

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petitions No.D-594 and 729 of 2024

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman**

- Petitioner in CP No.D-594/2024 : M/s. Tec Style Emporium
Through Mr. Rana Sakhavat Ali, Advocate alongwith
sole proprietor Khawaja Sohail Ahmed
- Petitioner in CP No.D-729/2024 : M/s. Akhundzada Associates (Pvt.) Limited
Through M/s. Imran Iqbal Khan and Aneela Zia,
Advocates.
- Respondent No.1 : Federation of Pakistan
Through Mr. Kashif Nazeer,
Asst. Attorney General.
- Respondent No.2 : The Collector of Customs
Collectorate of Customs Appraisalment-SAPT
Through M/s. Sardar Zafar Hussain, Agha Shahid Majeed
Khan, Arshad Majeed and Muhammad Zakir, Advocates
alongwith Mr. Tariq Aziz, Assistant Collector.
- Date of Hearing : 07.08.2024
- Date of Judgment : 07.08.2024

J U D G M E N T

Muhammad Junaid Ghaffar, J: Both these Petitions involve a common issue and were therefore, heard together and are being decided through this common order. C.P. No. D-594 of 2024 has been filed by the *Auction Purchaser* of the goods in question seeking directions against the respondent No.2 for delivery of the same, whereas C.P. No.D-729 of 2024 has been filed by the *importer* of the said goods seeking its delivery and a restraining order against the auction proceedings.

2. Learned counsel appearing on behalf of the Auction Purchaser submits that the petitioner is the successful bidder, whereas, he has already deposited earnest money and the

remaining auction amount totalling to Rs.19.5 million, hence a vested right has accrued in his favour. According to him, after the auction proceedings, delivery order was also issued, but the petitioner was restrained from taking delivery of the goods. He further submits that importer had failed to file its Goods Declaration within the timeframe and has come to the Court only after auction proceedings have been concluded.

3. On the other hand, learned counsel appearing for the importer/petitioner submits that the goods in question were imported for supply to Pakhtunkhwa Energy Development Organization and there was a dispute in respect of exemption of sales tax, hence the processing of the Goods Declaration was delayed. According to him, the Goods Declaration was filed on 29.09.2023 after payment of duties and taxes claiming certain exemption, whereas the auction was conducted on 25.01.2024. He further submits that as of today, even the disputed amount has also been paid to the Respondent Collectorate and the Auction Purchaser has no right to seek delivery of the goods in question.

4. Mr. Agha Shahid Majeed Khan, learned counsel appearing on behalf of the Collectorate of Custom (Appraisalment-SAPT) has referred to Rule 75 of the Customs Rules, 2001 and submits that the Collector is empowered to cancel the auction proceedings at any stage and since in this matter the importer has already come forward, therefore, the auction is liable to be cancelled. He further submits that the goods are meant for supply to a government

agency, hence they may not be allowed to be auctioned otherwise.

5. We have heard all the learned counsel for the parties and perused the record. Insofar as the Auction Purchaser is concerned, though admittedly he has participated in the auction proceedings and was the successful bidder; however, it is not in dispute that the importer of the goods had filed its Goods Declaration on 29.09.2023, which can only be done after payment of duty and taxes in advance as per its own calculation. It is also a matter of record that exemption claimed by the importer in respect of the sales tax was denied and the matter was being persuaded by the importer before the Respondents for grant of such exemption. In the meantime, the Collectorate on its own has auctioned the goods, which does not appear to be in accordance with law, as the importer was already agitating its case in respect of the Goods and the exemption so claimed.

6. As to the cancellation of the auction, it would be advantageous to refer to Rule 75 of the Customs Rules, 2001, which is relevant for the present purposes and reads as under:

"75. Power of Collector to cancel auction, etc.- (1) Notwithstanding any thing contained in this chapter, the Collector may --

- (i) cancel the whole proceeding of an auction without assigning any reason;*
- (ii) accept or reject any bid or offer or auction at any time before the goods are delivered to the successful bidder/private offerer. He may also recall the proceedings and recover the goods even after delivery of goods if it is proved that there has been a deliberate attempt to cause loss to the public exchequer; and*

(iii) *restrict or refuse the entry of persons to the premises where an auction is held or their taking part in the auction.*

(2) *Notwithstanding the procedures prescribed above, the Collector may issue such general or special orders, regulating the auction as he thinks fit in order to safeguard the public interest.”*

7. From perusal of the aforesaid Rules, it clearly reflects that (i) the Collector of Customs concerned is empowered to cancel the whole proceedings of an auction without assigning any reason; (ii) to accept or reject any bid or offer or auction at any time before the goods are delivered to the successful bidder/private offeror, and (iii) the Collector can recall the proceedings and recover the goods even after delivery of goods if it is proved that there has been a deliberate attempt to cause loss to the public exchequer. The above rule clearly provides and empowers the Collector to reject any auction proceedings before delivery of the goods. In the present case, admittedly the goods have not been delivered as physical delivery of the goods has not been given to the auction purchaser and the language of Sub-Rule (2) of Rule 75 requires “delivery of goods” which to our minds would mean the physical delivery and not constructive delivery provided on a delivery order. It further reflects that the goods in question have been auctioned for Rs.19.5 million, whereas the importer has paid an amount of Rs.7.14 million approximately as duty and taxes, and the assessed value of the goods is at Rs.27 million making it a total of Rs.34 million approximately. As against this, the goods have been auctioned on payment of Rs.19.5 million, which is approximately 57% of the total value of the goods. Such fact casted serious doubts upon the sanctity of the auction and the

entire process which led to such auction and upon concluding that good have been sold for less than its declared value, the Court was not denuded of its jurisdiction to set aside such sale on account of inadequacy of price alone¹. When auction proceedings are tainted with serious lapses causing prejudice to the owner of the goods, the Courts can always take notice of it². In the instant case things were done in a casual and cursory manner and without due application of mind bringing the whole proceedings under a thick cloud of doubt causing serious prejudice to the actual owner of the goods on the one hand, and depriving the exchequer of its lawful dues, on the other. This even otherwise justifies that the auction ought to be cancelled and the goods be delivered to the importer who had already filed a Goods Declaration and has also paid the duties and taxes as assessed.

8. In view of hereinabove facts and circumstances of the case, C.P. No. D-594 of 2024 filed by the Auction Purchaser is hereby ***dismissed***, whereas petition of importer i.e. C.P. No. D-729 of 2024 is **allowed** and the auction proceedings stand cancelled. It is further ordered that the goods in question be delivered to the importer, if otherwise, in accordance with law.

J U D G E

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Farhan

¹ MUHAMMAD KHALIL---Versus Messrs FAISAL M.B. CORPORATION (2019 S C M R 321)

² Lanvin Traders v Presiding Officer Banking Court No.2 (2013 S C M R 1419)