

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

CP D 4965 of 2020 : Muhammad Hasan Nadeem & Others vs. Model Customs Collectorate (Enforcement and Compliance) & Others

For the Petitioners : Mr. Khawaja Shams-ul-Islam Advocate

For the Respondents : Mr. Muhammad Ahmer Assistant Attorney General

Mr. Khalid Rajpar, Advocate (For respondent no. 1)

Mr. Amir Mansoob Qureshi Advocate
Mr. Iftikhar Ahmed Shah, Advocate (For respondent nos. 2, 3 & 4)

Dates of hearing : 18.11.2020; 24.11.2020; 15.12.2020

Date of announcement : 22.12.2020

JUDGMENT

Agha Faisal, J. The crux of this determination is the scope of section 163¹ of the Customs Act, 1969 (“Act”); and whether the said provision is to be construed as an exception to section 162² of the Act or an alternative thereto.

¹ 163. Power to search and arrest without warrant. (1) Whenever any officer of customs not below the rank of an Assistant Collector or Deputy Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place. (2) An officer or person who makes a search or causes a search to be made under sub section (1) shall leave a signed copy of the aforementioned statement in or about the place searched and shall, at the time the search is made or as soon as is practicable thereafter, deliver furthermore a signed copy of such statement to the occupier of the place at his last known address. (3) All searches made under this section shall be carried out mutatis mutandis in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898). (4) Notwithstanding anything contained in the foregoing sub-sections and subject to previous authorization by an officer of customs not below the rank of an Assistant Collector or Deputy Collector of Customs, any officer of customs or any person duly empowered as such may, with respect to an offence related to exportation of such goods as the Federal Government may, by notification in the official Gazette, specify in this behalf- (a) arrest without warrant any person concerned in such offence or against whom reasonable suspicion exists that he is about to be concerned in such offence; (b) enter and search without warrant any premises to make an arrest under clause (a), or to seize any goods which are reasonably suspected to be intended for exportation contrary to any prohibition or restriction for the time being in force, and all documents or things which in his opinion will be useful for or relevant to any proceeding under this Act; and (c) for the purpose of arresting, detaining or taking into custody or preventing the escape of any person concerned or likely to be concerned in such offence, or for the purpose of seizing or preventing the removal of any goods in respect of which any such offence has occurred or is likely to occur, use or cause to be used such force to the extent of causing death as may be necessary. (5) The provisions of sub-section (4) shall apply only to the areas within five miles of the land frontier of Pakistan, and within a five miles belt running along the sea coast of Pakistan. (6) No suit, prosecution or other legal proceeding shall be instituted, except with the previous sanction in writing of the Federal Government,

2. Briefly stated the respondents No.2, 3 and 4 conducted a raid upon rented warehouses of the petitioners, located in North Karachi, and seized the consignments of fabric stored therein, in an operation initiated at 03:00 am on 02.10.2020. The present petition has been filed seeking for the raid and seizure, and the subsequent actions of the respondents based thereupon, to be declared as contrary to the law.

3. Per petitioners counsel, the raid and seizure was unlawful, inter alia, for the reason that it was conducted without jurisdiction; in violation of the relevant provisions of the law; and was also predicated upon a *mala fide* abuse of the powers by the cited respondents. Learned counsel relied upon authority of the superior courts to bulwark his case³.

4. Mr. Khalid Rajpar, Advocate controverted the arguments and submitted that search and seizure was in accordance with law, hence, no interference was merited therewith⁴. Mr. Amir Mansoob Qureshi, Advocate augmented the respondents' arguments, while submitting that the search and seizure was within jurisdiction⁵; in accordance with the law⁶; and that since parallel proceedings of a criminal nature were already underway, therefore, no case was made out for the exercise of writ jurisdiction by this court⁷.

5. We have appreciated the arguments of the respective learned counsel and have also considered the law to which our attention was solicited. The facts and circumstances, subject matter herein, are admitted by all parties and there is no cavil, by other side, to the documentation placed before us, upon whereof both sides have equally rested their case. In view hereof, it is

against any person in respect of anything done or purporting to be done in exercise of the powers conferred by sub-section (1) or sub-section(2) or, in the areas specified in sub-section (5), by sub-section (4).

