

# IN THE HIGH COURT OF SINDH, KARACHI

**Const. Petition No. D -7210 of 2018**

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.  
MR. JUSTICE ZULFIQAR AHMAD KHAN.**

*M/s. Sahara Public Rights Welfare*

**Vs.**

*Federation of Pakistan & others*

**Petitioner:** through Ms. Dilkhurram Shaheen,  
advocate.

**Respondents:** through M/s. Masooda Siraj, Ghulam  
Murtaza and Muhammad Aqeel  
Qureshi, advocates.

Ms. Lubna Pervaiz, DAG.

**Date of Hearing:** 17.04.2019.

**Date of Order:** 17.04.2019.

## **ORDER**

**Aqeel Ahmed Abbasi, J:-** Through instant petition, petitioner being a registered organization under Registration and Control Ordinance, 1961, which claims to be a public rights welfare organization, established in the year 1988 to provide welfare services to the old, sick and disabled persons including the children, has expressed its grievance against **hold** on its imported consignment by the Customs Authorities for an indefinite period, for being without any lawful authority, particularly in the absence of any proceedings pending i.e. Seizure under Section 168 or Detention under Section 186 of the Customs Act, 1969, against the petitioner and has sought the following relief(s):-

1. that placing the consignments (as per Annexure P/6) on hold for indefinite period is illegal, void and of no legal effect.
2. that the respondents are liable to release the consignments (As per Annexure P/6) of the petitioner on the declared value in terms of Exemption Certificate provided pending hearing of the main petition.
3. Direct the respondent No.3 to decide the Notice dated 25.08.2018 on urgent basis.
4. That acts & actions on the part of respondents are illegal, void, without lawful authority and of no legal effect.
5. Direct the respondents to grant delay detention certificate for waiver of wharf age and detention charges.
6. Declare that the act of respondents in withholding the consignments (As per Annexure P/6) of the petitioner is illegal, malafide, void, unjust and tainted with ulterior motive and of no legal effect;
7. Any other relief, which this Honourable Court may deem fit keeping in view the facts and circumstances of the case may also be granted to the petitioner.

2. It has been contended by learned counsel for the petitioner that petitioner is a registered social welfare organization, which is providing welfare services to the old, sick and disabled persons including children on behalf of donors from outside the country. It has been further contended by the learned counsel that petitioner is presently operating five Welfare Centers (i) Sahara Village Old Age Home, D-59, Punjab Chowrangi, Block-9, Clifton Karachi (ii) Sahara Village Old Age Home, 36-N, 8<sup>th</sup> East Street, Phase-1, DHA, Karachi (iii) Sahara Village Shelter Home for Women, A-68, SMCHS, Karachi

(iv) Sahara Village Shelter Home for Psychiatric Patients and (v) Sahara Village Shelter Home, Morro Hall, P.A.F. Base Korangi Creek, Ibrahim Hydari, whereas, Commissioner Inland Revenue (FBR), Revenue Division, Government of Pakistan, has been pleased to grant exemption to the petitioner from time to time under sub-clause (c) of clause (36) of Section 2 of the Income Tax Ordinance, 2001 read with Rule 214 and 220 of the Income Tax Rules 2002, from payment of customs duty and taxes, and recently, such exemption was granted vide order dated 10.07.2018, which is valid till 30.06.2019. According to learned counsel, previously petitioner received 69 Containers from different countries towards donations, which were duly released by the Customs Authorities in view of exemption granted to the petitioner by the Commissioner Inland Revenue in this regard. However, on or about 11.08.2018, five containers arrived at Karachi Port from shipper M/s. Al-Mukhtaram General Trading, UAE, containing different relief items in respect of donation for the petitioner, against which, the petitioner submitted the required documents, however, instead of releasing the consignments, the respondent No.3 vide Notice under Section 26 and 155M of the Customs Act, 1969 dated 25.08.2018, directed the petitioner to provide certain documents and information, which were duly responded by the petitioner vide letter dated 29.08.2018, and also provided the required documents to the Customs Authorities on 30.08.2018. However, as per learned counsel for petitioner, since no response thereafter was received from the Customs Authorities, petitioner written three letters dated 13.09.2018, 24.09.2018 and 03.10.2018 to the respondents with a request to release or at least process the consignments of the petitioner, however, no response whatsoever was received from the respondents, who did not allow

release of the lawfully imported consignments of the petitioner, and instead, placed all the five containers/consignments on **hold**, without assigning any reason or pointing out relevant provision of the Import Policy Order 2016 or any of the provisions of the Customs Act, 1969, in this regard, therefore, the petitioner having no other alternate remedy, has approached this Court with the request to direct the respondents to release the lawfully imported consignments of the petitioner, and to declare that withholding of the consignments of the petitioner is illegal, malafide, void and unlawful.

