IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan

Const. Petition No.D-4151 of 2020

M/s. Popular Juice Industries (Pvt.) Ltd and others …… Petitioners

Versus

Federation of Pakistan through Chairman
Federal Board of Revenue and others ……. Respondents

Const. Petition No.D-4322 of 2020

Akmal Ameen …… Petitioner

Versus

Federation of Pakistan through Chairman
Federal Board of Revenue and others ……. Respondents

Petitioners	:	Through Ms. Navin Merchant and Mr. Salman Yousuf, Advocates alongwith petitioners
Customs Department	:	Through Mr. Khalid Rajpar, Advocate alongwith Saqif Saeed, Collector of Customs, Haroon Malik, Additional Collector, Shafiullah, Assistant Collector, Hasan Sardar, P.O. Seizing Officer, Ali Asjad Bukhari, I.O and Malik Safdar Ali, SPO
Federation of Pakistan	:	Mr. Muhammad Aminullah Siddiqui, AAG
Date of Hearing	:	23-09-2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Brief facts of these cases are that petitioner No.1, a private limited company engaged in the business of manufacturing of fruit juices and flavored milk needfully imports skimmed milk from various countries, as well as purchases it from the local market by making payment of duty and allied taxes at each step of import and manufacture, while petitioner Nos.2 to 7 are its directors. Allegedly in the intervening night of 1st and 2nd September 2020 (at about 1:00AM), as per FIR No.ASO-374/2020HQ an actionable information was received by Customs

Authorities (respondents) to the effect that a considerable quantity of smuggled/non-duty paid foreign origin milk powder was being dumped/concealed in the petitioner's factory premises located at S.I.T.E Karachi and the said foreign origin milk powder was to be used in the manufacturing of products in the said factory. Pursuant to the said information, a Customs team headed by the Assistant Collector of Customs, MCC (Enforcement and Compliances) Hqrs-I Karachi was constituted to thwart that attempt on urgent basis. Accordingly the Customs team reached the identified premises and found security guards present on the main gate of the said factory. They were inquired about the presence of factory in-charge or any other responsible person being present in the factory (*at 1:00AM*) to which they called someone present in the factory. After sometime two persons appeared, who were identified as Imran Ahmed Nami S/o Irshad Ahmed (Manager HR/Admin) and Abdul Jabbar S/o Abdul Razzaque, G.M of M/s. Popular Security Co. (Pvt.) Ltd. (*the Security Guard Company*). Accordingly, these persons were inquired/confronted about the presence of non-duty paid foreign origin smuggled milk powder in the said factory, but they vehemently denied the same. As there existed specific information regarding the presence of foreign origin non-duty paid milk powder, therefore, after serving the Search Notice under section 163 of the Customs Act 1969 to Imran Ahmed Nami S/o Irshad Ahmed (Manager HR/Admin) and completion of legal formalities as envisaged in the Customs Act, 1969, the Customs team entered into the factory premises in the presence of the Musheers namely Sepoy Naushad and Sepoy Muhammad Noman (*both belonging to Customs*) and found that a huge quantity of PP bags containing assorted brands of milks powder were lying in the said premises. Cursory search of these bags was carried out in the presence of aforesaid Musheers and found that there were 3820 PP bags containing assorted origin dry milk powder, and 140 paper bags of assorted foreign origin food chemical used as juice whitener. On recovery of foreign origin milk powder

and food chemical, the available person (Manager HR/Admin) was asked to produce documents regarding lawful import, procurement possession and storage of these foreign origin goods (*at about 1:00AM*), but he failed to produce any documents in this regard. Consequently, these 3,820 PP bags of Milk Powder and 140 Paper bags containing food chemical were taken into possession in presence of Musheers under the cover of a Mushirnama prepared on the spot, and shifted to State Warehouse-III Keemari, Karachi for further examination and legal formalities under the escort of aforesaid Musheers. At State Warehouse-III, detailed examination revealed that goods comprising 3,850 PP bags of milk powder and 140 bags of food chemical were found and each bag weighing 25 Kg containing assorted brand dry milk samples of the milk powder and food chemical as listed in column No.4 of the FIR. Three representative samples of the milk powder and food chemical of each brand were drawn, which were sealed and signed by the aforesaid Musheers. Detailed inventory of the recovered goods was also prepared under the signatures of above named Musheers. Mushirnama to this effect was also prepared on the spot. As no one could produce document to prove lawful import/procurement/possession, therefore, the impugned foreign milk powder and food chemical were seized in the presence of aforesaid Musheers under the cover of Musheernama under Section 168 of the Customs Act, 1969 in violation of Section 2(s) of the Act punishable under Section 156(1), (8) and (89) read with Section 156(2) *ibid* further read with Section 3(1) of Import and Export (Control) Act, 1950. Notice under Section 171 of the Act, 1969 was issued to the owner of goods and factory from where the impugned goods were recovered and also displayed on the Notice Board at Customs House, Karachi and ASO/HQ NMB Wharf, Karachi. Efforts are underway to arrest the persons involved in the crime including financers/abettors and their associates.

