

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-4498 of 2018

Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Ashraf Jehan

Petitioner: M/s. F.A.S Enterprises,
through M/s. Ghulam Hyder Shaikh & Kashif
Nazeer, advocates.

Respondents: Federation of Pakistan and others
through M/s. Masooda Siraj & Dr. Shahnawaz
Memon, advocates and Mr. Mir Hussain,
Assistant Attorney General a/w M. Ilyas Ahsan,
Appraising Officer (Legal), Custom Deptt.

Proposed Intervenor: Federation of the Swiss Watch Industry FH,
through Mr. Khalid Daudpota, Advocate.

Date of Hearing: 17.09.2018.

Date of Order: 17.09.2018.

ORDER

Through listed application filed under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has alleged that the order passed on 26.01.2018, whereby, instant petition was finally disposed of, has been violated by the alleged contemnors. On 13.08.2018, before issuing Notice of the contempt application to the alleged contemnors, and in order to ascertain the veracity of allegations, in the first instant, office was directed to call comments from the concerned respondents/alleged contemnors.

2. Pursuant to Court's Notice, all the learned counsel named above shown appearance on behalf of the respondents/alleged contemnors, as well as for the proposed intervenor in the aforesaid petition, whereas, comments have been filed on behalf of the respondent No.1 along with annexures, which includes eight (08) Order-in-Original Nos.01/2018(PQ) to 08/2018 (PQ) all dated 31.08.2018 passed by Deputy Collector (Adjudication), in

respect of various consignments of the petitioner. Learned counsel for the respondents have denied the allegations as contained in the listed application, and have submitted that the order passed by this Court on 26.01.2018 has been duly complied with in letter and spirit, as the consignment(s) of the petitioner, in respect of which, there was no complaint regarding counterfeit/violation of copy right, have already been released as per Court's order, whereas, in cases, where complaints of counterfeit/violation of Copy Rights were received and sufficient material was available with the Customs Authorities, in such cases only, after issuance of Show Cause Notices and after providing opportunity of being heard, eight (08) Order(s)-in-Original have been passed by the Adjudicating Authority, which are appealable orders. It has been further contended by the learned counsel for the respondents that the contempt application filed on behalf of the petitioner is totally misconceived and also contrary to facts, hence, liable to be dismissed in limine.

3. While confronted with hereinabove contention of the learned counsel for the respondents and the documents produced on behalf of the respondent No.1, which include eight (08) Order-in-Original(s) passed by the Adjudicating Authority in this case, learned counsel for the petitioner could not submit any satisfactory response, however, contended that in order to frustrate the order passed by this Court on 26.01.2018, the Customs Authorities had written letters to third party, and have managed frivolous complaints after disposal of instant petition, therefore, the adjudication proceedings initiated by the respondents which culminated in the Order-in-Original(s) as referred to hereinabove, are based on malafide, hence liable to be set-aside.

4. We have heard the learned counsel for the parties, perused the record with their assistance, as well as the order passed by this Court on 26.01.2018, when instant petition was finally disposed of in the following terms:-

“ Learned counsel for the petitioner has filed a statement alongwith copy of Notice dated 20.06.2018 issued by Additional Director, Directorate of IPR Enforcement-South, Customs House, Karachi, and submits that since respondents have initiated adjudication proceedings, therefore, petitioner will not press instant petition and will join the same by submitting response to impugned Show Cause Notice, however, requests that respondents may be directed to provide complete opportunity of being heard to the petitioner and to pass appropriate order at an early date. It has been further prayed that respondents may be directed to proceed only in respect of such consignment in respect of which some valid compliant has been received, and not for the remaining consignment which, according to learned counsel, is otherwise importable under the law, on payment of duties and taxes.

In view of candid statement of learned counsel for the petitioner, instant petition stands dismissed as not pressed, however, with direction to the Respondents to conclude adjudication proceedings at an early date, preferably within a period of four weeks from the date of this order, however, after providing opportunity of being heard to the petitioner, strictly in accordance with law. It is clarified that consignments of the petitioner, which are not subject matter of any complaint, and there is no allegation of their being counterfeit, same may be processed in accordance with law and be released subject to payment of duty and taxes.

Instant petition stands disposed of in the above terms alongwith pending application(s).”

5. From perusal of the aforesaid order, it is clear that the petition was dismissed as not pressed at the request of the learned counsel for the petitioner, however, with the directions to the respondents to conclude the adjudication proceedings at an early date after providing opportunity of being heard to the petitioner in accordance with law. Whereas, it was further observed that consignments of the petitioner, which are not subject matter of any complaint and there is no allegation as to the counterfeit, the same may be processed in accordance with law, and such consignment(s) may be released subject to payment of duty and taxes. Learned counsel for

the respondents have submitted that order passed by this Court has been duly complied with, as the consignment(s) of the petitioner wherein, there was no complaint or allegations of their being counterfeit, have already been released, which fact has not been refuted by the petitioner, whereas, adjudication proceedings in respect of consignments where complaints have been received, have been concluded vide Order-in-Original Nos.01/2018 (PQ) to 08/2018(PQ) all dated 31.08.2018, after issuance of Show Cause Notice(s) and by providing opportunity of being heard to the petitioner. Learned counsel for the petitioner could not deny the above factual position, nor could controvert the fact that Order-in-Originals passed in the instant case, can be assailed by filing appeal before the Collector Customs (Appeals) in terms of Section 193 of the Customs Act, 1969.

6. In view of hereinabove facts and circumstances of the case, we are of the opinion that petitioner could not substantiate the allegations nor could make out a case of contempt of Court, on the contrary, it appears that legality of eight (08) Order-in-Originals passed by the Adjudicating Authority in the instant matter has been challenged, which request of the petitioner cannot be examined by this Court, when instant petition already stands disposal of vide order dated 26.01.2018. Accordingly, we do not find any substance in the contempt application filed by the petitioner, which was dismissed vide our short order dated 17.09.2018, and above are the reasons for such short order. However, petitioner will be at liberty to seek remedy against above eight (08) Order-in-Originals passed by the Adjudicating Authority by approaching the proper forum as may be available under law, if so advised.

J U D G E

J U D G E

Nadeem