

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.D-542 of 2009

Date

Order with signature of Judge

M/s Iqbal Haider and Siddiq Mirza, for the petitioners.
Mr. Aqeel Ahmed Abbasi, for respondents Nos.2 to 4.
Mr. Mian Khan Malik, DAG, representing the Federation of Pakistan also put to notice of this Petition.
S. M. Abbas Jafri, I.O. of the case, Senior Intelligence Officer, Directorate General, Intelligence and Investigation, FBR, Lahore.

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MUHAMMED KARIM KHAN AGHA, J. According to the petitioners, petitioner No.3 is a private limited company, which is engaged, amongst other things, in the import of auto spare parts. Initially, according to the petitioners, Javed Ahmed Chaudhry, was the founder and majority shareholder of Messrs Automotive Products (Pvt) Limited-petitioner No.3, ("**the Company**"), who managed and administered most of the affairs of the Company. The Company's head office is situated at Plot No.C-17, Korangi Road, Defence Housing Authority, Phase II (Extension), Karachi, commonly known as Messrs Automotive Products (Pvt) limited, Worldwide House ("**the Head Office**").

2. On 27.11.2000, Javed Ahmed Chaudhry died. This led to his widow, petitioner No.1 becoming Chief Executive and his daughter, petitioner No.2, becoming a Director of the Company.

3. Since petitioners Nos.1 and 2 had no experience in the running of the business/affairs of the Company, they entrusted and relied upon the management, appointed earlier by (late) Javed Ahmed Chaudhry and in particular Iqbal Hussain for the management and administration of the Company.

4. In essence, petitioners Nos.1 and 2 contend that they have no knowledge about the business dealings of the company as it was almost exclusively run by Iqbal Hussain in his capacity as Senior Manager, Parts Division, who only recently left the Company.

5. On 18.3.2009, acting under search warrant dated 18.3.2009, issued by VIIth Civil Judge & Judicial Magistrate, Karachi (South), ("the Warrant") pursuant to an application under Section 162 of the Customs Act, 1969 ("Act, 1969"), officers of respondents Nos.1 and 2 raided the Head Office of the Company and according to the petitioners illegally confiscated computers, CPUs, records, documents and files, as per the mashirnama, of the petitioners, without any lawful authority

6. It is the case of the petitioners that the search and seizure made by the respondents under Section 162 of the Act, 1969 and the Warrant, was illegal and without lawful authority and likewise the FIR, which was registered after the material was seized from Company's Head Office, was unlawful and liable to be quashed.

7. The petitioner has prayed as under:-

- (a) declare that the aforesaid impugned orders, decisions, actions and proceedings of the respondents including the impugned warrant of search, said mashirnama, said application of the respondents under section 162 of the Customs Act, 1969, for issuance of the search warrant, said FIR No.08/2009, said summon dated 09.4.2009, under section 165/166 of the Customs Act, 1969, said circular letter to the Banks of the petitioners, issued under section 26 of the Customs Act by a Deputy Director of Customs Intelligence, whose copy not received by the petitioners as mentioned in para 17 above, warrant of arrests caused to be issued for the arrest of the accused named in the impugned FIR and all decisions, proceedings and acts of the respondents in consequence or on the basis of the aforesaid are without jurisdiction, without any lawful authority, in violation of the Constitution, Customs Act and all relevant laws as well as in violation of the principles of natural justice, mala fide, illegal, void and of no lawful effect,
- (b) set aside the aforesaid impugned orders, decisions and actions and proceedings of the respondents as listed above,
- (c) quash the impugned proceedings under Section 162 of the Customs Act being without jurisdiction, unwarranted by law, beyond territorial jurisdiction vested by Board of Revenue and without lawful authority and without any legal affect and direct the respondents to return the record and articles of the petitioners as per recovery memo,
- (d) quash the impugned FIR No.08/2009 and subsequent proceedings of the respondents being without lawful authority, based on malafide intentions and are an abuse of authority based on discrimination and ulterior objectives.

- (e) restrain the respondents from taking any action, decision or order or instituting any proceedings against the petitioners or the accused named in the FIR on the basis of the impugned orders/actions as listed in prayer (a) above,
- (f) restrain the respondents from harassing, victimizing, defaming or arresting any of the accused named in the impugned FIR,
- (g) grant any other relief which this Hon'ble Court may deem fit and proper,
- (h) grant cost of the petition and compensation may also be awarded.

