

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D-3738 of 2020

Date

Order with Signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Zulfiqar Ahmed Khan

Disposed of matter.

1. For orders on CMA No.16929/2020 (U/A)
2. For orders on CMA No.16930/2020 (U/S 151 CPC)
3. For orders on CMA No.16931/2020.

01.09.2020

Ms. Amna Salman Ahmed, advocate for the petitioner.

Mr. Amar Naseer, advocate for respondent No.5.

O R D E R

1. Granted.
- 2-3. Both the listed applications have been filed on behalf of respondent No.5 being CMA No.16930/2020 under Section 151 CPC with the prayer to suspend the operation of order dated 18.08.2020 passed by this Court in the instant petition to the extent of "direction to the Customs Authorities to deface the packaging of the seized rice (product of the applicant)", pending hearing of the application being CMA No.16931/2020 filed under Section 114 & order XLVII read with Section 151 CPC 1908, seeking review of following portion of the aforesaid order:-

"Customs Authorities are also directed to deface the packaging of the seized rice, in accordance with law, by associating the representatives of the petitioner and the respondents."

2. Learned counsel for the respondent No.5 has argued that respondent is aggrieved by the aforesaid portion of the order passed by this Court on 18.08.2020, whereby, Customs Authorities have been directed to deface the packaging of the seized rice, as according to learned counsel, such direction to deface the packaging of the goods is premature, and also has the effect of finally deciding the appeals pending before the Appellate Tribunal. It has been contended by the learned counsel for the respondent, since huge quantity of rice has been seized by the Customs Authorities, therefore, directions by this Court to deface the packaging would otherwise create serious hardship to the respondent, whereas, this process would adversely effect the quality of the valuable perishable food

item. It has been further contended by the learned counsel for the respondent that once it has been observed by this Court in its order dated 18.08.2020 that impugned order passed by the Appellate Tribunal does not suffer from any jurisdictional defect or patent illegality, therefore, there was no need to issue aforesaid directions to the Customs Authorities. While concluding his arguments, learned counsel for the respondent submitted that the order passed by this Court on 18.08.2020 is liable to be recalled and reviewed to the extent of direction issued to the Customs Authorities to deface the packaging of seized rice of the respondent No.5.

3. We have heard the learned counsel for the respondent No.5, perused the record and the contents of both the listed applications with his assistance. Above petition was filed by the petitioner with the following prayers:-

“It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- a) Set aside the Order dated 11.08.2020 passed by the Respondent No.2.
- b) Suspend the Order dated 11.08.2020 passed by the Respondent No.2, pending the decision of this petition, thereby suspending the operation of the impugned Order.
- c) To permanently confiscate the impugned goods so as to prevent the release of illegal and counterfeit goods (bearing trademarks ‘TABIAT’/‘TABIYAT’ being in contravention of Section 15 (c) and other enabling provisions of the laws of Pakistan). The particulars of the Impugned Goods are provided herein below:-

S.NO.	CONSIGNMENT NO.	NO. OF CONTAINERS
1	KPEX-SB-105306-01-02-2020	5X20
2	KPEX-SB-105287-01-02-2020	5X20
3	KPEX-SB-105254-01-02-2020	5X20
4	KPEX-SB-105202-01-02-2020	5X20
5	KPEX-SB-105127-01-02-2020	5X20
6	KPEX-SB-105114-01-02-2020	5X20
7	KPEX-SB-105106-01-02-2020	5X20
8	KPEX-SB-105100-01-02-2020	5X20
9	KPEX-SB-105092-01-02-2020	5X20
10	KPEX-SB-106680-04-02-2020	5X20

11	KPEX-SB-106673-04-02-2020	5X20
12	KPEX-SB-106668-04-02-2020	5X20
13	KPEX-SB-106662-04-02-2020	5X20
14	KPEX-SB-106655-04-02-2020	5X20
15	KPEX-SB-106652-04-02-2020	5X20
16	KPEX-SB-106648-04-02-2020	5X20
17	KPEX-SB-106640-04-02-2020	5X20
18	KPEX-SB-106610-04-02-2020	5X20
19	KPEX-SB-106664-04-02-2020	5X20
20	KPEX-SB-105322-01-02-2020	5X20

- d) To set aside the option allowed to the Respondent No.5 to furnish the Bank Guarantee and release the seized goods on the basis that the rights of the Petitioner will be prejudiced should the Impugned Goods be released to the Respondent No.5.
- e) Grant any such further, additional or alternative relief, as this Honourable Court may deem fit and proper.

4. However, after hearing the learned counsel for petitioner at some length and in view of an objection raised by this Court as to maintainability of petition, instant petition was disposed of vide order dated 18.08.2020 in the following terms:-

“18.08.2020:

M/s. Amna Salman Ahmed & Saifullah Sachwani, advocates for the petitioner.

After arguing the matter at some length and while confronted as to maintainability of instant petition, which appears to have been filed against an interim order dated 11.08.2020 passed by the Customs Appellate Tribunal on the injunction application in Appeal No. K-995/2020/1345, which order prima facie does not suffer from any jurisdictional defect or patent illegality, according to which, respondents have been directed to release the seized rice on furnishing of bank guarantee equivalent to the amount of redemption fine as the seized goods are perishable, whereas, further directions have been issued that the seized rice may not be allowed for export, the learned counsel for the petitioner has submitted that

petitioner will be satisfied and will not press instant petition provided that the Customs Appellate Tribunal may be directed to finally decide both the appeals filed by the petitioner and the respondent No.3 at an early date, after providing opportunity of being heard to the parties, whereas, further clarification may be made to the effect that the packaging of seized rice may be defaced by the Customs Authorities as per Order-in-Original by associating the representative of the petitioner and the respondents.