² 162. Power to issue search warrant. (1) Any Judicial Magistrate may, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods, documents or things. (2) Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure, 1898 (Act V of 1898).

³ *Taj International (Pvt.) Ltd. & Others vs. The FBR & Others* reported as *PTCL 2014 CL 726*; *Muhammad Measum & Others vs. Federation of Pakistan & Others* reported as *2015 PTD 702*; *Zaheer Ahmed vs. Directorate General of Intelligence & Others* reported as *2016 PTD 365*; *Mazhar Iqbal vs. Collector of Customs (Preventive) Karachi & Others* reported as *2004 PTD 2994*; *Agha Steel Industries Ltd. vs Directorate of Intelligence & Investigation & Others* reported as *2019 PTD 2119*.

⁴ *Chief Commissioner Inland Revenue vs. Paper World (Pvt.) Ltd.* reported as *2020 SCMR 105*; *Muhammad Hanif vs. The State* reported as *2019 SCMR 2029*; *Abdul Hameed & Another vs. Province of Sindh & Others* reported as *PLD 2019 Sindh 168*; and *Brig. (Retd.) Imtiaz Ahmad vs. Govt. of Pakistan & Others* reported as *1994 SCMR 2142*.

⁵ SRO 581(I)/2013 dated 18.06.2013; SRO 13(I)/2019 dated 01.01.2019; and SRO 371(I)/2002 dated 15.06.2002.

⁶ Section 163, 165 and 168 of the Act.

⁷ *Collector of Customs Lahore vs. Universal Gateway Trading Corporation & Another* reported as *2005 SCMR 37*; *Assistant Collector & Another vs. Shafqat Shah & Others* reported as *1991 SCMR 2525*; *Muhammad Farooq vs. Ahmed Nawaz Jagirani & Others* reported as *2016 PLD SC 55*; *Col. Shah Sadiq vs. Muhammad Ashiq & Others* reported as *2006 SCMR 276*; *Muhammad Saleem Bhatti vs. Syed Safdar Ali Rizvi & Others* reported as *2006 SCMR 1957*; *Muhammad Mansha vs. SHO PS City, Chiniot & Others* reported as *2006 PLD SC 598*; *Abdul Aleem vs. Special Judge (Customs) Lahore & Others* reported as *1982 SCMR 73*; *Khushi Muhammad & Others vs. The State* reported as *1979 SCMR 94*; *Noman Junejo vs. FIA & Others* reported as *2018 PLD Khi 1*; *Muhammad Hanif vs. The State* reported as *2019 SCMR 2029*; and *A. Habib Ahmed vs. M.K.G. Scott Christian & Others* reported as *1992 PLD SC 353*.

considered appropriate to abridge⁸ the scope of this determination to consider whether Section 163 of the Act is an exception to Section 162, or an alternative thereof.

Scope of section 163 of the Act

6. An early illuminating decision in such regard was delivered by the august Supreme Court in the *Mahfooz case*⁹, wherein the primacy of section 162 was given due recognition. It was held that section 163 was required to be read along with section 162, and resort to section 163 was only merited if the requirements¹⁰ laid out therein were satisfied. The learned bench emphasized that it was imperative that the concerned officer prepare a statement including the grounds of his belief with regard to the suspect nature of the goods and his apprehension with respect to the dissipation thereof. The ratio enumerated supra was relied upon and reiterated by the august Supreme Court in numerous subsequent pronouncements, including *Universal Gateway*¹¹ (relied upon by the respondents), and remains binding law.

Application of the law to the present admitted facts and circumstances

7. It is the respondents' case¹² that upon receipt of actionable information a raid was conducted at the respective warehouses at 3am on 2.10.2020. It was specified by the respondents that no one was present at the warehouses, hence, it was considered inevitable to conduct a search per section 162 of the Act. It was further stated that since there was no person present on site, therefore, the raiding team carried away the goods to their own premises and the cartage and inventory process concluded on 05.10.2020, where after further proceedings were initiated.