8. The petitioners maintain that this Court has jurisdiction to hear this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution, 1973**") since the Head Office of the Company, which also happens to be the premises, which was raided, was based in Karachi, that the Warrant, issued pursuant to Section 162 of Act, 1969 was also issued in Karachi and that officers of the Karachi Customs Department were also involved in the raid, hence the cause of action arises in Karachi.

9. In support of their contentions, learned counsel for the petitioners, have relied on the following case law:-

- (i) AL-IBLAGH LIMITED v. COPYRIGHT BOARD (1985 SCMR 758);
- (ii) NEW JUBILEE INSURANCE CO. LTD. v. COLLECTOR OF CUSTOMS, DRY PORT, LAHORE (1995 SCMR 1535);
- (iii) IJAZ KHAN v. APA BARRA, PESHAWAR (PLD 2006 Peshawar 180);
- (iv) MUHAMMAD TARIQ QAZI v. THE STATE (SBLR 2009 Sindh 694);
- (v) MUHAMMAD ASHRAF v. RIZWAN NAZIR (2005 YLR 1685);
- (vi) COLLECTOR OF CUSTOMS (PREVENTIVE) v. MUHAMMAD MAHFOOZ (PLD 1991 SC 630)

10. According to the respondents, the petitioner No.3 also has an office in Lahore and the respondents in Lahore have initiated an investigation against the Company. Pursuant to the information gathered from an informer and based on their own investigation, the respondents were of the view that the Company had been involved in mis-declaration of goods, which they imported through and cleared from Lahore Dry port which had caused a colossal loss to the national exchequer.

11. In order to make further progress in their investigation initiated in Lahore the respondents applied for the Warrant under Section 162 of Act, 1969. The respondents contend that they have followed the lawful procedure in obtaining the Warrant in order to search the Head Office of the Company, therefore, they were fully entitled to recover and confiscate the material from the Head Office in order to assist them in their investigation.

12. After the recovery of evidence from the Head Office, an FIR bearing No.80/2009 dated 07.4.2009, under Sections 2(s), 18, 25(1), 32(1)(2), 32A, 79,80,178 and 192 of Act, 1969, was registered at Investigation and Prosecution Branch, Directorate General, Intelligence and Investigation, FBR, Regional Office, at Lahore against the petitioners.

13. With regard to territorial jurisdiction, the respondents have contended that this Court has no territorial jurisdiction to entertain this petition. This is because the original investigation emanated from Lahore; an office of the Company is located in Lahore; the customs officials responsible for the investigation are based in Lahore; the goods were imported and cleared through Dry port Lahore; the application under Section 162 of Act, 1969, for the warrant to the Magistrate in Karachi, was made by respondents, who are based in Lahore, the raid on the Head Office in Karachi was lead by a team from Lahore and finally the FIR was lodged in Lahore. The only reason why the Warrant was issued by the Magistrate, based in Karachi, was because this was a requirement under Section 162 of Act, 1969. The respondents further contend that Sections 182 and 185, Cr.P.C. are applicable and that territorial jurisdiction of this case rests with the Lahore High Court.

14. The respondents in support of their submissions relied on the case of IBRAHIM FIBRES LTD. v. FEDERATION OF PAKISTAN (2009 PTD 248).

15. We have reviewed the documents on record, in detail and carefully considered the arguments advanced before us by the learned counsel.

16. We are of the view that the first issue to be addressed in this case is whether this Court has territorial jurisdiction to entertain the petition. If we find that we have no jurisdiction then it would not be proper for us to go into the merits of the case, which could be agitated before the appropriate forum. This is in consonance with the order passed by this Court on 15.4.2009, which is reproduced herein below:-

"15.4.2009

Mr. Siddiq Mirza, advocate.

Mr. Aqeel Ahmed Abbasi, advocate, has filed memo of appearance on behalf of the respondents and comments on behalf of respondent No.3.

Counsel for the petitioner seeks permission to amend the petition as after filing this petition an FIR has been lodged in Lahore.

Counsel for the respondents states that this Court has no jurisdiction as the FIR has been registered in Lahore.

Counsel for the petitioner to first satisfy this Court about the jurisdiction.

