

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 3428 of 2025

[Noman Liaqat Proprietor of M.H. Traders v. Federation of Pakistan and others]

Before.

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner : Noman Liaqat Proprietor of M.H. Traders
through Mr. Amjad Hayat Advocate
Respondent No 2 : Collector of Customs Appraisement Karachi
through Mr. Khalil Jakhro, Advocate
Respondent No 3 : Collector of Customs Enforcement Karachi
Through Mr Asif Ali Siyal, Advocate
Date of Hearing : 30.07.2025.
Date of Short Order: 30.07.2025.

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioner has claimed the following relief.

- i. To direct the Respondents to forthwith implement and comply with the order passed by Collector of Customs (Adjudication – I) vide Order-In-Original No K-321/2024-25 dated 29.05.2025 without any further loss.***
- ii. Grant any other or better relief, which this Honorable Court may deem fit and proper under the circumstances of the case and cost of litigation may also be granted to the Petitioner.***

2. Facts as asserted in the petition are that the Petitioner is proprietor/owner of M.H. Traders private limited, a company engaged in the business of wholesale, distribution and import of goods. The Petitioner imported goods from China and cleared the same through clearing agent M/S Esmailji Muhammad Ali. The Petitioner was accused of misdeclaration in weight of the imported items; therefore on 17.04.2025 the customs authorities intercepted the consignment outside the port area and goods were seized. The goods were examined and it was found that Petitioner had imported the consignment from China with a total weight of 28000 Kilograms but shown less weight deliberately to evade custom duty and taxes. The Petitioner was served with a show cause notice dated 12.05.2025, with a charge sheet that Company in collusion with clearing agent had committed the breach of the conditions laid down under section 32, 79, 178, 187 and 209 which constituted an offence punishable under section 156 of the Customs Act 1969 read with section 33 of

Sales Tax Act 1990. Petitioner was directed to appear and defend the case before the competent authority. Petitioner was further informed that misdeclaration in weight of imported goods resulted in tax evasion of Rs 53,78,413. The collectorate of customs enforcement filed seizure case before Adjudicating Authority for a proper order for confiscation of goods or penalty as deemed appropriate. The Adjudicating authority disposed of the seizure case by imposing penalty and payment of additional duty but Customs Authorities did not release the goods despite of the willingness of the Petitioner to deposit the amount. Hence this Petition.

3. Mr. Amjad Hayat Learned Counsel for the Petitioner contended that the goods have been seized by the Respondents without any lawful authority. He contended that the Petitioner was ready to pay the amount of additional duty and penalty imposed by the Collector of Customs (Adjudication – I) but Respondents had refused to release the goods. He prayed for allowing this petition.

4. Mr. Khalil Jakhro assisted by Mr Asif Ali Siyal Learned Counsel for the Respondents No 2 and 3 controverted the submissions of Learned Counsel for the Petitioner and contended that the Petitioner was guilty of filing incorrect declaration and Department has filed an appeal against the order passed by the Collector of Customs (Adjudication – I), there is very likelihood of success of the department in the appeal, therefore, until the final decision in the case goods cannot be released. He prayed for dismissal of the petition.

5. Heard Arguments, Perused material available on record.

6. Examination of the record transpired that the Petitioner imported the consignment and filed Goods Declaration (GD) under section 79 of Customs Act 1969. The goods were initially released but were intercepted in the port area as the GD filed by the Petitioner was found suspicious. The consignment was seized and matter was referred for adjudication to the Collector of Customs (Adjudication-I) for appropriate order through seizure case No ASO – Misc/06/2025- HQ /07 dated 07.05.2025. The adjudicating authority disposed of the seizure case vide order 29.05.2025 declaring the classification filed by the Petitioner as correct, the operative part of the order reads as under:

“18. I have reviewed the case file, both lab reports, arguments from both sides and relevant classification principles and departmental practice. Both lab reports confirm the goods are transparent plastic strips/rolls composed of polyester (PET type), metallized on one side. Goods under 3920.6200 are generally opaque, coated on both sides and consist primarily of PET. The impugned goods do not meet the essential criteria for classification under 3920.6200, therefore, the classification declared

by the respondents under PCT 3920.4990 is more probable as correct. Hence the charge of misdeclaration or mis-classification under item No 4 of the GD ie Shiny Plastic Sheets in Rolls is not established.

