

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.7153 of 2021  
(M/s. Manaco International Vs. Federation of Pakistan and others)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zulfiqar Ahmad Khan

Date of hearing : 10.01.2022.

For the petitioner : Mr. Aqil Ahmed, Advocate.

For the respondent No.1 : Mr. Kafeel Ahmed Abbasi, Deputy Attorney General for Pakistan (DAG).

For the respondents No.2 and 4 : Mr. Khalid Rajper, Advocate.

For the respondent No.3 : Mr. Muhammad Rashid Arfi, Advocate.

### **J U D G M E N T**

**IRFAN SAADAT KHAN, J.** The instant petition has been filed impugning the action of the respondents No.2 and 4 in seizing the consignment of the goods imported by the petitioner at Port Qasim (PQ) and thereafter lodging the FIR against the petitioner.

2. Briefly stated, the facts of the case are that the petitioner is engaged in the business of toiletries of different brands. The petitioner imported these goods and filed the Goods Declaration (GD). The Customs Authorities at PQ after receiving some credible information that the petitioner is involved in evasion of duty /taxes confiscated the consignment and after finding it to be not in accordance with law seized the same under Section 168 of the Customs Act, 1969 (the

**Act-1969**) and thereafter lodged the FIR for violation of Section 2(s), 32(1) & (2), 32(A), 79 and 80 of the Act punishable under clause (14), (14A) & 77 of 156(1) of the Act-1969 read with Section 3, 6, 33 and 34 of the Sales Tax Act, 1990 and Section 148(1) of the Income Tax Ordinance, 2001.

3. Mr. Aqil Ahmed Advocate has appeared on behalf of the petitioner and stated that scrutiny of the consignment were to be made at Quetta Dry Port where the goods were to be transshipped by the Customs authorities at PQ. He stated that the respondents No.2 and 4 have no jurisdiction to scrutinize the goods, who without issuing any notice and lawful authority have illegal detained the consignment and refused to release the same and also registered an FIR dated 01.12.2021 against the petitioner. According to the learned counsel the action of the respondents No.2 and 4 is in violation of Sections 121 and 123 of the Act-1969 read with Customs General Order No.15 of 1989 (**CGO-15**), dated 21.10.1989. The learned counsel also invited our attention to Rule 335(4) of the Customs Rules, 2001, to show that only the Customs Authorities at Quetta have the jurisdiction to examine the goods. According to him, the respondents No.2 and 4 without any jurisdiction and authority have made the assessment of the consignment, which power was vested in Collector of Customs at Quetta under Section 79 of the Act-1969. He finally submitted that since the action of the respondents No.2 and 4 was illegal and uncalled for hence the goods illegally seized by them may be directed to be released and the action taken in this regard by them may be declared as illegal and uncalled for. In support of his above

contentions, the learned counsel has placed reliance on the following decisions:

1. M. Hameedullah Khan Vs. Director of Customs Intelligence and 3 others (**PTCL 1992 CL 172**)
  2. Famous Corporation Vs. Collector of Customs (Appraisement) Karachi and others (**PTCL 1989 CL 312**)
  3. Messrs N.B. Trading Company, Samberial (Sialkot) and others Vs. Collector of Customs (Appraisement), Custom House, Lahore and others (**2003 PTD 14**)
4. Mr. Khalid Rajper Advocate has appeared on behalf of the respondents No.2 and 4 and stated that none of the provisions of law relied upon by the learned counsel for the petitioner is applicable in the instant matter. He next submitted that the CGO upon which much reliance has been placed by the learned counsel for the petitioner has already been suspended. He further submitted that the decisions relied upon by the learned counsel for the petitioner are distinguishable in nature. He stated that when the goods reached at PQ, the same were examined by the respondents No.2 and 4 in detail who found that the goods could not be cleared as the same falls under the category of banned items as these were found to be of Indian and Israeli origin and hence falls under prohibitory clause 2(a) of para-5 of the Import Policy-2020. He next stated that the examination of the goods also revealed that a LCD, which is not importable in secondhand used condition, was also imported. He stated that in the FIR detailed description of the items seized, their quantity and their grounds of seizure have been mentioned. He submitted stated that not a single word has been stated by the learned counsel for the petitioner that the

items imported by them were not that of Indian or Israeli origin but has only challenged that the respondents No.2 and 4 have no jurisdiction to make assessment which argument, according to him, on the face of it is fallacious and not available to the learned counsel for the petitioner. He stated that since a mis-declaration has been found in the GD, therefore, the respondents No.2 and 4 quite rightly confiscated and assessed the goods and no illegality could be attributed to them in this regard. He finally submitted that this petition is misconceived and not maintainable and the same may, therefore, be dismissed by imposing cost upon the petitioner. In support of his above contentions, the learned counsel has placed reliance on the following decisions:

1. Director General, Intelligence and Investigation (Customs & Excise) Vs. Amanat Ali and others (**HCA 307 of 2002**)
  2. Messrs P&G International, Lahore Vs. Assistant Collector of Customs, (Appraisement GR-II), Karachi and 3 others (**2010 PTD 870**)
  3. Messrs Baba Khan Vs. Collector of Customs, Quetta and 2 others (**2000 SCMR 678**)
5. Mr. Kafeel Ahmed Abbasi, DAG, has appeared on behalf of the respondent No.1 and Mr. Muhammad Rashid Arfi, Advocate, has appeared on behalf of the respondent No.3 and both of them have adopted the arguments of Mr. Khalid Rajpar, Advocate.
6. Mr. Aqil Ahmed, Advocate, in his rebuttal, has reiterated his above submissions and stated that since the respondents No.2 and 4 have no jurisdiction to make assessment /examination of the goods

hence whatever action has been taken by them is illegal and uncalled for, which may be vacated.