To come up on 28.4.2009."

17. With regard to territorial jurisdiction, the petitioners have analyzed the scope of Article 199 of the Constitution, 1973 and have argued that Article 199(1)(a)(i) and Article 199(1)(a)(ii) are distinct. This is because A.199 (1) (a) (i) deals with writs of mandamus whilst A.199 (1) (a) (ii) deals with writs of certiorari. In this respect, he has relied on the case of NEW JUBILEE INSURANCE CO. LTD. v. COLLECTOR OF CUSTOMS (1995 SCMR 1535), wherein it was observed in placitum (a) as follows:-

"Under Article 199(2) of the Constitution of Pakistan, 1973, a High Court can make a declaration that any act done or proceedings taken within the territorial jurisdiction of the Court by a person performing function in connection with the affairs of the Federation is without lawful authority and of no legal effect. Although in clause (1) the restriction is provided that a person to whom direction is to be issued should be performing duty within the territorial jurisdiction of the Court but so far clause (2) is concerned, such restriction is not provided. It is attracted only if

the act done or proceedings taken are within the territorial jurisdiction of the Court."

18. He has relied on this authority in order to distinguish the recent findings (relied upon by the Respondents) of a Division Bench of this Court in the case of IBRAHIM FIBRES LTD. v. FEDERATION OF PAKISTAN (2009 PTD 248), whereby this Court held in respect of a writ of mandamus that this Court had no territorial jurisdiction to entertain a petition, which related to the Income Tax Appellate Tribunal at Lahore.

19. With regard to this Court having territorial jurisdiction, learned Counsel for the petitioner has also placed reliance on the cases of AL-IBLAGH LIMITED v. COPYRIGHT BOARD (1985 SCMR 758) and IJAZ KHAN v. APA BARRA, PESHAWAR (PLD 2006 Peshawar 180).

20. The Respondent particularly placed reliance on the case of IBRAHIM FIBRES LIMITED (supra), which the learned counsel for the Petitioner has attempted to distinguish. There are however several other judgments concerning territorial jurisdiction, which require review in order to reach an appropriate decision, based on the facts and circumstances of this case.

21. In the case of BENAZIR BHUTTO v. FEDERATION OF PAKISTAN (PLD 1999 Karachi 39) a Division Bench of this Court, headed by Hon'ble Chief Justice Mr. Justice Kamal Mansur Alam, as he then was, fully discussed the question of territorial jurisdiction whilst analyzing in detail most of the above mentioned relevant authorities. This case concerned the power of the Attorney General of Pakistan under Article 100 to communicate directly with the Swiss Authorities.

22. The petitioner had challenged such correspondence before this Court which she submitted had territorial jurisdiction to hear her petition on the basis that the Attorney General had offices in all four provinces and in particular at Karachi and as such she was entitled to challenge the action of the Attorney General before the Sindh High Court. After considering, in detail, the cases on

territorial jurisdiction, the Court came to the conclusion that since the Attorney General's Head Office was based in Islamabad and that the correspondence in question had been sent from Islamabad this Court had no territorial jurisdiction.

23. The case of IBRAHIM FIBRES LTD. (supra), referred to above, although relating to mandamus also fully dilated upon all the relevant legal authorities in respect of territorial jurisdiction. We are agreement with that judgment and do not consider that it has been distinguished simply because it was based on a writ of mandamus.

24. Ultimately, however, in determining the issue of territorial jurisdiction we place reliance on the case of SANDALBAR ENTERPRISES (PVT) LTD. v. CENTRAL BOARD OF REVENUE (PLD 1997 SC 334), which was also a customs case wherein it was observed that the Court, in essence, has to see what is the dominant object of filing of the writ petition. In that case, the dominant object was not to pay regulatory duty assessed by the customs authority at Karachi and, therefore, the case should be heard at Karachi. Relevant observations are as under:-

"We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. *The Court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi. We are, therefore, not inclined to grant leave. Leave is refused.*"(italics added)

25. In this case the entire proceedings stem from an investigation which was initiated at Lahore, led by Lahore customs officials, who had the jurisdiction to investigate this matter especially as the information was received in Lahore in respect of goods, which were imported into and cleared from the Dry Port at Lahore. Pursuant to this investigation and acting on information, customs officials in Lahore, acting under Section 162 of Act, 1969, as they were required to do under that section, sought the consent of a Magistrate based in Karachi for

issuance of the Warrant to search the Head Office of the petitioners, which was based in Karachi. The Warrant was for the purpose to gather additional information, which would assist them in the investigation in Lahore. The Karachi Magistrate was only involved since the Head Office of the petitioner lay within its jurisdiction and this was a codal formality required under Section 162 of Act, 1969.

