

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

Spl. Criminal Appeal No.09 of 2018

Date	Order with signature of Judge
1.	For orders on M.A No.3675/18 (U/S 5)
2.	For hearing of main case.
3.	For orders on M.A. No. /2018 (Stay)

13.06.2018.

M/s Kashif Nazeer and Ilyas Hassan advocates along with the appellant, namely Zhang Zhongmin.  
Mr. Javed K.K. Assistant Attorney General  
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The instant Special Criminal Appeal has been filed on the grounds to set aside the impugned order dated 02.02.2018 passed by the Special Judge (Customs & Taxation) and to direct the release of the passports of the appellants with further directions to delete their names from FCL/ECL.

Briefly stated, the facts of the case are that the appellants, namely, Zhang Zhongmin, Li Chunhong and He Gang are the employees of M/s. BGP (Pakistan) International Limited, which is doing its business since last more than twenty years and is a subsidiary of BGP Company, China. The company is engaged in providing geo-physical solutions and operations in various parts of Pakistan. The company temporarily imported machinery for the business purposes without payment of duty and taxes against deposit of Corporate Guarantee valid for two years, which is extendable on time to time basis by the Collector of Customs. It is stated that the period of two years is extendable on payment of one percent surcharge for each year on C&F value of the goods. The company imported equipment for its projects. The company then exported the equipment back to China however it is stated that at the time of export due to a bona fide mistake on the part of the clearing agent some mistake took place in declaration and the consignment was intercepted at the port by the FIA on the allegation that the said equipments are being re-exported on the basis of some fake /bogus guarantee. Thereafter FIR was lodged against the company as well as its employees, including the three present appellants. The appellants thereafter were taken into custody but subsequently were granted bail. However, their passports were confiscated in respect of

which, they filed an application for return of their passports and deletion of their names from FCL/ECL but when the same was refused by the Special Judge (Customs & Taxations), vide order dated 02.02.2018, thereafter the instant Special Criminal Appeal has been filed.

Mr. Kashif Nazeer Advocate has appeared on behalf of the appellants and stated that firstly no illegality has been committed by the appellants since the period of guarantee is extendable from two years to five years, hence, the allegation of not exporting the machinery in a timely manner is not correct. He secondly stated that the matter of the company and the appellants was with regard to recovery of customs duty which has been decided by the Adjudicating Authority in favour of the company and rather than a demand, refund has accrued in favour of the company, hence, under the circumstances, no liability now is against the company as well as appellants hence their passports may be ordered to be released with further directions that their names may be deleted from FCL /ECL in order to allow them to proceed to their respective country on temporary basis. The counsel states that the company has furnished an undertaking that the appellants as and when required by the Special Judge would be available and hence, in view of that undertaking also, the appellants may be given their passports and their names may be deleted from FCL /ECL. Statements filed by the counsel for the appellants are taken on record.

Mr. Muhammad Javed K.K., Assistant Attorney General for Pakistan, who appeared for the State /respondent, on the other hand, has not denied that at present there is no demand outstanding against the company. He, however, states that the department has no objection if the passports may be returned to the appellants in view of the undertaking given by the company by acquiring substantial security from each appellant and they may be asked to appear before the learned Special Judge as and when required.

I have heard both the learned counsel at considerable length and have perused the record.

The issue of limitation since has not been objected by the counsel for the respondent hence decided in favour of the appellants and the

delay caused in filing the instant appeal is condoned, in the interest of justice.

There is no denial to the position that the Adjudicating Authority has decided the matter in favour of the company so far as the issue that the company is not liable to pay the amount of duty and taxes on their temporarily imported consignments and if any amount is recovered the same has to be refunded to the company, as the company has only been asked to pay surcharge for the extended period at the rate of one percent vide order dated 05.01.2018 in Order-in-Original No.281 and 282 of 2017-2018. The only reason given by the Special Judge (Customs & Taxation) in confiscating the passports and not allowing the application for their return is firstly that the same is the case property and secondly that after getting their passports the appellants will abscond. In my view, these observations of the Special Judge are firstly apprehensions and secondly when there is an undertaking given by the company that the appellants would attend the pending proceedings before the Special Judge as and when required, hence he should have considered the application in a broader spectrum rather than ignoring the request. Before me an undertaking has been furnished by the company that their employees i.e. the appellants will attend the proceedings initiated against them as and when called by the Court of Special Judge in Case No.170 of 2018, which is duly signed by its General Manager and the company binds itself that any instruction or direction passed by this Court and /or the Court of Special Judge shall be complied with in its letter and spirit. I, therefore, under the circumstances, am of the considered view that in the light of the undertaking given by the company and its General Manager, the appellants could be given their passports and their names be removed from FCL /ECL subject to the condition that they shall appear before the Special Judge in the above referred case as and when required by the said Judge and in case they failed to do so, appropriate action would be taken against the company and its General Manager in accordance with law for non-compliance of the order in this behalf.

I, therefore, under the circumstances and keeping in view the interest of justice, since it was brought to my knowledge that the appellants are working in Pakistan since quite some time and they need to

meet their family, dispose of this Special Criminal Appeal by directing the company to furnish a security of Rs.25,00,000/- (Rupees Twenty Five Lac) for each appellant and also to submit original passport of Mr. Liu Zhenyou, General Manager of M/s. BGP (Pakistan) International, Islamabad, with the Nazir of this Court within ten days' time and if the above directions are complied with i.e. security of Rs.25,00,000/- (Rupees Twenty Five Lac) for each appellant and passport of the General Manager of M/s. BGP (Pakistan) International named above are furnished, the concerned authority who has withheld the passports i.e. FIA ACC after obtaining a certificate in this regard from the Nazir of this Court would return the passports of the appellants and the Ministry of Interior would also delete the names of the appellants from FCL /ECL thereafter, as a temporary arrangement only.

With the above directions the instant Special Criminal Appeal stands disposed of along with the listed applications.

JUDGE