

ORDER SHEET  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Special Customs Reference Applications Nos. 766 to 819 / 2015**  
**(54 Cases: Additional Director, Directorate of Intelligence v Inam**  
**Khan, Taj Ali and Rizwan Khan)**

Date

Order with signature of Judge

**Present:-**  
**Mr. Justice Muhammad Junaid Ghaffar.**  
**Mr. Justice Agha Faisal.**

**FRESH CASE.**

- 1) For orders on CMA No. 2506/2015.
- 2) For hearing of main case.

**09.11.2020.**

Mr. Muhammad Khalil Dogar Advocate for Applicant.

**Muhammad Junaid Ghaffar, J.** All these connected Reference Applications have been filed against a common judgment / order dated 27.11.2014 passed in Customs Appeal No. K-939/2014 and other connected matters by the Customs Appellate Tribunal, Karachi. Though the Department has proposed six (6) Questions of law; however, today learned Counsel for the Applicant has pressed upon Questions No. 4, 5 and 6 which reads as under:-

- “4. Whether the honourable Appellate Tribunal has rightly taken into the consideration the facts of the case brought on record as per contents of contravention reports?
5. Whether the respondents who connived and abetted in the matter have been absolved by the Appellate Tribunal by taking into account all aspects and circumstances of the case. In other hand, whether the respondents who have committed offence and were part and parcel in the matter can be absolved from the criminal liability?
6. Whether the provision of section 32 of the Customs Act, 1969 as well as section 32-A of the Customs Act are not attracted when the B/L without invoices / packing lists were provide by the respondents for illegal removal of containers of fake documents?

Learned Counsel for the Applicant has read out the impugned order and submits that the learned Larger Bench of the Customs Appellate Tribunal has erred in law and facts by ignoring the material and evidence placed on record and in support he has referred to statement of one of the co-accused under Section 164 Cr.P.C. According to him enough material in the shape of statement of co-accused was available and ought to have been considered by the Tribunal; hence the impugned order warrants interference.

We have heard the learned Counsel and perused the record. It appears that insofar as the impugned order of the Tribunal is concerned, the Appeal filed by present Respondents in these Reference Applications i. e. Rizwan Khan, Taj Ali and Inam Khan were allowed; while the order-in-original / appeal was maintained against other Appellants so mentioned in the title of the impugned order. Therefore, for the present purposes and for the sake of clarity we may observe that it is only to the extent of these three respondents that we have considered the impugned order as well the proceedings before the department. The relevant findings of the learned Tribunal in the impugned order reads as under:-

“11. The above said 12 consignments were imported in the name of M/s Louis Berger by M/s. Essa Khan and M/s. Inam Khan, who are the real brothers and proprietor of M/s. Nagina Electronics, with whom they made the deal for clearance of their consignments on (Done Basis) against pre-settled amount. Record further highlighted that the appellant Inam Khan, who is at present absconder, was present at the time of illegal removal of containers from QICT.

12. It is also pertinent to mention here that out of 12 containers 05 containers were seized by Regional Office Lahore at M/s. Shalimar Private Godown, Akhri Mini Stop, near Nadia Ghee Mills, Daroghawala, Lahore and the record of the remaining 07 containers was also obtained from the above said Godown, which establishes, without any shadow of doubt, that all the above 12 containers which were imported in the name of M/s Louis Berger were actually owned by M/s. Essa Khan and M/s. Naushad Khan, who illegally removed the containers from the QICT Karachi against fabricated and bogus TPs filed by M/s. N. J. International Karachi, which were actually imported by M/s. Nagina Electronics in the name of M/s. Louis Berger, under the shadow of ISAF consignment but they did not reach the destination and were pilfered and misappropriated in Pakistan and the said goods never crossed over the Afghanistan. Therefore, M/s. Essa Khan and M/s. Naushad Khan are the actual

importer and proprietors of the imported goods who are liable to pay the duty and taxes and the penalties and liabilities determined by the forums below.

13. So far as the case of M/s. Taj Ali, M/s. Rizwan Khan and M/s. Inam Khan is concerned, the D/R has contended that they are the abettors who were involved by the co-accused Muhammad Naeem Qureshi and Faisal Shahzad, but on the query raised by this Larger Bench, the D/R could not produce even an iota of evidence against the above said 03 appellants, except the statement of co-accused, which could not be used against the accused persons without cogent corroborate evidence.

14. The upshot of the above discussion is that this Larger Bench is unanimous in opinion that no sufficient evidence is available on the file against M/s. Rizwan Khan, M/s. Taj Ali and M/s. Inam Khan. Therefore, their appeals are accepted and impugned orders to the extent of appellant M/s. Rizwan Khan, M/s. Taj Ali and M/s. Inam Khan are set aside, while the remaining orders are upheld.”

Perusal of the aforesaid findings and the fact available on record reflect that the containers in question were imported by different parties, and insofar as the present Respondents are concerned, the allegation was to the effect that they were involved behind the scene in the illegal removal of the containers from the Container Terminal. The stance of the Department was that they are abettors pursuant to statement under Section 164 Cr.P.C of other co-accused; however, the Tribunal has refused to accept such contention on the premise that no other evidence has been placed on record except the statement under Section 164 Cr.P.C. In our view to that extent the finding is unexceptional and does not warrant interference on this argument alone. Today we have even asked the learned Counsel for the Applicant to refer to any other piece of incriminating evidence against the present respondents which could be considered for upsetting the findings of the learned Tribunal; however, he could not do so.

We have also perused the order-in-original in question and in the entire order, we have not been able to find out any discussion about the role assigned to the present Respondents, if any. There were in fact many other Respondents before the adjudicating authority and there is at least some observation and or finding in

relation to the conduct and role of all; except these three respondents before us. The concluding Paragraph by virtue of which penalty has been imposed against the present Respondents reads as under:-

“9. The Directorate General, Intelligence & Investigation-FBR Regional Office, Peshawar, also made out eleven other identical cases, against mostly the same respondents and eleven other separate show-cause notices were issued. The importers / consignees in these cases are different. They have denied ownership of goods but the same stands established through the documents provided by the Department. In some cases, the banking transactions provided by the Department establish that the importers involved have transferred money to the respondent No. 7 and 8, which leads to confirmation of their involvement in these cases. Muhammad Rahim S/O Muhammad Azeem. In case of Muhammad Rahim s/o Muhammad Azeem his involvement in impugned imports is confirmed from his telephone number appearing on the Bill of Landing of imported goods. These cases, being identical in nature and involving identical roles and findings in respect all the respondents, are also disposed of through this order in similar terms, with penalty imposed under this order as given in column 3 of the table below against each respondent and the duties and taxes payable under this order, as specified, along with surcharge under section 202A of the Customs Act, 1969.”

We are unable to understand as to how by virtue of this observation and without any discussion about the role, if any, assigned to the present Respondents penalty could be imposed. While confronted, learned Counsel for the Applicants could not satisfy.

In view of hereinabove facts and circumstances of the case, we do not find any illegality in the impugned order which has been passed on the basis of sound reasoning; more specifically on the implication of the present respondents on the basis of 164 statement of other co-accused, and therefore, the Questions so proposed are answered against the Applicant and in favour of the Respondents and accordingly these Reference Applications are dismissed in limine.

Office to place copy of this order in all listed / connected matters mentioned against Serial No.2 of today's cause list.

**J U D G E**

**J U D G E**

Arshad/