26. The raid on the Head Office of the Company pursuant to the Warrant was led by customs officials from Lahore although they were accompanied by customs officials from Karachi, which, in our view, was required as a codal formality and as a matter of harmonious inter provincial co-operation between two sister agencies working towards the same objective. The FIR, on the basis of evidence collected from the Company's Head Office at Karachi, was registered in Lahore and specifically involved the commission of the offence at Lahore. The contents of the FIR are reproduced herein below for ready reference:-

"FIRST INFORMATION REPORT

Report under Section 161 of the Customs Act, 1969

Book No.8

Case FIR No.8/2009 dated 07.4.2009 District Lahore

Date of occurrence 07.4.2009 Time of occurrence 1500 hrs.

*Investigation and Prosecution Branch, Directorate General,
Intelligence and Investigation-FBR, Regional Office, Lahore.*

1	Date & Time of Report	07.04.2009 at 1530 hours
2	Name and address of the Complainant	Syed Muhammad Abbas Jafri, Senior Intelligence Officer, Intelligence and Investigation-FBR, Lahore.
3	Place of detection	Office of the Directorate of Intelligence and Investigation-FBR, Lahore.
4	Name and address of the accused person	i) M/s automotive Products (Pvt) Ltd., 20-Ferozepur Road, Lahore, Head Office at Worldwide House, C-17, Korangi Road, DHA, Phase II Ext. Karachi.

A credible information was received through Director, Intelligence and Investigation-FBR, Lahore that M/s Automotive Products (Pvt) Limited, 20-Ferozepur Road, Lahore, with their Head Office at Worldwide House, C-17, Korangi Road, D.H.A, Phase II, Ext. Karachi, one of the largest importers of auto spare parts are indulged in gross mis-declaration of value of imported auto parts in a bid to evade duties/taxes leviable thereon. The

modus operandi adopted by *M/s Automotive Products (Pvt) Limited, 20-Ferozpur Road, Lahore*, in committing this fiscal fraud was that commercial invoices presented to the customs department only covered the partial amounts sent through LCs opened in authorized banks and such transactions were known within the company as "1st. LC". The balance amounts paid to the foreign suppliers were arranged through money changers/hundi and were known in the company as "2nd. LC". The duties and taxes were paid against 1st. L.C. only. The informer further disclosed that private record of all such clearances was lying at Head Office of *M/s Automotive Products (Pvt) limited, situated at Worldwide House, C-17, Korangi Road, DHA, Phase-II, Extension, Karachi*. Pursuant to the above mentioned information, *on the directions of Director Intelligence and Investigation-FBR, Lahore, the Additional Director Intelligence and Investigation-FBR, Lahore, constituted a raiding party under the supervision of Deputy Director, Mr. Ashraf Ali, comprising of Mr. Muhammad Ejaz, Superintendent, Mr. Muhammad Sarwar, Intelligence Officer including the undersigned*. The raiding party proceeded to Karachi and filed an application on 18.3.2009 before the Judicial Magistrate, South Karachi, under Section 162 of the Customs Act, 1969, for issuance of search warrant. As a result of search, the relevant record of *M/s Automotive Products (Pvt.) Ltd., Karachi* was taken into custody. The scrutiny of the record so recovered from Head Office of *M/s Automotive Products (Pvt) Limited Karachi* revealed that huge amount of more than US\$ 10 million had been paid clandestinely to the foreign suppliers through money changer against the imported goods during the period December 1997 to February 2009, and the same was not declared to the Customs Authorities. *The scrutiny of such 22 GDs filed at NLC Dry Port, Thokar Niaz Baig, Lahore and Mughalpura Dry Port, Lahore, revealed that M/s Automotive Products (Pvt) Ltd. Lahore* paid duty and taxes amounting to Rs.59,35,995/- against amounts of 1st L.C. only, whereas evaded duties and taxes amounting to Rs.2,30,89,137/- against amounts paid to the foreign suppliers through money changers. These facts demonstrate beyond any shadow of doubt that the importer, *M/s Automotive Products (Pvt.) Limited, Lahore/Karachi*, through their Managing Director/Chief Executive, Managers and assignees knowingly, willfully and deliberately mis-declared the value of the imported goods and have been found involved in fiscal fraud by way of mis-declaration of value of goods. *M/s Automotive Products (Pvt) limited Karachi* in league with their clearing agents and in connivance with the concerned customs staff caused a colossal loss of government revenue of more than Rs.2,30,89,137/- in respect of above mentioned 22 GDs, commissioning an offence as defined under section 2(S), 18, 25(1), 32(1)(2), 32A, 79, 80, 178, 192 of the Customs Act, 1969 punishable under clauses 8, 14, 14A, 77, 81, 82 and 86 of Section 156(1) *ibid* (italics added)