⁸ Per *Saqib Nisar J as he then was* in *LDA & Others vs. Imrana Tiwana & Others* reported as 2015 SCMR 1739 – “Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds; Court should not decide a larger Constitutional question than was necessary for the determination of the case”.

⁹ Per *Sajjad Al Shah J (as he then was)* in *Collector of Customs & Others vs. Muhammad Mahfooz* reported as PLD 1991 Supreme Court 630 (*Mahfooz case*).

¹⁰ Whenever any officer of customs not below the rank of an Assistant Collector or Deputy Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.

¹¹ *Collector of Customs & Others vs. Universal Gateway Trading Corporation & Another* reported as 2005 SCMR 37 – Reliance of the respondents thereupon was unmerited since the law enunciated by *Mahfooz case* was maintained and reiterated, however, it was found that in the said facts the statutory requirements to dispense with section 162 of the Act were met.

¹² Per the narration in FIR Case No. ASO-448/2020(HQ) dated 05.10.2020 (“FIR”).

No recourse to section 162

8. The starting point of this discussion is section 162 of the Act; which although cited by the respondents was admittedly not followed. It is admitted position that no search warrant was ever sought or obtained and in the alternative section 163 of the Act was employed in an attempt to garner the sanction of the law.

No notice under section 26

9. Section 26¹³ of the Act empowers a designated officer to require any person concerned with the importation, exportation, purchase, sale, transport, storage or handling of any goods, which are being or have been imported or exported, to furnish such information relating to the goods as may be necessary for determining the legality or illegality of the importation or exportation of such goods. In the event that the department did have actionable information, it may have been appropriate to serve such a notice to determine the veracity of the information received. It is an admitted fact that no such notice was ever issued.

Violation of section 168

10. Even if a designated officer is of the opinion that certain goods may be liable to for confiscation, the law¹⁴ contemplates certain safeguards. Notwithstanding the admitted fact that the raid was carried out solely on the basis of purported information, hence, no ostensible reason for the raiding team to believe that the goods were liable to confiscation, the requirements of section 168 of the Act were not fulfilled. As noted supra, it took three days to prepare inventory and remove the goods after search, resultantly not practicable to seize them; hence, serving of notice on the owner of the

¹³ 26. Power to require information to be furnished.- An appropriate officer may, by a requisition in writing, require any person concerned with the importation, exportation, purchase, sale, transport, storage or handling of any goods which are being or have been imported or exported to furnish such information relating to the goods as may be necessary for determining the legality or illegality of the importation or exportation of such goods, the value of such goods, the nature, amount and source of the funds or assets with which the goods were acquired and the customs duty chargeable thereon, or for deciding anything incidental thereto and to produce, and allow the officer to inspect and take extracts from or make copies of any invoice, bill of lading, book of account or other book or document of whatever nature relating to the goods.

¹⁴ 168. Seizure of things liable to confiscation. (1) The appropriate officer may seize any goods liable to confiscation under this Act, and where it is not practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. Where any goods are seized under sub-section (1) and no show cause notice in respect thereof is given under section 180 within two months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the aforesaid period of two months may, for reasons to be recorded in writing, be extended by the Collector of Customs by a period not exceeding two months: Provided further that the limitation prescribed under sub-section (2) shall not apply to goods specified under the first proviso to section 181. (3) The appropriate officer may seize any documents or things which in his opinion will be useful as evidence in any proceeding under this Act. (4) The person from whose custody any documents are seized under subsection (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

warehouses, with directions not to remove, part with or otherwise deal with them except with permission, would have sufficed.

No satisfaction of requirements under section 163

11. Section 163 of the Act has been interpreted by the superior courts to be read in conjunction with section 162, which may only be dispensed with in the statutorily stipulated circumstances.

12. The raid was carried out at 3pm on 02.10.2020, *prima facie* without recourse to section 162, and nobody was found at the premises. While we consider appropriate not to delve into the factual realm, it is apparent from the admitted facts that there was no manifest sign of the goods being removed from the premises prior to any search being conducted. It is further demonstrated before us that the removal and inventory of the goods took three days, hence, it is beyond the pale of comprehension that given the quantum of the goods present on site, and the time requisite for removal thereof, why recourse to section 162 was abjured by the respondents.

