

IN THE HIGH COURT OF SINDH AT KARACHI.

Present:

Justice Mohammad Abdur Rahman

Justice Dr. Shah Nawaz Memon.

Spl. Customs Reference Application No. 19 of 2017.

M/s A & S Enterprises Vs. The Customs Appellate Tribunal & others.

Date of hearing 23.09.2026.

Date of judgment 23.09.2026.

Applicant Through Mr. Pervaiz Iqbal Kasi, Advocate.

Respondent Through Mr. Afsheen Aman, Advocate.

JUDGEMENT

Dr. Shah Nawaz Memon-J.:- Through this Reference Application under section 196 of the Customs Act, 1969 ("the Act"), the Applicant, a licensed customs agent, has called in question the judgment dated 23.11.2016 of the learned Customs Appellate Tribunal, Bench-III, Karachi, in Customs Appeal No. K-438 of 2016, by which its appeal against Order-in-Original No. 380/2015-16 dated 08.01.2016 was dismissed and a penalty of Rs.100,000/- imposed upon it was maintained. The narrow question is whether that penalty could be imposed without the Applicant having been put on notice and heard.

I. FACTS OF THE CASE

2. On information received from the State Bank of Pakistan, the Model Customs Collectorate of Appraisalment (West), Karachi, issued a contravention report dated 24.11.2015 alleging that the importer, M/s S. Fazal Elahi & Sons, Lahore, had concealed letters of credit and under-declared the value of eighteen consignments cleared between May 2011 and September 2014, resulting in short realisation of Rs.16,137,677/-. The goods declarations for those consignments had been filed through two customs agents, the Applicant and M/s K.P. Kakalia (CHAL No. 13). The importer deposited the entire amount on 06.11.2015, before any show cause notice was issued.

3. The show cause notice, as reproduced in paragraph 5 of the Order-in-Original, called upon the importer and both customs agents to show cause under sections 32(1), 32(2), 32(3A), 79(1)(a) and (b) and 192 of the Act, punishable under clause (14) of section 156(1), together with provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001. The Order-in-Original records hearings on 31.12.2015 and 05.01.2016, at which Mr. Shamshad Younas, Advocate, appeared “on behalf of the respondent” and filed a written reply which, in its own opening words, was on behalf of the importer. The Order does not record any reply, appearance or non-appearance of the Applicant, nor that the notice had been served upon it. By paragraph 11 it imposed a penalty of Rs.500,000/- on the importer and “Rs.100,000/- on clearing agent” under clauses (1) and (14) of section 156(1) of the Act.
4. On receiving a demand notice dated 18.01.2016, the Applicant wrote to the Deputy Collector (R&D/AIB) on 23.01.2016, receipt of which is acknowledged on the letter the same day, stating that neither the show cause notice nor the Order-in-Original had been received, that the penalty had been imposed without an opportunity of reply or hearing, and asking for copies so that an appeal could be filed. In the appeal before the learned Tribunal this was the first ground taken (paragraphs 2.3, 2.4, 3.1 and 3.2 of the memorandum of appeal). The learned Tribunal noted it as the first point urged for the Applicant (paragraph 7(i)), noted the departmental representative’s rejoinder that the Applicant “did get the Show Cause Notice” (paragraph 8), and dismissed the appeal on the view that the concealment extended over three and a half years, leaving no room for a plea of innocence, and that the penalty was modest in comparison with the revenue involved (paragraph 9).

II. THE QUESTIONS PROPOSED

5. The Applicant has proposed the following questions of law:
 - I. Whether in a case where the applicants did not receive a Show-Cause Notice and have been condemned unheard can such applicants be subjected to any fine or penalty?

II. Whether the applicants can be charged for mis-declaration in terms of Section 32 of the Customs Act, for not uploading copies of L.C at the time of import?

III. Whether the applicants can be held responsible for not providing the L.C to the respondents in a situation where provision of L.C was never demanded during the course of assessment and clearance of goods in terms of Section 80(2)?

IV. Whether the applicants can be subjected to any penalty in a situation where their role, in any manner, has not been discussed in the impugned Order-in-Original nor any specific provisions thereabout invoked?