2. Learned counsel for the petitioners submits that respondent Nos.1 and 2 lacked the pecuniary as well as the territorial jurisdiction to barge

into the factory of the petitioners located in an industrial area miles away from port, that too in the very middle of the night, which act is *malafide*, illegal and without jurisdiction on the grounds that respondents No.3 and 4 have falsely implicated the petitioners on the basis of totally incorrect and fabricated story, which as per contents of the FIR according to respondents' own narration was registered during the intervening night of 1st and 2nd September, 2020; that as per their own narration, the respondents raided the factory during the night time at around 12:30 a.m. without issuing any search warrant duly issued under Section 162, or serving any notice under section 171 of the Act, 1969; that it was simply unimaginable and impossible to produce the documents related to skimmed milk in the middle of the night; that the allegation leveled by the respondents attracts penal provision and while interpreting it the rule of strict construction has to be followed; that no specific role has been attributed to the petitioner Nos.2 to 7, and in a sweeping, casual and lax manner the FIR accuses "*Directors and Owners of the Popular Juice Industry*". The counsel vehemently argued that acts of the respondents, in particular sealing of the factory premises rending entire production process to come to a halt, resulted in hundreds of employees being jobless causing irreparable losses.

3. In support of her contention, learned counsel for the petitioners relied on the cases of Collector of Customs (Preventive) and 2 others v. Muhammad Mehfooz, reported as 1992 CL 155 and an order of this Court passed in C.P No.D-3337 of 2013 on 11.06.2014 in the case of Zaheer Ahmed v. Director General of Intelligence & Investigation-IR & others.

4. On the other hand, learned counsel for the respondents submits that the contentions the petitioners are not admitted as being incorrect, baseless and misleading. The respondents have absolute pecuniary and territorial jurisdiction to seize the smuggled goods from the factory of the petitioner under the provisions of the Act, 1969, hence impounding of

smuggled commodity does not tantamount to illegal action; that the petitioner has misstated and mis-interpreted the contents of FIR; plain reading of aforesaid FIR reveals that the goods were impounded on the intervening night of 1st & 2nd September when an actionable intelligence was received to the effect of concealment of foreign origin milk powder. The aforesaid information was authenticated when the impugned goods were recovered from the factory of the petitioner; that it is not denied that the respondents have conducted a search under the provisions of Section 163 of the Act, 1969, after completing the formalities as envisaged in aforementioned section at night as there was apprehension and danger of removal of goods before a search can be effected under Section 162 *ibid*; that the notice under section 171 was issued and served out at the available address i.e., C-22, Phase-I, Scheme No.33, S.I.T.E-II, Super Highway Karachi of the petitioners; that the contention of the petitioner is vehemently denied being frivolous and inappropriate as the contents of FIR reveal that the respondents inquired about the presence of smuggled goods/milk powder from responsible persons of the petitioner i.e. G.M, Security as well as the Manager HR/Admin, of Popular Juice Industry who replied in negative, thereafter search was conducted after completing the codal formalities and recovery of smuggled milk powder (including 1,650 bags Iranian origin) was made out. The above persons were time and again asked for verifiable documents to substantiate the lawful import, purchase etc., to which they completely failed. Subsequent to availability of smuggled Iranian milk powder the same was taken into possession and properly detained vide detention receipt dated 02.09.2020; that the petitioner failed to provide any document with regard to the legal import of the impugned goods recovered from the petitioner's factory. The respondents have complete jurisdiction to seize the smuggled goods from the factory of the petitioner under the provisions of the Act, 1969; that the perusal of FIR depicts that the role of the petitioner as to acquire possession of, keeping, concealing or in any manner dealing with

smuggled goods brought into the country without payment of duty and taxes the proof of which lies upon the petitioner; that Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 requires that no efficacious and adequate remedy under the statute has to be available whereas the impugned goods have been seized under the provisions of the Act, 1969, and various provisions are available in the said Act under which the petitioner can seek redereesal of his grievances hence, the petition is thus not maintainable under the law, which may graciously be dismissed in the interest of justice