It is requested that the case may be registered against the accused persons. Copy of the FIR may also be provided. The investigation of the case and further scrutiny of rest of the Bills of Entry/GDs so involved in the case is underway.

Report under section 161 of the Customs Act, 1969 for lodging of FIR bearing signature of *S.M. Abbas Jafri, Senior Intelligence Officer, Intelligence and Investigation-FBR, Lahore* received on

07.4.2009 at 1500 hours and accordingly entered in the register vide FIR No.08/2009 dated 07.4.2009 and copy forwarded to all concerned for further necessary action.

(MUHAMMAD SARWAR)
Intelligence Officer
Directorate of Intelligence
and Investigation-FBR
Regional Office, Lahore.

Copy forwarded to:-

1. Original copy for record.
2. *Special Judge (Customs & Taxation) Lahore.*
3. Concerned Police Station.
4. Informer/Complainant.
5. Head of the Department.”
(italics added)

27. In essence, therefore, the raid carried out on the Company's Head Office at Karachi, was in continuation of the cause of action, which had originally emanated in Lahore through the secret information regarding the goods, which were shipped into and cleared from Lahore Dry Port and which had triggered the investigation.

28. In our view since the dominant cause of action has arisen in Lahore that would be the appropriate forum for the activities of the respondents to be challenged by the petitioner. This is more so since if the Courts in Karachi were to take jurisdiction it would only confuse and complicate an ongoing investigation which has its origin in Lahore.

29. Furthermore, based on the aforesaid case of SANDALBAR ENTERPRISES (PVT) LTD. it can be seen from the prayer in this case that the dominant purpose for filing the writ petition was to quash all the proceedings which flowed from the investigation which was initially started in Lahore i.e. application under Section 162 of Act, 1969, made by Lahore customs officials, the Warrant, which was issued at the behest of the Lahore Customs and executed by some of their officers, the FIR, which was registered in Lahore by Lahore Customs officials concerning imports into and cleared from the Lahore Dry port and the seizure in Karachi by a raiding party lead by customs officials from Lahore pursuant to the execution of the Warrant in connection with there

investigations in Lahore. These actions when taken as a whole indicate that the dominant purpose of this writ petition was to quash proceedings and actions emanating from inquiries initiated in Lahore and thus according to SANDALBARS case (supra) the appropriate forum to challenge the acts of the Respondents would be based in Lahore rather than Karachi.

30. We are further fortified in our findings by Sections 182 and 185 Cr.P.C, which are reproduced herein below:-

Section 182

"182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts. Where it is uncertain in which or several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is continuing one, and continues to be committed in more local areas than, one, or

where it consists of several acts done in different local areas,

it may be inquired or tried by a Court having jurisdiction over any of such local areas."

Section 185.

"185. High Court to decide, in case of doubt, district where inquiry or trial shall take place. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction *the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it,* and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court upon the matter having been brought to its notice, does not so decide any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued". (italics added)

31. The above Sections seem to indicate that jurisdiction should lie within the territorial jurisdiction where the proceedings were first commenced. Since

the FIR was copied to Special Judge (Customs & Taxation), Lahore, jurisdiction should be in Lahore.

32. As such, based on the facts and circumstances of this particular case, we find that this Court has no territorial jurisdiction to entertain this petition, which is accordingly dismissed.

Karachi,
Dated: 15.6.2009.