III. SUBMISSIONS

6. Learned counsel for the parties jointly stated that the issue is squarely covered by the order of this Court dated 29.02.2024 in Special Customs Reference Application No. 47 of 2022. Learned counsel for the Applicant submitted that no show cause notice was served and no proceedings under rule 101 of the Customs Rules, 2001 were initiated against the Applicant before the penalty of Rs.100,000/- was imposed; that under Article 10-A of the Constitution no one can be condemned unheard; and that the Supreme Court has held the principles of natural justice to be part and parcel of every statute. Learned counsel for the Respondents did not dispute that the matter falls within the order in Special Customs Reference Application No. 47 of 2022.

IV. WHAT THE RECORD SHOWS ON NOTICE AND HEARING

7. Since Question I rests on a matter of record, we have examined the record with care. The show cause notice does name the Applicant as a noticee. What is not on record, either before us or, so far as the judgment of the learned Tribunal discloses, before the Tribunal, is any material showing that the notice or any notice of hearing was delivered to the Applicant. The Order-in-Original is silent on service, on any reply by the Applicant and on its absence. The Applicant's letter of 23.01.2016, written within days of the demand notice and acknowledged by the Collectorate, is a contemporaneous assertion that nothing had been received. The statement in paragraph 5 of the Tribunal's judgment that the importer and the Applicant "were

served” forms part of the facts “as reported by MCC-Appraisement (West)”, that is, the departmental version; the contrary assertions of the two sides are then noted in paragraphs 7 and 8, but the judgment does not go on to determine which is correct. Learned counsel for the Respondents has not suggested otherwise before us.

8. Whether a penalty may lawfully be imposed on a person who has not been informed of the charge and heard is a question of law, and one that goes to the validity of the order itself. It is therefore within the reference jurisdiction of this Court under section 196 of the Act.

V. THE LAW ON NOTICE AND HEARING BEFORE A PENALTY

9. The Act does not leave this matter to implication. Section 180 provides:

“180. Issue of show-cause notice before confiscation of goods or imposition of penalty.— No order under this Act shall be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person— (a) is informed in writing ... of the grounds on which it is proposed to confiscate the goods or to impose the penalty; (b) is given an opportunity of making a representation in writing ... within such reasonable time as the appropriate officer may specify, against the proposed action; and (c) is given a reasonable opportunity of being heard personally or through a counsel or duly authorized agent.”

10. The provision is couched in negative and mandatory terms, and its three limbs are cumulative. It is not satisfied by the issuance of a notice on file; its object is that the person to be penalised is in fact informed of the grounds and afforded the chance to answer them. The burden of showing that this was done lies on the authority that imposes the penalty, since it alone is in possession of the record of issuance and service.
11. Section 180 gives statutory form to a principle that the law would in any case have read into the Act. As the Applicant pointed out in its reference application, the Supreme Court in *Mst. Zahida Sattar*¹ held that no person can be condemned unheard in any matter in which

¹*Mst. Zahida Sattar v. Federation of Pakistan* [PLD 2002 SC 408].

he has an interest, and that the principle of hearing a person before condemning him is deemed to be embodied in every statute unless expressly or impliedly excluded. The principle is of long standing in our jurisprudence², and the Supreme Court has since reaffirmed that the principles of natural justice are part and parcel of every statute, even where not written into it, and apply to all proceedings, whether judicial or administrative³.

12. Since 2010 the requirement also carries the force of a fundamental right. Article 10-A of the Constitution guarantees a fair trial and due process in the determination of civil rights and obligations. A penalty imposed by an adjudicating authority is such a determination. The Supreme Court has recently described Article 10-A as casting a constitutional canopy over all proceedings, ensuring that no person is condemned unheard; it has also held that the right does not lapse because the person concerned did not ask for it, the duty to afford it resting on the authority conducting the proceedings⁴.
13. An order made in disregard of these requirements does not stand merely as an irregular order open to correction on merits. The Supreme Court has held that an order passed without hearing the person whose rights it affects is illegal, and that neglect of a mandatory procedure prescribed by statute invalidates the action taken in deviation of it⁵. Where the foundational step is missing, what is built upon it cannot stand⁶.