5. In rebuttal, the learned counsel for the petitioners submitted that the respondents neither obtained authorization/permission from the appropriate Collector of Customs for conducting the raid nor has obtained a search warrant from the appropriate Magistrate/Court before barging into the factory premises of the petitioners that too the middle of the night. Such illegal search/raid, registration of criminal case/FIR without providing any opportunity to the petitioners are completely illegal, without jurisdiction and suffering from palpable illegalities, whereby a Preventive Officer has tried to exercise his jurisdiction beyond the pecuniary as well as territorial limits provided under the law, as such this Honorable Court is fully equipped with the powers to hear and decide the above matter under the Constitutional jurisdiction.. It was submitted that the agreements which are annexed as annexure P/1 & P/2 with the memo of petition are duly executed between the parties for the supply of milk to the petitioners and M/s Dalda Foods Limited and M/s Daily Dairy producers have voluntarily approached the investigating officer through their letter dated 02.09.2020 and the statement dated 14.09.2020 respectively, wherein M/s Dalda Foods Limited confirmed and claimed that 1,878 bags of skimmed dry milk which were seized by the Customs official while lifting the raw material from the petitioners' premises belonged to M/s Dalda Foods Limited and the same were supplied by them to the petitioners for the toll manufacturing of their branded flavoured milk. Similarly, M/s Daily Dairy

Producers through the Statement dated 14.09.2020 have also admitted and confirmed that the 1,650 bags of Skimmed Milk of Iranian origin belonged to them and was supplied to M/s Popular Juice Industries (Pvt) Ltd for toll manufacturing, however, the investigating officer malafidely refused to accept the said statement. In support of their contentions both the parties supplied copies of above said Agreements. That in the presence of above of above admitted facts there were no grounds for challenging the authentication of the said agreements as both the parties to the agreement have neither disputed nor disowned the same making contentions of the respondents malafide. It is submitted that it was the duty of the prosecution to make true statements before the Court and any false statements as made in the comments called for the perjury. It was submitted that petitioner No.1 also does the toll manufacturing for companies like Dalda, Haleeb and various other companies for which the raw material is provided by these companies to the petitioner company. The copies of Goods declaration (GDs) and other sales tax invoices annexed along with memo of petition are in relation to the import and local purchase of the subject goods which were illegally taken/confiscated by the respondents from the petitioners' business premises. With regards goods detailed in column 4 of the impugned FIR following explanations were made to the court:

(a) 1650 Bags of Dry Milk Powder each weighing 25 kg of Iranian origin Total 41250 Kg Valuing Rs.12,474,000/-

That the subject goods have been supplied by the *"M/s Daily Diary Producers"* who purchased the same from the Auction Purchasers Khud-e-Dad (1,200 bags) and Essa Khan (450 bags). M/s Khud-E-Dad and Essa Khan purchased this item on different dates from the Model Customs Collectorate, Gwadar Customs Station, Panjgur through their duly approved auctioneer M/s AnR Enterprises in total 6 transactions.

That after purchasing these 1,650 bags of Iranian Origin Skimmed Milk Powder from the Auction Purchasers, the M/s Daily Dairy Producers supplied the same to M/s Popular Juice Industries (Pvt) Ltd for toll manufacturing.

(b) 1800 bags each weighing 25 Kg containing Dry Milk Powder of USA Origin Total weighing 45000 Kg. valuing Rs.17,690,400/-

That M/s Dalda Foods Limited imported quantity of 9,175 bags through two Goods Declaration bearing GD Nos.KAPE-HC-15860 dated 28-07-2020 & KAPE-HC-1586 dated 28-07-2020 and out of which 2,468 bags provided to the petitioner company for the toll manufacturing of colored milk. Out of this total quantity of 2,468 bags, 1,850 bags were in balance as were yet to be used for manufacturing colored milk which were taken away by the Customs.

(c) 400 bags each weighing 25 Kg containing Dry Milk Powder, origin not mentioned Total 10,000 kg valuing Rs.3,511,200/-

Quantity of 500 bags were locally purchased by the Petitioner Company from M/s Engro Pakistan out of which 100 bags were consumed by Popular Juice, remaining 400 bags were taken away by the respondents.

(d) 140 bags each weighing 25 Kg Foreign origin “food” Chemical used as juice whitener, total weight 3500 Kg:-

(i) 133 Bags of “Type P(V)S” each weighing 25Kg total weighing 3325 Kg valuing Rs.469,224/-

The subject goods have been imported by M/s N.A Enterprises vide GD Nos KAPW-HC-73927 dated 01.01.2020, KAPE-HC-114472 dated 24.01.2020 & KAPE-HC-9750 dated 20.07.2020 and locally purchased by Popular Juice Industries (Pvt) Limited. It is also submitted that the importer M/s. N.A Enterprises, has also confirmed through reply dated 08.09.2020 that the subject goods have been imported by them and subsequently supplied to the Petitioner Company.

(ii) 07 Bags of “DL Malic Acid” each weighing 25 Kg total 175 Kg valuing Rs.67,900/-

These goods have been imported by M/s Popular Food Industries (Pvt) Limited, a sister concern of Popular Juice Industries (Pvt) Limited and locally purchased by Popular Juice Industries (Pvt) Limited.

6. It was also submitted that the respondents in the instant case have acted in excess of their power and jurisdiction and have acted without adopting/following due process of law; that neither any notice was issued to the petitioners nor any search warrant was produced, whereas criminal case has been registered on the allegation of smuggling under Section 2(s) of the Customs Act without providing any opportunity to the petitioners. It was denied that the petitioners failed to provide any documents with regard to the seized goods rather contented that the petitioners have provided each and every document to the investigating officers, but no opportunity was given to the petitioner to provide the same

before registering FIR against the petitioners only for their high headedness.

7. Heard the learned counsel for the parties, perused the material available on record. From perusal of above controversy, following legal questions emerge, which require opinion of this Court:

(a) Whether, Custom Authorities have any jurisdiction over the area, other than Notified Port Areas, Customs Areas, Custom Stations, etc. and to lodge criminal case (FIR) on the allegation of smuggling, in the absence of any assessment or adjudication of duty and taxes under the Customs Act, 1969?

(b) Whether powers of search under section 163 of the Act, 1969 can be exercised by Customs Authorities in the absence of approval by competent authority and without recording valid reasons in writing in terms of Section 162 of the Customs Act,1969?

(c) Whether Customs Authorities can seal the business premises during search and seizure, under the Customs Act, 1969?

8. With regards question (a), amendments in the Act, 1969 were brought through Finance Act 1996 to reduce section 3 it to the current text in terms of which Board by notification in the official gazette has given power to appoint officers (including Chief Collector of Customs, Collector of Customs, Collector of Customs (Appeals), Additional Collector, Deputy Collector and Assistant Collector) *in relation to any area specified in the notification*. We must not also lose track of the context of the Act, 1969 which through its preamble provides that the statute was enacted "*for to the levy and collection of customs-duties, fee and service charges and to provide for other allied matters*". At this juncture it would not be out of place to look for the origin of the word "customs" (which originated from the French word *Costume*) and how it ended up being a levy. Typically the word 'custom' in common English parlays refers to traditions, usages and practices of people which by common adoption, acquiescence, and long and unvarying habits become compulsory and acquire the force of law with respect to the place or subject matter to which they relate, but its secondary meaning of levy, fee or charges only surfaced in the 14th century when it was started to be used in the sense of customary due paid to a Ruler on goods being taken away from fields to the market. In our legislative history, the earliest enactment came in the form of The Seas Customs Act enacted in the year 1878 consolidating and amending the