13. The august Supreme Court had specifically emphasized, in the *Mahfooz case*, upon the requirement for a statement of the concerned officer to express the grounds for his belief with regard to the suspect nature of the goods and his apprehension with respect to the dissipation thereof. No such statement has been placed before us. However, a statement / reply was filed before us on behalf of the respondent nos. 2, 3 and 4 to which annexed was a notice under section 163 of the Act, purportedly dated 02.10.2020; however, the notice was not addressed to any person and there is nothing on record to demonstrate that the said notice was pasted at the required time at the premises under consideration. Notwithstanding the foregoing, it is manifest from a bare perusal of the aforesaid instrument that it does not contain any grounds for the officer to suspect the nature of the goods and / or to apprehend the dissipation thereof prior to any proceedings under section 162 of the Act. It may also be observed that in the FIR it is not clearly and specifically stated that this mandatory requirement of preparing a statement and leaving the same at the searched premises in terms of s.162(2) was fulfilled. In fact from the FIR it is not even discernable whether the appropriate officer, authorized to carry out a search under s.163, was even present at the warehouses at the relevant time.

14. In addition to the foregoing it became apparent from the record that the respondents did not even deign to prepare a seizure report (prepared by the

seizing officer), with respect to the goods seized, and instead the respondents relied upon a *mushirnama* of seizure, executed by a *mushir* three days post the seizure having taken place.

Burden of proof under section 187¹⁵

15. It is ordinarily presumed that goods coming in to the country have been filtered through the customs barrier and the relevant duties and taxes have been paid. The aforesaid presumption is judicially recognized¹⁶ in the absence of an indication to the contrary. The law places the initial burden upon the person to show that the goods in possession are in accordance with lawful authority; however, it is well settled law in customs matters that while the evidential and tactical burden is initially placed upon on the person, he only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same shifts upon the customs authorities¹⁷.

16. The petitioners claim that the seized goods have been duly imported and brought out of charge post completion of the requirements. The petitioners have admittedly also provided the documentation, upon which their assertion is based, to the respondents. While the respondents have not denied the veracity of such documentation, it has been stated¹⁸ that since the documentation was in the shape of photocopies it cannot be treated as evidence and as a corollary thereto the action taken by the respondents is justified.

The respondents have further submitted¹⁹ that since the said documentation was not provided at the time that the raid was conducted, therefore, such documentation is doubtful.

17. Respectfully, we find ourselves unable to sustain the rationale pleaded by the respondents to justify their disregard of section 187 of the Act. It is the respondents' own case that there was no one present at the warehouses when the raid was conducted so no occasion arises to present any documentation to the raiding team. Furthermore, once the relevant

¹⁵ 187. Burden of proof as to lawful authority etc. When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, licence or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, licence or other document shall lie on him .

¹⁶ *Abdul Razzak vs. DG I&I & Others* reported as 2016 PTD 1861; in reliance upon *AC Central Excise vs. Qzi Ziauddin* reported as PLD 1962 Supreme Court 440, *Sikander A Karim vs. The State* reported as 1995 SCMR 387.

¹⁷ Division Bench, of which one of us (*Muhammad Junaid Ghaffar J*) was a member, judgment of this Court in *Abdul Razzak vs. DG I&I & Others* reported as 2016 PTD 1861; *Muhammad Gul vs. Member Judicial Customs Appellate Tribunal & Others* reported as 2013 PTD 765; *Kamran Industries vs. Collector Customs & Others* reported as PLD 1996 Karachi 68.

¹⁸ Per paragraph 2 of the reply filed by the respondent no. 3; presented on 10.11.2020.

¹⁹ Per paragraph 3 of the reply filed by the respondent no. 3; presented on 10.11.2020.

documentation was provided thereto, albeit as copies as alleged, no justification has been placed before us to demonstrate the reason as to why the same could not be verified at the very first instance.