VI. THE POSITION OF A CUSTOMS AGENT

14. A customs agent is not a mere conduit. Rule 101 of the Customs Rules, 2001 places real obligations on him, including the duty to exercise due diligence to ascertain the correctness of the information he imparts to Customs, and to pay evaded duties and taxes where evasion has occurred because of his negligence or failure to perform his functions; section 209(3) of the Act is to similar effect. But these obligations are personal to the agent, and liability under them must

²*Commissioner of Income Tax, East Pakistan v. Fazlur Rahman* [PLD 1964 SC 410]; *University of Dacca v. Zakir Ahmad* [PLD 1965 SC 90].

³*Khushdil Khan Malik v. Secretary, Ministry of Defence* [PLD 2017 SC 173].

⁴*Ain-ud-Din v. Acting Sector Commander NHMP, Shahi Bagh, Kalat* [2026 SCMR 274], paras 4 and 5.

⁵*Senior Member Board of Revenue, Punjab v. Abdul Shakoor (deceased) through LRs* [2026 SCMR 605], applying *Atta Muhammad Qureshi v. Settlement Commissioner, Lahore* [PLD 1971 SC 61].

⁶*Messrs Mobiserve Pakistan (Pvt.) Limited v. Messrs V-Tech* [2025 SCMR 1936].

be founded on a charge directed at his own conduct, framed under the provision relied upon, put to him, and determined on evidence. The scheme of those Rules itself reflects this: rule 102 does not permit action against a licensee unless he is informed in writing of the allegations and heard.

15. That is the view this Court took in Special Customs Reference Application No. 47 of 2022, on which both sides rely. The Court there observed that no penalty can be sustained or imposed until a proper show cause notice to that effect, along with the relevant provision of law, has been issued to the person concerned, and that to hold a clearing agent liable for the acts and omissions of the importer requires a clear finding, based on legally acceptable evidence, of his being an active and conscious party to the manipulation; in the normal course of his business the agent files the declaration on the documents and information supplied by the importer, and cannot be presumed privy to any arrangement the importer may have made⁷.
16. The present case is on the same footing. The show cause notice, as reproduced, invoked neither rule 101 nor section 209 against the Applicant, and the Order-in-Original contains no discussion of what the Applicant did or omitted to do, beyond including it in the allegation of connivance. It does not identify which of the two customs agents the penalty of Rs.100,000/- is imposed upon. We should not be understood to suggest that a customs agent who fails in his obligations is beyond the reach of the law. The Act and the Rules furnish the means. What they require is that he be told what is alleged against him and under which provision, and be heard, before he is penalised.

VII. HOW THE IMPUGNED FINDINGS SIT AGAINST THE LAW

17. The concern of the learned Tribunal over the extent of the revenue involved is understandable, the importer having itself admitted the concealment and paid the amount. That default, however grave, is the importer's. It could not supply, in the case of the Applicant, the notice and hearing that section 180 requires, nor a finding on the

⁷Order dated 29.02.2024 in Special Customs Reference Application No. 47 of 2022, following *Ports Ways Custom House Agent v. Collector of Customs* [2002 YLR 2651].

Applicant's own role. The plea that the Applicant had not been served was the first ground in appeal and was disputed by the department; it called for determination by reference to the record before the merits were reached. On the record as it stands, service upon the Applicant is not shown, and the penalty imposed upon it cannot be sustained.

VIII. THE ANSWERS TO THE QUESTIONS

18. In view of the foregoing, Question I is answered in the negative, in favour of the Applicant and against the Respondents: a penalty cannot be imposed on a person who has not been informed in writing of the grounds and afforded an opportunity of representation and hearing in terms of section 180 of the Act. Question IV is likewise answered in the negative, in favour of the Applicant, in terms of paragraphs 14 to 17 above. Questions II and III, which concern the merits of the allegation of mis-declaration, do not require an answer and are left open.

IX. ORDER

19. This Reference Application is allowed. The judgment of the learned Customs Appellate Tribunal dated 23.11.2016 in Customs Appeal No. K-438 of 2016, and Order-in-Original No. 380/2015-16 dated 08.01.2016, are set aside to the extent of the penalty of Rs.100,000/- imposed upon the Applicant. Any amount recovered from the Applicant towards that penalty shall be refunded in accordance with law. Nothing in this judgment affects the Order-in-Original insofar as it concerns the importer.
20. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, Karachi, as required by section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE