

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. D-6621 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For directions.

1. For orders on CMA No.21885/2018.
2. For orders on CMA No.21886/2018.
3. For orders on CMA No.22266/2018.
4. For orders on MIT-II reports dated 13.06.2018 & 24.07.2018.

13.08.2018.

M/s. Zain A. Jatoy & Ayesha Munawwar, Advocates for the Petitioner.
Dr. Shah Nawaz Memon, Advocate for respondent.

Through instant petition, the petitioner had challenged the blocking of petitioner's user I.D./NTN by the respondent No.2 with the prayer to set-aside the impugned blocking of the petitioner's user I.D./NTN and to direct the respondent No.2 to restore the same forthwith, as according to petitioner, the same was totally illegal for the reason that petitioner was never confronted with any material nor issued any Show Cause Notice before blocking the user I.D./NTN of the petitioner.

2. Notice of instant petition was issued to the respondents pursuant to which comments were filed on behalf of the respondent No.2, wherein, it was alleged that petitioner, in the garb of import of computer broken parts has smuggled the mobile phones by misusing transshipment facilities, whereas, adjudication proceedings were initiated against the petitioner and other persons, who according to respondent were found involved in the evasion of duty and taxes. However, during pendency of instant petition, it transpired that pursuant to adjudication proceedings, Order-in-Original was passed in favour of the petitioner in the instant case, wherein, directions were issued to de-block the user I.D./NTN of the petitioner, whereafter, an appeal was filed, which was also reportedly decided in favour of the petitioner, however, inspite of such position the user I.D./NTN of the petitioner was not de-blocked.

3. In view of above facts, an order was passed by this Court on 24.05.2018 in the following terms:-

“ Learned counsel for the Petitioner submits that Order-in-Original has been passed in instant case, whereby Respondents have been directed to de-block user I.D. of the Petitioner. It has been further contended by learned counsel that such order was impugned by filing an Appeal, however, such Appeal has also been decided in favour of the Petitioner and Respondents have been issued similar directions, but needful has not been done by the Respondents, therefore, Petitioner has filed instant petition with a request that Respondents may be directed to de-block user I.D. of the Petitioner so that Petitioner may be in a position to carry on his lawful business.

*While confronted with hereinabove position, learned counsel for Respondent No.2 requests for a short adjournment to assist this Court on the above point. We are adjourning this matter to **05.06.2018**, when learned counsel for Respondent No.2 is directed to come prepared and some concerned Officer shall also be called on the next date of hearing.”*

4. However, on 05.06.2018, when the matter was taken up for hearing, at the request of learned counsel for the petitioner, instant petition was finally disposed in the following terms:-

“ Learned counsel for the Petitioner submits that Petitioner will not press instant petition and will continue to proceed with the appeal pending before the Appellate Tribunal, however, submits that respondent may be directed to de-block User I.D of the Petitioner. According to learned counsel, the adjudicating authority as well as Appellate authority have already issued such directions, however, needful has not been done by the respondents. He further contends that the Petitioner has not received any Show Cause Notice prior to blocking of his user ID/NTN. It has been prayed that direction may be issued to the respondent to de-block the Petitioner’s I.D immediately, whereas, till decision by the Appellate Tribunal, petitioner will not claim any refund of sales-tax. Accordingly, petition stands disposed of alongwith listed application with directions to the Respondent to de-block the User ID of the Petitioner within two days and submits compliance to this Court through MIT within seven days from the date of this order.

The request of the Petitioner for delay and detention certificate also be considered by the respondent in accordance with law.”

5. Thereafter, instead of complying with the aforesaid order passed by this Court, respondent No.2 filed two applications i.e. CMA No.21886/2018 under Section 114 CPC and Order 47 Rule 1 CPC read with Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking review and recall of

order dated 05.06.2018 and CMA No.21885/2018 filed under Section 151 CPC with the prayer to grant exemption to the applicant from filing certified copy of annexures, whereas, petitioner has also filed CMA No.22266/2018 under Order 39 Rule 2(3) read with Section 94(c) & (e) CPC read with Sections 6 & 12 of the Contempt of Court Ordinance 2003 & Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, against alleged contemnors i.e. Fayyaz Anwar, Director and Ali Zaman Gardezi, Additional Director, Directorate General of Intelligence & Investigation-Customs, 81-C, Block-6, PECHS, Karachi, with the prayer to initiate contempt of Court proceedings against the aforesaid officials for having violated the Court's order dated 05.06.2018. Learned counsel appearing on behalf of respondent No.2 as well as for alleged contemnor under instructions argued that order of this Court dated 05.06.2018, could not be complied for the reason that user I.D./NTN of the petitioner was not blocked by respondent No.2, on the contrary, it was blocked by Collector of Customs, Dry Port Sambrial, Sialkot, as according to learned counsel, the petitioner is registered with the Collector of Customs, Dry Port Sambrial, Sialkot, and the business place of the petitioner also falls within the territorial jurisdiction of the above Collectorate. Per learned counsel, did not disclose the entire facts and also did not even implead the Collector of Customs, Dry Port Sambrial, Sialkot, as party in the instant case, therefore, it has been prayed that the petitioner may be directed to approach the concerned Collector of Customs, Dry Port Sambrial, Sialkot, for seeking relief in the instant case, whereas, order passed by this Court on 05,06.2018 may be recalled accordingly.