19. However, with respect to Items 1 and 2 of the GD, there is discrepancy in the declared weight and weight found upon re-examination by the seizing Collector. While the Respondents claimed the weight was approximate and objected to during clearance, they are now directed to pay differential duties and taxes amounting to Rs 262,398. I impose a penalty of Rs 50,000 under clause 14 of section 156 (1) of the Customs Act, 1969 for incorrect weight declaration. “

7. It is shocking to notice that the Petitioner was ready to make payment of differential amount of duty and tax including penalty in compliance to the order of adjudication but Respondents No 2 and 3 were not willing to release the goods on account of an appeal filed by them before Customs Tribunal under section 194 – A of the Customs Act, 1969. When confronted as to whether any restraining order has been passed by the Appellate Tribunal, Learned Counsel for the Respondents No 2 and 3 conceded that no any order restraining the release of the goods has been passed by the Appellate Tribunal. He however contended that during re-examination of goods a huge different was detected in payment of tax and duty and adjudication officer has failed to pass appropriate order in the seizure case. He insisted that the Petitioner may be directed to pay the differential amount determined by the Collector of Customs Appraisalment and get its goods released. He contended that the customs would not be in a position to recover the disputed amount if the higher forum reversed the order passed by the adjudication officer.

8. We are afraid that the goods of the Petitioner are not being released under an apprehension of recovery of dues if the appellate Tribunal reverses the findings of adjudication officer. In case the Appellate Tribunal determined that the Petitioner evaded the duty and tax and passed orders to pay the amount other than imposed by the adjudication officer, the customs department would recover the same by invoking the provisions of section 202 of the Customs Act 1969. To enforce recovery of government dues the officers of the customs can take coercive measures, which may result in the arrest of defaulters.

9. Since the Respondent No 2 and 3 have preferred an appeal under section 194A of the customs Act 1969, and no orders restraining the release of goods have been passed by the Tribunal. In our view detention of the imported goods by the Officers of Customs pending adjudication of appeal was beyond the bounds of law, as mere filing of an appeal does not operate as stay. In the present case owner of imported goods was willing to deposit the additional amount of tax and penalty imposed by the Collector of Customs

(Adjudication – I), then putting embargo on the release of goods was not warranted under the law. This Court believes in the institutional autonomy and avoids entertaining the matters that may result in judicial overreach or encroachment of the powers of executive authority. This Court believes that the matters like the release of consignment, levy of duty and tax must be handled and resolved at the departmental levels within customs as provided under the law and only the matters in the shape of customs references or any issue involving the interpretation of law should come before this Court. But unfortunately, due to lackadaisical approach of the officers of customs this Court is clogged with unnecessary litigation seeking indulgence of this Court to issue writ for release of the consignment. Inaction on the part of the officers of the Customs to act timely in the matter of release of consignment is highly deplorable.

10. Sequel to the discussion and reasons recorded hereinabove, We are of the considered view that impugned action on the part of Respondents No 2 and 3 for refusal to release the imported consignment of the Petitioner is not based on sound reasoning and without any lawful authority, perverse and illegal, thus subject to the judicial review of this Court in its powers conferred under article 199 of the Constitution. This Petition is therefore allowed the Respondents No 2 and 3 are directed to release the imported goods of the Petitioner in terms of the order dated 29.05.2025 passed by the Collector of Customs (Adjudication – I) within a period a of ten days from today. However, this arrangement shall be subject to the final outcome of the appeal filed by collector of customs appraisement before Appellate Tribunal.

The Petition stands disposed of in above terms along with pending applications with no order as to the costs.

JUDGE

JUDGE