

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. **D - 7278** of 2017

M/s Jamal Apparel
Versus
Federation of Pakistan & others

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan

Dated: 28.11.2018

Mr. Ghulam Hyder Shaikh, advocate for petitioner.
Mr. Mir Hussain, Assistant Attorney General.
Mr. Khalid Mahmood Sidique, advocate for respondents No.2 & 3.

O R D E R

Through instant petition, the petitioner, who claims to be a service providers, has impugned the action of the respondents, whereby, the respondents have detained and seized the thaans/fabrics which, according to learned counsel for the petitioner, were lying in their factory for the purposes of dyeing on behalf of local manufacturer and customers, whereas, respondents with malafide intention, have treated the same to be Indian origin fabric.

2. Learned counsel for the petitioner has argued that entire proceedings initiated by the customs department in the instant case are based on malice and result of fishing & roving enquiry against the petitioner, whereas in the garb of visiting the premises of the petitioner on the basis of some purported information, fabric/thaans of customers and local manufacturers have been detained/seized without issuing any Show Cause Notice, and the thaans/fabrics lying at the factory of the petitioner have been detained. Per learned counsel, the only allegation

against the petitioner is that some of the thaans/fabrics, which contained the stamp of OM/DL Sharma, are of Indian origin and not locally manufactured.

3. Notice of instant petition was issued to the respondents as well as DAG, whereas, respondents were directed to place on record the adverse material, if any, available with the respondents against the petitioner to justify the allegation that the petitioner was found in possession of Indian origin thaans/fabric. The respondents, however, did not file any comments, whereas, statements have been filed along with certain documents which include inventory of the seized thaans/fabrics and the invoices of the supplier and local manufacturers. However, it has been observed that not a single document has been placed on record, which otherwise could justify and substantiate the allegation of the respondent against the petitioner for dealing in smuggled Indian origin fabric.

4. During the course of hearing, it was learnt that the respondents did not draw samples of the fabric, for the purposes of verification from some textile expert, to ascertain as to whether, the detained thaans/fabrics were of Indian origin or otherwise, therefore, vide order dated 29.05.2018 Nazir/Deputy Nazir of this Court was appointed to associate the customs department for the purposes of taking 10% random samples from all the detained thaans/fabrics and also to associate some expert as well for such ascertainment. Pursuant to Court's order Deputy Nazir has submitted various reports including report dated 29.05.2018, 21.06.2018, 16.08.2018, 17.10.2018 and 16.08.2018 along with photographs and the opinion of a textile expert, namely, Dr. Abdul Jabbar of Textile Institute of Pakistan.

5. However, from perusal of the Reports furnished by Deputy Nazir and the opinion of the textile expert, it transpired that out of detained

thaans/fabric, there were stamps of Om and DL Sharma Grey Checker on 93 thaans only, whereas, on the remaining thaans (711 + 13 + 7240), either there were stamps of local manufacturers, there were no stamps at all. Except stamps of Om and DL Sharma on the outer cover of 93 thaans, there seems no convincing material, which could otherwise, justify the seizure/detention by the Customs Department on the basis of mere presumption that thaans/fabrics were of Indian origin, whereas, mere stamp of Om and DL Sharma Grey Checker on the outer cloth cover cannot, otherwise, be considered as a conclusive evidence that the fabric itself is of Indian origin, particularly, when no such stamp or endorsement strip of Indian origin is available on the fabric/cloth itself. It will be relevant to reproduce the opinion of the expert namely Dr. Abdul Jabbar, as contained in his letter dated 05.11.2018, which reads as follows:-

“After detailed investigation of textile material samples collected from detained goods, stored at Jamal Apparels (SITE area Karachi) as well as un-named manufacturing site in Sher Shah area, my findings are as under;

- 1. All the fabric has been manufactured using 100% polyester yarn having yarn count of 58-60 Denier (both warp and weft). The fabric construction is more or less similar in all the samples.*
- 2. The fabric collected from the manufacturing site on 15th October 2018 has been prepared on power looms having no “auto pirn” changing facility and that was confirmed during the visit of manufacturing site.*
- 3. The physical inspection of fabric “thaan” collected from the detained fabric on 3rd November 2018 having “D L Sharma” stamp on it show that this fabric has been manufactured on a machine having “auto pirn” changing facility. This was concluded on the basis observation that selvedge marks and weft insertion faults were less as compared to samples with no auto pirn changing facility.*

Hence, it has been concluded that the detained fabric is not of local origin as per the best of our knowledge.

Regards.
Sd/-
Dr. Abdul Jabbar”

6. From perusal of hereinabove opinion, it does not transpire that samples drawn from the thaans/fabric are manufactured in India, whereas, except the thaans on which, there was a stamp of DL Sharma (93 in numbers), all the remaining fabric as per textile expert report has been prepared on power looms having no “Auto Pirn” changing facility which fact was verified from manufacturing site, at Karachi, and such fact has not been disputed by learned counsel for the respondents.

7. In view of hereinabove facts and circumstances of the instant case, we are of the view that the respondents did not have sufficient material or credible information to support the allegation against the petitioner for having found in possession of Indian origin fabrics/thaans, therefore, the seizure/detention of thaans/fabric lying in the factory of petitioner for dyeing purposes, was equally illegal and without lawful authority. Accordingly, we would dispose of instant petition with the directions to respondents to release all the thaans/fabric, which have been detained, except 93 thaans having stamp of OM and DL Sharma, for which the respondent may continue the adjudication proceedings, which shall be concluded, preferably, within a period of four weeks from the date of this order, however, after providing complete opportunity of being heard to the petitioner, and also keeping in view the Deputy Nazir’s reports and the opinion of expert, as referred to hereinabove, whereas, it is expected that unless there is some concrete convincing material available with the respondents, the petitioner may not be unnecessary dragged in litigation.

Instant petition stands disposed of in the above terms along with listed application.

Judge

Judge