

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CR. ACCOUNTABILITY APPEALS NO.7, 8, 9, 10 & 11 OF 2010**

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Date

Order with signature of Judge  
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**BEFORE: MR. JUSTICE SALAHUDDIN PANHWAR, &  
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

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**04.10.2017**

Mr. Ghulam Sarwar Chandio advocate alongwith appellant.  
Mr. Munsif Jan, Special Prosecutor, NAB.

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**Salahuddin Panhwar, J:** At the outset, learned counsel for appellant contends that appellant was booked in FIR Nos.10/(19)DV.INV.MISC/91/A, B, C, D & E, all dated 24.02.1992, lodged u/s 156(1), 14 and (82), Customs Act 1969.

2. Brief facts of the case, as contained in FIR No.10/(19)DV.INV.MISC/91/E, are that accused Khalid Aziz s/o Muhammad Aziz along with acquitted accused Imtiaz Ali Taj s/o Muhammad Sadiq, accused Ali Ahmed Balouch s/o Muhammad Mohsin, accused Shahid Hussain s/o Zahid Hussain and absconding accused Haroon Rasheed s/o Suleman Khan, Muhammad Nawaz, Khatankar Ramesh Gangaram, Khatankar Sunil Gangaram, Ghulam Muhammad s/o Haji Ghulam Raool, accused Abdul Ghani Askani s/o Muhammad Shafi, accused Mumtaz Ali Ghangezai s/o Hyder Ali Changezai, accused Abdul Majeed Askani (deceased) and accused Khalid Mukhtar s/o Mukhtar Ahmed (acquitted by the hon'ble High Court u/s 265-K Cr.P.C) were sent up to face trial u/s 156(1), 14 and (82) of Customs Act 1969 r/w section 9 of the National Accountability Ordinance 1999 punishable u/s 10 of the Ordinance 1999 r/w section 31-a of the Ordinance 1999 vide FIR No. FIR Nos.10/(19)DV.INV.MISC/ 91-A dated 24.02.1992 for having acted in

the process of rebate in connivance with each other on the grounds of bogus, fictitious, fake and fraudulent export of art silk fabrics (Jacquard) and glass marble which allegedly were not physically exported from Gawadar to Dubai hence extended the benefit of rebate to M/s. Charli Enterprises and M/s. Concord Export House thereby causing colossal loss to the public exchequer in the sum of Rs.45,355,802/- by preparing false and fictitious examination report based on fake documents.

Initially the accused was shown as absconder during the course of investigation alongwith other co-accused and his challan u/s 512 CrPC was sent in court alongwith accused who at the time of submission of challan were arrested. After submission of the challan, the case was proceeded against sent up (arrested accused) and they were acquitted from the charge vide judgment of this Court dated 26.03.2005. After passing the aforesaid judgment the present accused was arrested and produced before this Court on 1<sup>st</sup> July 2005 to stand trial. After arrest of the accused compliance of section 265-C Cr.P.C. was made and charge was framed against him on 27<sup>th</sup> July 2005 vide Exh.49 to which he pleaded not guilty and claimed trial vide plea Exh.50.

3. After framing of charge prosecution examined PW-1 Abdul Jabbar s/o Barkat Ali vide Exh.51 who produced copies of letters and their replies from Exh.51/1 to 51/9, PW-2 Muhammad Abdul Azeem Siddiqui s/o Abdul Raheem Siddiqui vide Exh.52 who also produced photocopies of certain correspondence from Exh.52/1 to 52/4, PW-3 Nazeer Ahmed s/o Haji Dad Muhammad vide Exh.53 who also produced certain correspondence from EXh.53/1 to 53/12,