3. Notice of instant petition was issued to the respondents on 15.10.2018, whereas, vide order dated 14.01.2019 petitioner was directed to implead the concerned Commissioner of Inland Revenue as a party, from where, the exemption certificate was issued to the petitioner. Pursuant to said order, amended title was filed on 16.01.2019 by impleading the Commissioner Inland Revenue, Zone-1, RTO (Corporate), Karachi, as respondent No.4. Since the user I.D. of the petitioner was blocked during pendency of instant petition, therefore, at the request of the petitioner, respondents were directed to provisionally de-block the user I.D. of the petitioner vide order dated 14.01.2019, however, with an observation that release of future consignments of the petitioner will be subject to order of this Court. On 24.01.2019, when the matter was taken up in Court nobody shown appearance on behalf of the respondent No.4 inspite of service of Court Notice, whereas, learned counsel for the petitioner complained that inspite of Court's order, respondents have not de-blocked the user I.D. of the petitioner. The Officer of Customs Department present in Court alongwith his counsel submitted that Customs Authorities have not blocked the user I.D. of the petitioner, and further submitted that user I.D. can be blocked only by the

concerned Commissioner of Inland Revenue Department. Therefore, Notices were repeated upon the newly impleaded respondent No.4 from time to time, however, nobody shown appearance on behalf of the respondent No.4 nor the consignments of the petitioner were allowed release by the Customs Authorities on the pretext that since the user I.D. of the petitioner is blocked from the Office of Commissioner Inland Revenue, therefore, G.Ds could not be processed. In the meanwhile, comments were filed on behalf of the respondent No.3, wherein, besides raising objection as to maintainability of instant petition, respondent did not dispute the petitioner's status i.e. registered organization providing social and welfare services to the poor needy persons nor petitioner's claim of grant of exemption from payment of duty and taxes by the Commissioner Inland Revenue in terms of sub-clause (36)(c) of Section 2 of the Income Tax Ordinance, 2001 read with Rule 214 and 220 of the Income Tax Rules 2002. However, in their comments, it has been stated that previously cleared goods by the petitioner besides being in commercial quantity, were not fully utilized in conformity to the aims and objective of the petitioner organization, therefore, the same were sold in the market, in violation of condition (ii) of PCT Heading 9913. It is however pertinent to note that no discrepancy whatsoever in the GDs filed by the petitioner in respect of current imported consignments and the goods imported by the petitioner has been pointed out, nor respondents could refer to any violation of the Import Policy Order 2016 or any of the provisions of Customs Act, 1969, except the above stated allegations relating to previously cleared and out of charge consignments of the petitioner.

4. On 06.03.2019, Mr. Muhammad Aqeel Qureshi, Advocate, has shown appearance on behalf of respondent No.4/Commissioner

Inland Revenue, CRTO, Karachi, and requested for further time to file comments, whereas, learned counsel for the respondents No.2 & 3 submitted that as per report dated 04.02.2019 furnished by respondent No.3, the WeBoc user I.D. of the petitioner was not blocked by the respondent No.3, however, four G.Ds of the petitioner have been placed on hold for the purpose of finalization of inquiry/investigation under Section 186 read with Section 80 and 83 of the Customs Act, 1969, and Rule 442 of the Customs Rules, 2001. It was further contended by the learned counsel for the respondents No.2 & 3 that during pendency of instant petition, Commissioner Inland Revenue has withdrawn the exemption granted to the petitioner for the Tax Year 2018 and Tax Year 2019 vide order dated 22.01.2019. While confronted with hereinabove factual position as stated by the learned counsel for the respondents No.2 & 3, learned counsel for the petitioner has vehemently objected to such unilateral and arbitrary withdrawal of exemption by the Commissioner Inland Revenue, and submitted that petitioner has not been issued any Show Cause Notice nor provided any opportunity of being heard while withdrawing exemption from payment of duty and taxes, therefore, the entire proceedings by the respondents are totally illegal and in violation of restraining order passed by this Court in the instant case, hence liable to be set-aside. Learned counsel representing the respondent No.4, while confronted with hereinabove submissions of learned counsel for petitioner, could not justify such action of withdrawal of exemption by the Commissioner Inland Revenue. Keeping in view hereinabove facts and circumstances of the case, operation of the impugned order dated 22.01.2019 passed by the Commissioner Inland Revenue, CRTO, Karachi, for withdrawal of exemption was suspended, and time was granted to the respondents