6. Such contention of the learned counsel for the respondent has been vehemently opposed and controverted by the learned counsel for the petitioner, who submits that petitioner has already disclosed all the material facts in the petition, whereas, the only grievance, which was expressed by the petitioner in the above petition was to the extent of illegal blocking of the user I.D/NTN of the petitioner, whereas, according to learned counsel, the petitioner was willing to pursue the departmental proceedings and to seek the statutory remedy available to the petitioner in accordance with law, therefore, instant petition was disposed of in terms of order passed by this Court on 05.06.2018. It has been further

contended by the learned counsel for the petitioner that in order to frustrate the order passed by this Court on 05.06.2018, respondents have attempted to mislead this Hon'ble Court by filing a review application, which is not only time barred but also contains disputed facts, as according to learned counsel, in terms of para-4 of the comments filed on behalf of the respondent No.2 in the instant case, it has been categorically stated as under:-

“ *Therefore, the Respondent No.2 i.e. Director, Directorate General of Intelligence & Investigation-Customs, 81-C, Block-6, PECHS, Karachi, in order to pre-empt pilferage of bonded goods and to safe guard state-exchequer, **has blocked NTN of the petitioner in accordance with law.***”

Per learned counsel, since the user I.D/NTN of the petitioner was admittedly blocked by the respondent No.2, therefore, respondent No.2 was rightly made party in the instant proceedings, whereas, no relief was sought against Collector of Customs, Dry Port Sambrial, Sialkot, however, in case of any proceedings pending or initiated by the Collector of Customs, Dry Port Sambrial, Sialkot, petitioner will attend the same in accordance with law. While confronted with hereinabove position, which is apparent from the record, learned counsel for the respondent has candidly conceded to such factual position, however submitted that due to inadvertence the correct facts could not be brought to the notice of the Court, whereas, according to learned counsel for the respondent, the respondent No.2, has no jurisdiction in respect of blocking of user I.D/NTN of the petitioner, who has registered office at Sambrial, Sialkot. It has been further stated by the learned counsel for the respondent/alleged contemnor, that as per his instructions CPLA has also been filed before the Hon'ble Supreme Court against the order passed by this Court on 05.06.2018, however, could not place the copy of the CPLA or any order of the Hon'ble Supreme Court on the subject controversy.

7. We have heard the learned counsel for the parties, perused the record with their assistant, which reflects that as per contents of memo of petition and the comments filed on behalf of respondent No.2, it transpired that user I.D/NTN of the petitioner was suspended by the respondent No.2 i.e. Customs Department, however, without issuing any Show Cause Notice or having

confronted the petitioner with the allegations, requiring the respondent to initiate adjudication proceedings and/or to block the user I.D./NTN of the petitioner. It further appears that no substantial relief has been granted to the petitioner vide order dated 05.06.2018 except, restoration of Sales Tax Registration, whereas, the petitioner has already faced the adjudication proceedings in the instant case, which appears to have been decided in favour of the petitioner upto a Customs Appellate Tribunal, wherein, directions have been issued to the respondents to restore the user I.D/NTN of the petitioner. However, such order of the Customs Department duly affirmed by the Customs Appellate Tribunal has not been complied with inspite of order passed by this Court on 05.06.2018 to this effect, in the garb of having filed a time barred review application under Section 114 CPC and Order 47 Rule 1 CPC read with Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, by changing a instance that the user I.D/NTN of the petitioner has been blocked by the Collector of Customs, Dry Port Sambrial, Sialkot.

8. In view of hereinabove facts and circumstances of the case, we are of the opinion that application filed by the respondent No.2, seeking review of order dated 05.06.2018 is misconceived, having no merits, which is hereby dismissed. Consequently, respondents/alleged contemnors are directed to restore the user I.D/NTN of the petitioner immediately, however, if such user I.D/NTN of the petitioner has been blocked by the Collector of Customs, Dry Port Sambrial, Sialkot, on the directions of respondent No.2/alleged contemnors, such directions shall be issued to the concerned Collectorate by the respondent No.2/alleged contemnors for immediate de-blocking of the user I.D/NTN of the petitioner, within seven (07) days from the date of this order, which shall be transmitted to the concerned Collectorate of Customs by the respondent No.2/alleged contemnors through courier as well as Fax to ensure compliance. As regards CMA No.22266/2018 filed under Order 39 Rule 2(3) read with Section 94(c) & (e) CPC read with Sections 6 & 12 of the Contempt of Court Ordinance 2003 & Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, by the learned counsel, while showing restraint, while assuming that non-compliance of the Court's order dated 05.06.2018 was not deliberate and was the result of some inadvertence on the part of respondent No.2/alleged contemnors, we do

not intend to initiate Contempt of Court proceedings against the alleged contemnors provided that the order passed by this Court on 05.06.2018 shall be complied with within seven (07) days from the date of this order.

All the above listed applications, stand disposed of, in the above terms.

Let copy of this order be supplied cover-in-hand to the learned counsel for the respondent No.2 for onward transmission to the concerned Collectorate of Customs and also to the Chairman, Federal Board of Revenue, who shall also ensure the compliance of the Court's order in its letter and spirit.

JUDGE

JUDGE

Nadeem