

# THE HIGH COURT OF SINDH, KARACHI

## **Spl. Cr. Revision Appl. No. 223 of 2024**

[Anoop Kumar Kundanani v. Muhammad Saleem & another]

Applicant : Anoop Kumar Kundanani son of Lal Chand through Mr. Shoukat Hayat, Advocate, assisted by M/s. Syed Muhammad Abdul Kabir and Amna Magsi, Advocates.

Respondents/State : Through Mr. Altaf Sahar, Assistant Attorney General for Pakistan alongwith Muhammad Sadiq Metlo, Assistant Director, Muhammad Aslam, Deputy Director (Law), FIA and I.O. Muhammad Saleem, FIA, all are present in Court.

Sardar Zafar Hussain, Advocate for the Customs alongwith Muhammad Siddique, Advocate.

Date of hearing : 20-02-2025

Date of decision : 28-02-2025

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The goods of the Applicant comprising of nutraceuticals (food supplements) and cosmetics were seized by the FIA on 04-07-2024 upon a raid at a warehouse. Two FIRs were lodged against the Applicant and his business partner. For the nutraceuticals, FIR No. 18/2024 was lodged on 04-07-2024 for offences under the Drug Act, 1976. The other, FIR No. 20/2024, was lodged on 09-07-2024 for the offence of smuggling, punishable under clauses 8 and 89 of section 156(1) of the Customs Act, 1969. The seized goods remained in FIA's custody. After passage of two months or so, the Applicant made an application under section 516-A Cr.P.C. to the Special Judge (Customs, Taxation and Anti-Smuggling) for an order to release the goods on *superdari*. By order dated 04-12-2024 **[impugned order]**, the learned Special Judge held that the Applicant's remedy for release of goods liable to confiscation under the Customs Act was before an officer of Customs and directed the FIA to deliver the seized goods to the relevant officer of Customs. The Applicant has

questioned such order by way of this revision under section 185-F of the Customs Act.

2. Learned Assistant Attorney General along with the I.O. Muhammad Saleem of the FIA submitted that while the seized goods were retained by the FIA to investigate the aforesaid FIRs, the seizure report was dispatched to the Collector Customs (Adjudication) under cover of letter dated 31-07-2024 and again on 11-09-2024 to enable him to commence adjudication proceedings under the Customs Act. He submitted that nevertheless, on the order of the Special Judge the goods were delivered to the Preventive Officer Customs on 05-12-2024. On the other hand, learned counsel for the Customs submitted that though they had received the seizure report from the FIA under cover of letter dated 11-09-2024, they could not commence adjudication proceedings until the seized goods were delivered to their custody; that such delivery was made on 05-12-2024, whereafter the Customs prepared their own inventory and seizure report, forwarded the same to the adjudicating authority, who has now issued show-cause notice dated 19-02-2025 under section 180 of the Customs Act as to why the goods should not be confiscated.

3. It is contended by the Applicant that the goods were lawfully imported and the seizure was unlawful. Learned counsel for the Applicant submitted that since no show-cause was issued to the Applicant under section 180 of the Customs Act for more than two months, therefore, by virtue of section 168(2) of the Customs Act the goods were required to be returned to the Applicant; hence, the impugned order is erroneous.

4. Heard learned counsel and perused the record.

5. In the subject case, the initial seizure of goods was by the FIA in exercise of powers under sections 3 and 5 of the FIA Act, 1974 read with clause 10 of the Schedule to the FIA Act which empowers the FIA to investigate offences punishable by section 156 of the Customs Act. As the matter presently stands, custody of the seized goods was

transferred by the FIA to the Customs in compliance of the order passed by the Special Judge, which transfer was nonetheless required by section 169(1) of the Customs Act. Apparently, the Customs has also commenced adjudication proceedings against the Applicant under the Customs Act.

6. In view of the foregoing, and even assuming for the sake of argument that section 168(2) of the Customs Act is applicable to the case, the sole question to be determined here is whether the Special Judge Customs has jurisdiction to order return of seized goods allegedly liable for confiscation under the Customs Act.

7. As per section 179 read with section 180 of the Customs Act, the question whether goods seized are liable to confiscation is to be adjudicated by the relevant officer of the Customs, not by the Special Judge Customs. Against such adjudication an appeal lies to the Collector (Appeals) under section 193 and then to the Customs Appellate Tribunal under section 194A of the Customs Act. In contrast, the jurisdiction of the Special Judge Customs under section 185A of the Customs Act is to take cognizance of offences punishable under the Customs Act. Therefore, the impugned order passed by the learned Special Judge Customs that he does not have jurisdiction to order release of goods liable for confiscation under the Customs Act, is in line with the scheme of the Customs Act and does not suffer from any illegal infirmity. In that regard, reliance can also be placed on the case of *Government of Pakistan v. Mahmood Ahmed Qureshi* (2002 SCMR 1527).

8. Therefore this revision application is dismissed with the observation that the Applicant may move the relevant officer of Customs for seeking release of the seized goods.

**JUDGE**

Karachi

Dated: 28-02-2025

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