7. We have heard all the learned counsel at considerable length and have also perused the record and the decisions relied upon by them.

8. Before proceeding any further, we deem it appropriate to reproduce herein below the relevant provisions of law relied upon by the learned counsel for the parties:

**Sections 121 and 123 of the Act-1969.**

**121. Transshipment of goods without payment of duty.-** (1) Subject to the provisions of section 15 and the rules, the appropriate officer may, on application by the owner of any goods imported at any customs-station and specially and distinctly manifested at the time of importation as for transshipment to some other customs-station or foreign destination, grant leave to transship the same without payment of duty, if any, chargeable on such goods with or without any security or bond for the due arrival and entry of the goods at the customs-station of destination:

[Provided that at customs-station where the Custom Computerized System is operational, the system may automatically authorize transshipment to other customs-station subject to risk selectivity criteria.]

(2) The Board may, subject to rules and such conditions as it may deem fit to impose, authorize certain carriers to transport goods under the multimodal, scheme. Goods transported under the multimodal scheme shall be specially and distinctly manifested at the time of importation as for transshipment to some other customs-station or foreign destination and shall not—

- (a) require distinct permission for transshipment from the customs-station of first entry into the country to be transported to the customs-station of destination. The principal carrier issuing the multimodal bill of lading or air way bill will be responsible for the sanctity of the cargo during transportation between the customs-station of first entry into the country to the customs-station of destination; and
- (b) be subject to the risk management system at the customs station of first entry.

(3) The Board may, subject to such conditions as it may deem fit, grant license to any carrier to carry goods under the multimodal scheme.

**123. Entry, etc., of transshipped goods.**- (1) All goods transshipped under sub-section (2) of section 121 to any customs-station shall, on their arrival at such customs-station, be entered in the same manner as goods on their first importation and shall be dealt with likewise.

(2) All goods being transshipped under sub-section (1) of section 121 from a customs-station of first entry into the country, where the Customs Computerized System is operational and the goods are determined to be high risk by the risk management system shall be dealt with under rules on the subject.

Explanation:- For the purpose of transshipment of LCL goods, the customs-station of first entry shall be the customs-station where the goods are deconsolidated.

**Rule 335(4) of the Customs Rules, 2001**

335. Clearance of goods from port.--(1) .. .. .  
 (2) .. .. .  
 (3) .. .. .  
 (4) Hundred per cent weighing and two per cent random physical examination to be ordered by Director of Transit Trade of suspected consignments at the port of transshipment in presence of bonded carrier be allowed and in case of mis-declaration of description or weight, warranted action shall be initiated.

“CUSTOMS GENERAL ORDER NO.15 OF 1989,  
 DATED 21<sup>ST</sup> OCTOBER, 1989

*[Reported as PTCL 1989 St. 826(ii)]*

SUBJECT:- TRANSHIPMENT OF IMPORTED CARGO TO  
 THE UP-COUNTRY DRY PORTS.

It has been brought to the notice of the Central Board of Revenue that sometime the personnel of the Customs Agencies such as the Directorate of Vigilance and Inspection (Customs, Central Excise and Sales Tax), Directorate of Intelligence and Investigation (Customs, Central Excise and Sales Tax), Controller of Customs Valuation, Internal and External Audit agencies detain at Karachi imported cargo meant for transshipment of inland dryports. Since detention of such cargo at the port of transshipment causes unnecessary delay in its transshipment to the dryports and inconvenience to the importers, the Central Board of Revenue has decided to issue the following instructions with a view to ensuring smooth flow of transshipment cargo from the port of transshipment to inland dryports:--

- (i) Transshipment (TP) of imported cargo (including unaccompanied baggage) to the up-country ports shall invariably be allowed on the applications filed by the authorized representatives of the approved carriers viz the Pakistan Railways, the National Logistic Cell (NLC) or any other public or private carrier authorized in this behalf, if the address of the party to be notified is of an up-country destination or the marks and numbers on the Bill of Lading indicate an up-country destination via Karachi. Transshipment in these cases shall be allowed irrespective of the place of issue of import licence or of opening of L.C. Such goods shall not be detained or examined at Karachi by any of the Customs Agencies including the Customs House, Karachi notwithstanding any information which such agencies might possess regarding

misdeclarations or other contrventions suspected to be involved in such consginments. If there is any authentic information with any of these agencies which could lead to detection of contraventions, it should be passed on to the respective Collectors or Deputy Collector of Customs Incharge of the dryports and in case of Directorates to their own offices at port of destination for necessary action at that end.