Accordingly, instant petition is disposed of as not pressed along with listed applications, with the directions to the petitioner to approach the Customs Appellate Tribunal by filing an urgent application along with copy of this order for an early disposal of both the appeals, whereas, it is expected that the Customs Appellate Tribunal may decide both the appeals, after providing opportunity of being heard to all the concerned, preferably, within a period of fifteen (15) days from the date of receipt of this order. Customs Authorities are also directed to deface the packaging of the seized rice, in accordance with law, by associating the representatives of the petitioner and the respondents.”

5. From perusal of the aforesaid order, it is clear that relief sought by the petitioner stands declined for being premature, whereas, petitioner has been directed to approach the Customs Appellate Tribunal by filing urgent application for early disposal of both the appeals and further directions have been issued that appeals may be decided, preferably, within a period of fifteen (15) days from the date of receipt of the order passed by this Court. Since the Customs Appellate Tribunal through impugned order had itself observed that the **order of Collector of Customs (Order-in-Original No.1/2020 dated 11.06.2020) may be implemented**, whereas, respondents were directed to release the seized rice on furnishing of bank guarantee equal to amount of redemption fine, with further directions that seized rice may not be allowed for export, therefore, reference to the Order-in-Original passed in the instant case and the directions as contained in the concluding paragraph of the aforesaid order becomes relevant. The relevant directions read as follows:-

“However, in view of the profile of exporter an option under section 181 of the Customs Act, 1969 is extended to M/s Hassan Corporation to redeem the goods on payment of

Rs.2.5 millions (Rupees two and a half million only) as redemption fine **subject to the condition that M/s. Hassan Corporation will deface the objectionable marks on packing material.** A personal penalty of Rs.100,000 (rupees one hundred thousand only) is imposed upon M/s. Hassan Corporation under Section 156(1)(9) of Customs Act, 1969.”

6. The order dated 11.08.2020, impugned by the petitioner through instant petition, if read along with aforesaid directions as contained in the Order-in-Original (ONO No.1/2020 dated 11.06.2020) passed by the Collector of Customs in the instant case, clearly reflects that if the respondent No.5 intends to get the seized rice released prior to final decision of both the appeals on merits, then respondent is required to deface the objectionable Marks on packing material. Therefore, respondent No.5 can either seek implementation of such order subject to above condition, or can seek modification of such order by getting the appeals decided on merits, instead of seeking review of the order passed by this Court on 18.08.2020.

7. Learned counsel for the respondent No.5 was confronted to point out any error or mistake floating on the surface of the order dated 18.08.2020 or any factual or legal error, otherwise adversely affecting the rights of the respondent, which would justify filing of listed application under Section 114 & order XLVII read with Section 151 CPC 1908, in response, learned counsel could not refer to such error or mistake, nor could submit any reasonable explanation in this regard, however, insisted that the aforesaid order is an ex-parte order, therefore, the same is liable to be recalled and reviewed. Learned counsel further submitted that the aforesaid order is being misused by the petitioner, who has been pressurizing the Customs Authorities to immediately deface the packaging of seized rice of respondent No.5, failing which, petitioner would initiate contempt of Court proceeding against the Customs Authorities. Such contention of the learned counsel for respondent No.5 has been vehemently disputed and denied by the learned counsel for petitioner, who was also present in Court.

8. Learned counsel for the respondent was again confronted to assist this Court that as to whether any directions have been issued by this Court requiring the Customs Authorities to immediately deface the packaging of the seized rice of respondent No.5, in response to such query, learned counsel for the respondent could not refer to such directions in order dated 18.08.2020. It has been observed that inspite of above factual and legal position as emerged in the instant case and confronted to the learned counsel for the respondent No.5 learned counsel kept insisting upon recalling the order dated 18.08.2020 and also made an observation that, this Court, while passing the aforesaid order, has granted the relief to the petitioner, which was not even sought by the petitioner. Such contention of the learned counsel for respondent No.5, besides being contrary to the fact and record of the case, amounts to casting aspersions on the Court. Perusal of the order passed by this Court on 18.08.2020, reflects that learned counsel for the petitioner did not press the petition only in view of the objection raised by this Court as to maintainability of the petition, however, in view of a specific request made by learned counsel for petitioner, to make a clarification to the effect that packaging of the seized rice may be defaced by the Customs Authorities as per order (ONO No.1/2020 dated 11.06.2020) passed by the Collector of Customs in the instant case, such clarification has been made as per ONO No.1/2020 dated 11.06.2020 and the order of the Appellate Tribunal dated 11.08.2020, whereas, there has been no modification of orders already passed in instant matter. Moreover, both the parties are at liberty to get the appeals decided on merits at an early date as per directions already issued by this Court in its order dated 18.08.2020, instead of filing frivolous applications or proceedings to linger on the matter.

9. Accordingly, we do not find any substance in both the listed applications, which are misconceived and devoid of any merits, and the same were dismissed in limine with cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be deposited in the account of High Court Clinic, vide our short order announced in Court in the morning, and these are the reasons for such short order. However, in view of request made by learned counsel for the respondent regarding imposition of cost, we would reduce the amount of cost to Rs.10,000/- (Rupees Ten Thousand Only) to be deposited in High Court Clinic fund.

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