to submit explanation. On 17.04.2019, when the matter was finally taken up for hearing, learned counsel for respondents No.2 & 3 were specifically confronted to justify the action of Customs Authorities, to withhold the subject consignments of the petitioner, and to place **hold** on such consignments, which was otherwise imported as per Import Policy Order 2016 by complying with the provisions of Customs Act, 1969, claiming exemption from payment of duty and taxes in terms of sub-clause (36)(c) of Section 2 of the Income Tax Ordinance, 2001 read with Rule 214 and 220 of the Income Tax Rules 2002, whereas, petitioner also admittedly complied the condition of PCT Heading 9913 by furnishing an undertaking in the office of Collector of Customs, to the effect that such gift or donation will not be sold, utilized or disposed of, otherwise than for the purpose of which the same has been received. In response to such query of the Court, the learned counsel for the respondents could not submit any reasonable explanation nor could refer to any provision of the Customs Act, 1969, according to which, a **hold** can be placed in respect of some unlawfully imported consignments, on the basis of purported inquiry in respect of some previous consignment, which stood out of charge. Admittedly, no proceedings, including proceedings under Section 32 and 32A of the Customs Act, 1969, have been initiated by the respondents either in respect of previous consignments of the petitioner, or in respect of current subject consignments, nor there seems any lawful justification to either initiate any inquiry or investigation or to place a **hold** on the current consignments of the petitioner, on the pretext that petitioner may dispose of the same in the market for personal benefit and profit. It is pertinent to observe that the claim of exemption from payment of duty and taxes in terms of sub-clause (36)(c) of Section 2 of the

Income Tax Ordinance, 2001 read with Rule 214 and 220 of the Income Tax Rules 2002, as per PCT Heading 9913, is the domain of concerned Commissioner Inland Revenue, and not of the Customs Authorities, under the Customs Act, 1969, therefore, any purported inquiry/investigation in terms of Section 186 read with Section 80 and 83 of the Customs Act, 1969 or under Rule 442 of the Customs Rules, 2001, is otherwise not justified. It is apparent from record that at the time of import of the subject consignments, and filing G.Ds before the Customs Authorities, petitioner was already granted exemption upto 30.06.2019 by the Commissioner Inland Revenue, CRTO, Karachi, whereas, condition of PCT Heading 9913 were also duly complied with, and there was no violation either of the Import Policy Order 2016 or any of the provisions of the Customs Act, 1969, which could otherwise, justify the detention of the imported consignment or placing a **hold** on the consignment by the Customs Authorities on a false pretext and frivolous ground that the consignments previously imported by the petitioner were not properly utilized, particularly, in the absence of any material or evidence showing that goods imported by the petitioner were sold out in the market for profit. The entire proceedings at the end of the Customs Authorities in the instant case are apparently based on no evidence. On the contrary, to place a **hold** on the lawfully imported consignments of the petitioner for indefinite period appears also tainted with malice and cannot be justified through subsequent withdrawal of exemption by the Commissioner Inland Revenue at the behest of the Customs Authorities, during pendency of instant petition, to justify the non-release of the consignments of the petitioner for a period of more than six months from the date of its arrival at the Port.



5. In view of hereinabove facts and circumstances and the legal provision attracted in the instant case, the entire proceedings, including placing **hold** on the lawfully imported consignments of the petitioner, initiated by the Customs Authorities, and the withdrawal of exemption by the Commissioner Inland Revenue at the behest of Customs Authorities during pendency of instant petition, without providing any opportunity of being heard to the petitioner is clearly illegal, arbitrary and void ab-initio. Accordingly, vide our short order dated 17.04.2019, instant petition was allowed along with listed application with the directions to the respondents to release the subject consignments of the petitioner within a period of two days from the date of such short order, whereas, respondents were further directed to consider the request of the petitioner for issuance of delay and detention certificate strictly in accordance with law, and above are the reasons for such short order. It is however clarified that in case of any misuse of exemption by the petitioner, the concerned Commissioner, Inland Revenue, will be at liberty to initiate fresh proceedings against the petitioner, provided that some concrete material or evidence to this effect is available with the respondents, however, by issuing a proper Show Cause Notice and providing an opportunity of being heard to the petitioner in accordance with law.

***JUDGE***

***JUDGE***