- (ii) The authorities at the inland dryports shall deal with the transshipment cargo with reference to the information received by them under para (i) of this order. The Collector or Deputy Collector Incharge of the dryport concerned shall intimate to the information giving agency their findings and where any contraventions have been established, copy of the Show Cause Notice issued and the Order-in-Original passed shall be endorsed to the concerned agency.
- (iii) Custom House shall not allow transshipment in cases where the party to be notified (on the Bill of Landing) is based at Karachi or the marks and numbers on the Bill of Lading do not indicate up-country destination.

2. No transshipment shall be allowed for the times specified in SRO No.125(I)/83, dated 12<sup>th</sup> February, 1983, (Reported as PTCL 1983 St. 552)

9. Perusal of the record reveals that the GD was filed at Karachi for transshipment to Quetta Dry Port, however the customs authorities at PQ received information with regard to evasion of duty and taxes and mis-declaration about the description of the goods and their weight as well as their origin. Thereafter as many as eight officials of the customs department processed the matter in a detailed manner. Intimation in this regard was also given to the petitioner. The goods were then examined on 16.11.2021 in presence of the importer and the surveyor. During the examination it was found out that instead of declared 18500 pieces of goods 63212 pieces of the goods were found and a difference in quantity at 44712 was detected. The examination of those items not only revealed 214% increase in the quantity of the undeclared goods but the goods were also found to be that of Indian and Israeli origin. Certain other items not shown in the GD were also found. It was in this background that a tax liability of Rs.7,644,886/-

was worked out and other penal provisions, which included lodging of FIR, were then found to be attracted in the matter.

10. In our view, no doubt the goods imported were meant for transshipment purposes and were required to be sent to the respective port for clearance but the law gives ample power to the authorities of the port, where the consignment have arrived, to physically examine the said goods and to randomly check the same as specifically mentioned under Rule 335(5) of the Rules. It is also clear from the law mentioned above that all the goods arriving at the port are to be weighed and in case of any variation in the weight, which is more than 5% of the declared and ascertained weight, the customs authorities have the power to examine the same. In the instant matter it is clear that the declared quantity of the goods was 18500, whereas on physical checking the same were found to be 63212 pieces i.e. some 44712 undeclared pieces were found in the consignment which, as mentioned above, comes to 214% enhanced quantity of the imported goods apart from the fact that the goods belonged to Indian and Israeli origin and some undeclared items were also found.

11. The law, in our view, clearly envisages initiation of action against a person for mis-declaration either with regard to weight or description of the goods which in the present case has clearly been mentioned in the FIR dated 01.12.2021. The learned counsel appearing before us for the petitioner has not said even a single word with regard to the fact that there was no discrepancy in respect of the quantity, weight, description etc. but his only contention being that the



customs authorities at PQ have no jurisdiction to make assessment. We are afraid; we cannot endorse this view of the learned counsel for the petitioner in view of the law clearly spelt above. Though the learned counsel for the petitioner has relied upon certain decisions of the High Court but since there is an explicit finding given by the Hon'ble Supreme Court of Pakistan in the case of Messrs Baba Khan, the contention of the petitioner cannot be endorsed. The Hon'ble Supreme Court while dealing with a matter of somewhat similar nature has held as under:

5. The question is whether the aforesaid misdeclaration or wrong statement about the goods related to any matter of customs. The answer is in the affirmative. Goods arrived at the border and were meant to be cleared from customs at Quetta Dry Port. A statement was required to be made at Mand about the imported goods being transported to Quetta Dry Port and if a misdeclaration was made to avoid payment of duty or with the object of avoiding payment of duty or with the object of importing goods which were totally prohibited for import, the High Court rightly held that the concerned authority at Mand where the declaration was made were entitled to examine whether the goods correspond to the declaration made so that no change in the goods takes place from the starting point at Mand to the Dry Port. Such statement or declaration at the starting point, therefore, related to a matter of Customs and attracted penal provisions of section 32(1) of the Customs Act, in case it was untrue in any material particulars.

A Divisional Bench of this Court in the case of HCA No.307 of 2002 has also observed as under:

In view of the foregoing discussions, we have no doubt that in terms of the Customs Rules 2001 as quoted above and in view of the dictum laid down in Messrs. Baba Khan's case (supra) by the Honourable Supreme Court, the Customs Authorities at the point of entry are fully competent to take cognizance of the contravention thereof. Legal issue formulated by the learned Trial Judge is, therefore, to be answered in affirmative. Consequently, the Judgment and Decree are liable to be set aside and the both the Appeals in view of the above observations are allowed with no orders as to costs.

12. The upshot of the above discussion is that the action of the respondents No.2 and 4 are found to be in accordance with law and no

interference in this regard is warranted. The petition, therefore, along with the listed /pending application(s), stands dismissed.

JUDGE

JUDGE

Karachi:

Dated: .01.2022.

