

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2492 & 2493/2015

Date	Order with signature of Judge
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- 1) For orders on office objection No. 1.
- 2) For katcha peshi.
- 3) For hearing of Misc. No. 10868/2015 & 10871/2015

11.6.2015.

Mr. Noman Jamali Advocate for petitioner.
Mr. Asim Mansoor Khan DAG.
Mr. Ashiq Ali Anwar Rana Advocate for respondent.
Mr. Ilyas Ahsan Appraising Officer Legal.

Both the aforesaid petitions have been filed by the petitioners impugning issuance of Show Cause Notices as well as registration of FIRs in respect of goods in Transit for Afghanistan.

Counsel for petitioners submits that in view of the provisions of Afghanistan-Pakistan Transit Trade Agreement 2010 (APTTA, 2010), as well as Section 129 of the Customs Act, 1969, the issuance of Show Cause Notices as well as registration of FIR's is without jurisdiction, illegal and based on malafide. Counsel submits that though on examination of the containers in question, some quantity of undeclared goods has been found, however, since the goods have been imported for use in Afghanistan and are permissible to be imported in accordance with the Agreement between the two Countries, therefore, impugned Show Cause Notices as well as FIR's are liable to be set aside, whereas, the petitioners are agreeable to furnish Financial Security in accordance with the rules, for the declared as well as undeclared goods. Counsel further submits that consignments of other Importers in similar circumstances have been released by the respondents without initiating any adjudication or criminal proceedings. In support of his contentions the Counsel has relied upon the case of *Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan Islamabad and 5 others Vs. Jamaluddin and others (1996 SCMR 727)* and an unreported judgment of this Court dated 27.10.2010 passed in CP NoD-2410 of 2010.

Counsel for the respondent department submits that since Show Cause Notices have been issued and FIR's have also been registered, on which the Special Judge (Customs & Taxation), Karachi, has taken cognizance, therefore, instant petitions being misconceived in facts and law, are otherwise not maintainable and are liable to be dismissed. Counsel however, submits that insofar as the undisputed goods are concerned

as per the transit manifest of the vessel, no coercive measures are being adopted in respect of such goods.

After having heard both the learned Counsel at some length and on perusal of the record, it appears that in view of the fact that the Transit Trade Agreement of 1965 did not cater to the current economic realities and the new international transit requirements, a new transit agreement viz. *The Afghanistan-Pakistan Transit Trade Agreement 2010 (APTTA 2010)*, has been signed between the two Countries, whereas certain new Rules have also been framed for regulating the procedure of Transit Goods to Afghanistan vide SRO No. 121(I)/2014 dated 24.2.2014 and vide Rule No. 472 and 473 a complete mechanism and procedure for filing of Transit Goods Declaration, its examination and assessment has been provided. On a careful examination of *APTTA, 2010*, and the Rules framed thereunder, we are of the view, that this matter requires a detailed hearing on the issue, that as to whether, after enactment of *APTTA, 2010* and framing of new Rules vide SRO 121(I)/2014 dated 24.2.2014, and certain changes in the Customs Act, 1969, itself, the ratio of the judgment of the Honourable Supreme Court in the case of *Federation of Pakistan through Secretary, Ministry of Foreign Affairs, Government of Pakistan Islamabad and 5 others Vs. Jamaluddin and others (1996 SCMR 727)* and subsequent unreported judgment of this Court dated 27.10.2010 passed in CP NoD-2410 of 2010, is applicable any more or not, in respect of Afghan Transit Goods. For such purposes, both the aforesaid petitions are directed to be fixed in the second week of August after summer vacations, when such issue would be taken up and would be finally decided at the Katcha Peshi Stage.

As to interim relief, for the time being the respondents are directed to release the undisputed goods of the petitioner in accordance with Rules and procedure.

Adjourned. To be fixed in the second week of August 2015.

JUDGE

JUDGE

ARSHAD/