18. It is trite law that section 163 is not an alternative to 162 of the Act; and that section 163 may only be resorted to in the statutorily specified circumstances, as interpreted by the superior courts. In the facts and circumstances manifest before us, the search and seizure, under consideration herein, was defective and improper *inter alia* on account of non-conformity with the provisions of sections 162 and 163 of the Act; hence, cannot be sustained.

Implication of criminal proceedings upon seized goods

19. We feel it is expedient to exercise utmost restraint with respect to the criminal proceedings initiated pursuant to the search and seizure herein considered. However, it is our deliberated view that the pendency thereof does not fetter the determination herein undertaken.

20. The seizure and possible confiscation of goods is based upon adjudication, which in any event is exclusive of any proceedings before concerned court of criminal jurisdiction. Hence, the respondents' insinuation that the seized goods are case property cannot be sustained by us. Section 156²⁰ of the Act contemplates independent proceedings, departmental and before the learned special judge, in respect of an actionable wrong and co-mingling thereof, in an effort denude a person of the protection of law, does not have the sanction of law²¹.

²⁰ 156. Punishment for offences.- (1) Whoever commits any offence described in column 1 of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the punishment mentioned against that offence in column 2 thereof...

8.(i) If any goods be smuggled into or out of Pakistan, Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years and to fine not exceeding ten times the value of such goods...

89. (i) If any person without lawful excuse, the proof of which shall be on such person, acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing, or in any manner dealing with smuggled goods or any goods in respect to which there may be reasonable suspicion that they are smuggled goods; such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and, where the value of such goods exceeds one hundred thousand rupees, he shall further be liable, upon conviction by a Special Judge, to imprisonment for a term not exceeding six years and to a fine not exceeding ten times the value of such goods...

²¹ Per *Mansoor Ali Shah J in Taj International & Others vs. FBR & Others* reported as 2014 PTD 1807.

"11. Tax crimes can lead to criminal prosecution leading to conviction and punishment (i.e., imprisonment or fine or both) and yet simultaneously, for the same tax crime, civil proceedings for assessment of tax and its subsequent recovery can be initiated. The role and character of an adjudicator in assessing the tax liability and of a special judge in convicting the tax evader are distinct and entail different sets of procedures and evidentiary standards...

19. ...Recovery under civil law is initiated once tax has been assessed through the civil adjudicatory process provided under the Act. Tax assessment becomes doubly necessary, when recovery stands criminalized and entails criminal consequences. Other than the penalties hinged on "amount or loss of tax involved," criminalization of recovery of tax is also evident from section 37A(4) of the Act. This provision permits compoundability of the offence if the amount of tax due and penalties as determined under the Act are paid at any stage of the criminal proceedings. Criminal mode of recovery, reinforces the requirement of prior assessment of tax liability under the Act...

21. Since we have already found the search and seizure, in consideration before us, to be contrary to the law, therefore, there is no case made out before us to allow the continued detention of the seized goods.

Section 217²² of the Act

22. We remain cognizant of section 217 of the Act that provides protection in respect of actions taken in good faith; however, we are also mindful of our Constitutional responsibility²³; which requires us to take notice in situations where it appears that persons, mandated to perform functions in connection with the affairs of the State, may not be discharging their obligations in accordance with the law and their actions may appear to be a patent infringement upon fundamental rights guaranteed in the Constitution.

23. The Act is sub-Constitutional legislation, amended from time to time through a money bill. It is incumbent upon this Court to determine the ambit of such legislation, more so when constituents thereof appear to infringe upon civil liberties; however, since the said issue does not have a material bearing on the determination herein, as the matter is clinched in so far as the present facts and circumstances are concerned, therefore, we deem it prudent to eschew deliberation in this regard and leave the matter for future consideration in an appropriate case²⁴.

24. It would be in the interests of justice to ensure that the powers conferred upon functionaries are exerted in consonance with the provisions of the governing law and with utmost responsibility to make certain that the fundamental rights, *inter alia* with respect to livelihood and liberty, guaranteed

21. ... Recovery under civil law is initiated once tax has been assessed through the civil adjudicatory process provided under the Act. Tax assessment becomes doubly necessary, when recovery stands criminalized and entails criminal consequences. Other than the penalties hinged on "amount or loss of tax involved," criminalization of recovery of tax is also evident from section 37A(4) of the Act. This provision permits compoundability of the offence if the amount of tax due and penalties as determined under the Act are paid at any stage of the criminal proceedings. Criminal mode of recovery, reinforces the requirement of prior assessment of tax liability under the Act...