PW-4 Asghar Khan s/o Rehmat Khan vide Exh.54 who also produced various correspondence and seizure memo from Exh.54/1 to 54/17, PW-5 Rafiqullah Khan s/o Ajeebullah Khan vide Exh.55 who also produced photocopies of various correspondence from Exh.55/1 to 55/7, PW-6 Akbar Ali s/o Sarfraz Ali vide Exh.56 who produced photocopy of authority letter vide Exh.56/1, PW-7 Abdul Qayoon s/o Muhammad Rafiue vide Exh.57 who also produced counter file of the cheque books vide Exh.57/1, PW-8 Nusrat Husain s/o Ahmed Bukhsh vide Exh.58, PW-9 Captain Muhammad Aleem Shaikh s/o Khan Muhammad vide Exh.59, PW-10 Ashraf s/o Hussain vide Exh.60 who produced photocopies of certain documents from EXh.60/1 to 60/4, PW-11 Niaz Muhammad Khan s/o Baz Muhammad Khan vide Exh.61 who produced photocopies of certain documents from Exh.61/1 to 61/4, PW-12 Muhammad Iqbal Anjum s/o Ghulam Rasool vide Exh.62, PW-13 Syed Zafar Ali s/o Syed Zahoor Ali vide Exh.63, PW-14 Syed Aqeel Zafarul Hasan s/o Prof. Dr. Syed Zafarul Hassan vide Exh.64 and PW-15 Muhammad Saleem s/o Syed Muhammad Shafi vide Exh.65 who is I.O of the present case who produced photocopies of rebate bills and shipping documents from Exh.65/2 to 65/49. The side of prosecution was closed vide statement Exh.66.

4. The statement of the accused was recorded u/s 342(2) CrPC vide Exh.67 wherein he denied his posting as Inspector Customs House, Quetta and stated that he was posted as Inspector at Gawadar Port; he also denied the allegations of prosecution or existence of any connivance between him and other accused persons (*absconding as well acquitted*) to facilitate the rebate to the

management of c.c.Al-Aminee and c.c.Al-Anwary. He further denied the suggestion that he inspected the goods as he was never posted as inspector custom house, Quetta. The goods were actually exported and examined by appropriate officer according to standing orders; he admitted the termination of his service because of enquiry against him by stating that his appeal is pending before the service tribunal; he further submitted that the liabilities or Octri receipts are not the requirement for claiming the rebate on the export goods; according to him he is innocent and has not committed the present offence. He *however* neither examined himself on oath nor led the evidence of witnesses in his defence.

5. At the outset learned counsel for appellant has placed on record judgment of this Court dated 07.01.2013 passed in Criminal Accountability Appeal No.14/2010 whereby appellant Muhammad Nawaz Butt was acquitted; learned counsel has also submitted judgment of the apex Court whereby appeal preferred by NAB in that case was dismissed; learned counsel emphasized paragraph No.10 of the judgment passed by this Court which is reproduced herewith:-

*“It is seen that the concerned directorate has written letter to the appellant for stoppage of sanction of six rebate claims by observing that the exports are suspicious, whereas no reason whatsoever for expressing such opinion was given, nor any action, by that time, appears to have been taken against such exporter. It has also come on record that after the exports by any exporter, the claim of rebate was required to be processed within 48 hours as per directive issued by the Central Board of Revenue which were binding upon the Collector in terms of section 223 of the Custom Act, 1969. By the time the directorate inspection issued such letter to the Collector, the entire process was completed as the cheques were already prepared and were issued by the concerned officer to the exporter. It has also come on record that before processing the claim of rebate the departmental pre-audit was conducted and the required documents were duly*

*examined and processed by all the concerned official, whereas the prosecution has neither disputed such process nor any material contrary to the documents produced by the appellant has been brought on record.”*

Learned counsel further contends that point of determination in impugned judgment was that *“Whether the present accused inspected the alleged exported goods from Gawadar Port to Dubai and acted maliciously in fraudulent manner to extend the facility of rebate in connivance with co-accused to the owners of the ships namely c.c.Al-Aminee and c.c.Al-Anwary, thereby causing colossal loss of Rs.45,355,802/- to the government.”* Learned counsel contends that this Court has already given findings that benefit of rebate was not with malafides and even no action was taken against exporters as well it has come on record that after export by any exporter the claim of rebate was required to be processed within 48 hours as per directives issued by the Central Board of Revenue in terms of section 223 of Customs Act 1969; it has also surfaced that before processing the claim of rebate, departmental pre-audit was conducted and the required documents were duly examined and processed by all the concerned officials. Learned counsel has also referred judgment passed by Accountability Court No.I whereby co-accused Imtiaz Ali Taj, Ali Ahmed Baloch and Shahid Hussain were acquitted on same ground.

