ply on the roads is a question that has framed and is pending adjudication before this Court in multiple other references, and will be decided in a case where the question of invalidity of the Order-in-Original does not impede the Court from adjudicating such question.

14. The impugned order of the Tribunal is set aside for not appreciating that the Order-in-Original was barred by limitation and no penal consequences could flow towards the applicant on the basis of such void order. The vehicle of the applicant shall be handed over to him forthwith. A copy of this order is directed to be sent to the Registrar of the Tribunal under the seal of this Court.

(BABAR SATTAR)
JUDGE

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Approved for Reporting

M.A. Raza