22. ... if the fine under criminal prosecution is to be loaded with the amount or loss of tax, such a criminal construct must be prefaced with the mandatory requirement of assessment of tax through civil adjudication provided under section 11 of the Act. This precondition is the minimum constitutional requirement to ensure fair trial and due process under Articles 4 and 10-A of the Constitution.

23. ...the process of hauling up taxpayers and effecting recovery of self-determined amount of sales tax by the officer of the Inland Revenue is brutally unconstitutional.

25. As a conclusion, we once again reiterate that civil and criminal proceedings can run independently and simultaneously or otherwise. The purpose and objective of criminalizing tax fraud and tax evasion is retribution and deterrence which is achieved through punishment or fine or both. If the law, however, goes further and criminalizes recovery of tax in addition to retribution and deterrence, then tax assessment has to take place first under the provisions of the Act...

²² 217. Protection of action taken under the Act. (1) No suit, prosecution or other legal proceeding shall lie against the Federal Government or any public servant for anything which is done or intended to be done in good faith in pursuance of this Act or the rules and notwithstanding anything in any other law for the time being in force no investigation or enquiry shall be undertaken or initiated by any governmental agency against any officer or official for anything done in his official capacity under this Act, rules, instructions or directions made or issued thereunder without the prior approval of the Central Board of Revenue.

²³ Per Articles 199 and 203 of the Constitution.

²⁴ Per *Munib Akhtar J* in the recent, yet unreported, judgment in *Shahid Gul & Partners vs. DCIT Peshawar (Civil Appeals 2444-9 of 2016)*.

in the Constitution are not trampled. While we are empowered to take appropriate measures to safeguard Constitutional rights of citizens, it is considered proper to direct the executive to undertake an in-house endeavor to ensure that statutory powers are not exercised in an unfettered manner. It is, however, observed that the petitioners remain at liberty to initiate remedial proceedings against the respondents in respect of any loss / damage suffered; since it cannot be presumed that each action of the functionaries was in good faith, to avail protection of section 217 of the Act.

25. In view of the reasoning and rationale herein contained, we are of the considered view, in the facts and circumstances under scrutiny, that the search and seizure conducted by the respondents was dissonant with the law. Therefore, these petitions are allowed in terms delineated herein below:

a. It is hereby declared that the search and seizure conducted by the respondents was in *prima facie* violation of the law; *inter alia* incongruent with sections 162 and 163 of the Customs Act 1969.

However, the respondents shall remain at liberty to initiate adjudication proceedings against the respondents, if they are in possession of cogent material, and may pass orders in accordance with the law, after providing ample opportunity of being heard to the petitioners.

b. The goods, seized by the respondents shall be returned thereto within seven (7) days from the date hereof. However, the respondents shall remain at liberty to make inventory and draw samples, if deemed expedient.

c. Insofar as the FIR and criminal proceedings are concerned, the petitioners may approach the trial court with an appropriate application for quashing of proceedings, which shall be decided in accordance with the law, keeping in view the observations and findings recorded by us.

d. The Secretary Revenue Division / Chairman FBR, respondent no. 5 herein and Member Customs (Operations), are directed to conduct an inquiry in respect of the *prima facie* manifest unfettered exercise of power by functionaries, conducting search and seizures, in violation of the Act and the fundamental rights, *inter alia* with respect to livelihood and liberty, enshrined in the Constitution; and initiate appropriate proceedings against those found to be culpable. The report regarding the above be submitted by the Secretary Revenue Division / Chairman FBR, through the office of

the learned Attorney General, before the learned Registrar of this Court within four (4) weeks from today.

26. The office is instructed to communicate copies hereof forthwith to the respondents, Secretary, Revenue Division, Chairman FBR, and the learned Attorney General for Pakistan for compliance.

Judge

Judge