6. Learned Special Prosecutor, NAB though has argued that sufficient evidence was brought on record as well lenient view was taken by the trial Court hence impugned *conviction* needs no interference.

7. We have also examined the judgment of the apex Court; for the sake of brevity paragraphs No.3 and 4 are reproduced herewith:-

*“3. After hearing the learned counsel for the parties and going through the record of the case with their assistance we have found that the exports in issue had statedly been made in the middle of the year 1991 whereas the respondent had been posted as the Collector, Excise and Customs, Quetta some time in the month of December 1991. The record shows that an intimation had been sent to the Collector, Excise and Customs, Quetta by the concerned agency through exhibit 6/2 regarding suspicious nature of the relevant exports but that intimation had not reached the respondent personally before 06.01.1992. Subsequently through another intimation exhibit 6/3 sent on 02.01.1992 the respondent had been warned against sanctioning of the rebate claim on account of the dubious nature of the relevant exports which were under investigation but even that intimation had not reached the respondent personally till 06.01.1992. The statement made before the learned trial Court by Muhammad Waseem Warsi (PW2) clearly established that the rebate claim had been sanctioned by the respondent in the morning of 06.01.1992 and the relevant cheques had also been encashed forthwith but it had never been established by the prosecution that the respondent had become aware of the intimations exhibits 6/2 and 6/3 before sanctioning of the rebate claim in the morning of 06.01.1992. It had indeed been established on the record that the respondent had come to know of the above mentioned intimations on 06.01.1992 but the sanctioning of the rebate claim had been made by the respondent in the morning of that very day whereas information about the above mentioned intimations had probably been received by the respondent in the later part of that day, i.e. 06.01.1992. **It was for the prosecution to establish through positive evidence that at the time of sanctioning the rebate claim he was aware of the above mentioned intimations but no such evidence had been brought by the prosecution on the record of this case.** In this state of the evidence available on the record it could not be alleged or proved by the prosecution that the respondent had sanctioned the rebate claim at a time when he was aware of the suspicious or dubious nature of the relevant exports. In this view of the matter the prosecution had failed **to***

**establish the requisite mens rea on the part of the respondent** so as to prove that the respondent had sanctioned the rebate claim with a guilty mind.

4. The record of the case also shows that the respondent was sitting at the apex of authorities who were involved in processing, finalizing and sanctioning of the relevant rebate claim and he had to proceed in the matter on the basis of documents put up before him by authorities subordinate to him. **In the case in hand the other accused persons, particularly those involved in the relevant exports and receiving the rebate amount, had already been acquitted by the learned trial Court** and, thus, it was hard to conclude that the respondent had maneuvered everything on his own so as to be picked up **as the sole perpetrator of the alleged offences.**”

8. Perusal of referred judgments show that point of determination was adjudicated by this Court as well in Appeal by the apex Court. The acquittal of co-accused persons, *particularly those involved in the relevant exports and receiving the rebate amount*, has now attained *finality*. The charge against the present appellant *though* tried separately yet is at par particularly that of Custom Collector therefore, benefit of *rule of consistency* would also be available to the appellant. The findings on a *fact* or question of law, given in a *particular* case / situation, while trying one or a set of accused persons would also be applicable for an *absconding* accused if his case involves same *fact* or *question* of law. There can be no *departure* from this well-established principle of law which is *deeply* rooted in Criminal Administration of Justice and a charge under NAB Ordinance *alone* cannot be an exception from such settled principles of law. We do not find any substance in *plea* of learned Special Prosecutor that since leniency has been taken hence conviction be maintained. The *leniency* may well be but for *quantum* of punishment

only and not to record conviction which could not be based on any other type of evidence except direct, natural and confidence inspiring one. There is nothing on record which *could* establish that case of appellant is not similar to that of acquitted accused persons. Accordingly impugned sentence awarded on Reference is hereby suspended and the appeals are allowed.

Appellant is already on bail bond. Office shall release the surety document after proper identification and verification.

**J U D G E**

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