



Collector (Adjudication), Pakistan Customs. He further argued that against the orders-in-original, the appeals have been filed in terms of the order passed by this court in C.P. No.D-4498/2018. In nutshell, he argued that if action is taken on destruction notice during pendency of the appeals and application under Section 12 (2) CPC, the appeals will become infructuous. Keeping in mind the controversy while issuing notices to the respondents, it was ordered that the alleged counterfeit watches may not be destroyed by the Customs authorities till next date.

2. On next date i.e. 17.12.2018, Mr. Khalid Daudpota, Advocate filed CMA No.37831/2018 for impleading 12 intervenors in this petition and the learned counsel argued that the counsel for the petitioner on concealment of facts got the interim orders on 22.10.2018 and according to the learned counsel for the intervenors at that time no application was filed under Section 12 (2) CPC and in fact after securing the interim orders, application was filed subsequently before the Intellectual Property Rights Tribunal, Sindh. The learned counsel for the petitioner denied this allegation, however, he pointed out his affidavit in rejoinder with which he has attached the appellate order passed in Appeal Nos.1721 to 1723 of 2018. These appeals were filed under Section 193 of the Customs Act, 1969 against the original-in-original (supra). The appellate authority has reproduced the operating part of the original order which is as under:

“Having gone through the case record and arguments on behalf of both the sides, it is proved beyond any shadow of doubt that the impugned Branded watches of Rolex, Cartier, Chanel, CK, DIOR, Longiness, Mont Blanc, Movado, Omega, Rado, Tag Heuer watches and Rolex Wall Clocks are counterfeit which have been imported in violation of IPR laws/Rules. In view of above the infringing goods Rolex (506 Pcs), Cartier (290 Pcs), Chanel (250 Pcs), CK (775 Pcs), DIOR (350 Pcs), Longiness (150 Pcs) Mont Blanc (25 Pcs), Movado (235 Pcs) Omega (30 Pcs), Rado, Tag Heuer watches (200 Pcs) and Rolex Wall Clocks (48 Pcs) are confiscated out rightly under sub-section 9 of the section 5() of the Customs Act, 1969, read with section 7

& 15 (c) of the *ibid*, and further read with Para 5(A) (v) of the Import Policy Order, 2016. A personal penalty of Rs.25,000/- is also imposed upon the importer under sub-section (9) of the Section (1) of the Customs Act, 1969. Case is disposed off accordingly.”

3. After providing ample opportunity of hearing to the parties, the appellate court concluded as under:

“POINT VI. The learned consultant of the appellants placed on record a long list consisting of Goods Declarations whereby goods identical to the impugned goods had been allowed release since October 2017 till June, 2018 some of these GDs have been mentioned in Point-I above. When the said evidential data was placed before the counsels of the right holders, they showed ignorance therefrom. The departmental representative appearing from the clearance collectorate stated that the impugned consignment was detained by the Directorate of IPR who prepared seizure report and followed subsequent proceedings. The collectorate, in the absence of any intimation or detention of goods by the Directorate of IPR, allowed clearance of presented GDs in routine. Here, too, the representative of the Directorate of IPR would have been in better position to clarify or explain the criteria whereby decisions to initiate infringement action or otherwise are made for identical goods. In the absence of said clarification, the stance of appellants of discriminatory treatment seems to be based on facts.

9. In view of above, it is concluded that the Directorate of IPR traversed beyond its lawful jurisdiction to initiate infringement action against the appellants. The impugned original order, thus passed, is arbitrary and suffers from legal infirmities. The same is accordingly set aside and the appeal is allowed.

10. This order shall apply *mutatis mutandis* on the following cases having the same facts, circumstances and points of law.”

4. After passing the appellate order, it is left open for the aggrieved person to file appeal against above orders before the Appellate Tribunal, Customs, Central Excise & Sales Tax, Karachi as provided under the law.

5. So far as the allegation of concealment of facts is concerned, it is clearly reflected from our order dated 22.10.2018 when the learned counsel for the petitioner argued that Section 12 (2)

applications are pending before the Tribunal but when we confronted this allegation to him in court, he argued that in fact he wanted to say that appeals are pending and not Section 12 (2) applications. This statement is totally incorrect. He had argued before us and stated that applications are pending. He has not denied the contention raised by learned counsel for the intervenors that after passing the interim orders, the petitioner had filed application under Section 12 (2) CPC.

6. So far as the order of Intellectual Property Rights Tribunal, Sindh is concerned, the right of appeal may be availed by the aggrieved person in accordance with law and so far as the order in appeal passed under the Customs hierarchy, the aggrieved person may also file appeal to the Appellate Tribunal Customs, hence no further orders are required in this petition which is disposed of but with the directions to the counsel for the petitioner to remain careful in future and before giving any such statement at bar, which is not true, he must realize the consequences and if anything like this is done in future, we will take strict action against him. Pending applications are also disposed of.

Judge

Judge

*Asif*