law of customs, prior to which the law of customs was mainly contained in the Customs Act 1863. It would be thus pertinent to have a look at the corresponding provision of the said 1878 Act to fully understand the underlying role of customs authorities as statutorily envisaged and legally assigned to them. The corresponding Section 6 of the 1878 Act provided that "The Local Government of *every place in which duties of Sea-customs are leviable,* may appoint such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed by this Act on such officers". The said old Act did not clearly defined "customs area" in its definitions however through sections 11 to 17 these areas were named as Ports, Wharves, Customs House and Warehouses. However, in the Act 1969, the law itself defiles "customs area" under clause (i) of section 2 to mean "*the limits of the customs-station specified under section 10 and includes any area in which imported goods or goods for export are ordinarily kept before clearance by the customs authorities*" whereas clauses (h), (j) and (k) signify this customs' universe to include customs-airport, customs-port and customs-stations. Section 10 titled "Power to approve landing places and specify limits of customs-stations" provides that the Board may, by notification in the official Gazette (a) specify the limits of any customs-station; and (b) approve proper places in any customs-station for the loading and unloading of goods or any class of goods. Examination of Section 9 of the present Act would also be relevant which deals with declaration of customs–ports, customs airports, etc. and provides that "the Board may, by notification in the official Gazette, declare: (a) the places which alone shall be customs-ports or customs-airports for the clearance of goods or any class of goods imported or to be exported; (b) the places which alone shall be land customs-stations for the clearance of goods or any class of goods imported or to be exported by land or inland waterways; (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland waterways into or out of Pakistan,

or to or from any land customs-station or to or from any land frontier; (d) the places which alone shall be ports for the carrying on of coastal trade with any specified customs-ports in Pakistan; and (e) what shall for the purposes of this Act be deemed to be a custom house and the limits thereof". The above discussion yields to the understanding that since customs is a levy charged on good-in-motion for the purposes of coastal trade from ports to civil area and vice versa customs' universe is limited to seaports, airports, wharves, warehouse and goods moving through specified routes. That's why when one considers the text of what defines smuggling under clause (s) of section 2 (of the Act, 1969) it deals with the act of bringing into or taking out of Pakistan of goods…by any route other than a route declared under section 9 or 10 or from any place other than a customs-station, the complete scheme of customs laws sinks into one's mind. That's why Government/Board issues notifications physically, geographically (and geospatially in the future – may be) embodying spatial spread of the jurisdictions enjoyed by the customs officers under Section 3 of the Act, 1969. Such powers of customs officers came into question with regards one such notification dated 12.02.1983 bearing No.108(I)/83 before the Hon'ble Supreme Court in the case of Collector of Customs v. Muhammad Mehfooz reported as PTCL 1992 CL 155 and 1991 PLD SC 630 where the said SRO spatially designated the following areas falling within the jurisdiction of Customs Port of Karachi namely;

> To the North -- A line drawn from a point on the ridge dividing the harbour break water from the Arabian Sea, nine miles N.W. from Manora Point, along the high water mark ordinary spring tides to boundary pillar No.44 at the head of Soti Creek, and thence along a line demarcated at the angles by masonry pillars numbered 43 around Khuda Village to 32 on the Harris Road, and from thence along the western edge of Harris Road to the North East corner of the Native Jetty where it crosses the MA. Jinnah Road at the Moulvi Tamizuddin Khan Road at the North East and of the Railway bridge and on to Boundary Pillar No.2. From Boundary Pillar No.2 round Scandal Point and Bath Island up to Boundary Pillar No.24 on the Western edge of the Clifton Road.
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> To the East -- A line draw from Boundary Pillar No.24 on Clifton Road last abovementioned to Boundary Pillar No.26 north of Clifton and thence to the shore, and of Clifton Pier and thence

along the high water line on the beach to a point 3 1/4 miles S.E. of Clifton.

To the South -- A line drawn from the point last abovementioned on Clifton Beach running in a S.W. by W 1/4 W, direction to a point four miles S. by 1/4 E, from Manora break water, and from thence along a line running in N.W.3/4 W. direction to a point two miles out at sea S.W.1/2 from the point first mentioned on the ridge dividing the Harbour breakwater from the Arabian Sea.

To the West -- A line drawn from the point last mentioned above running in a N.E.1/2 N. direction to the starting point on the ridge abovementioned, nine miles from Manora Point."

The Hon'ble Supreme Court in respect of a raid made and goods seized in the territory known as Federal 'B' Area - Karachi held that the said (Federal 'B' Area) was not included within the limits of Port of Karachi notified by the above mentioned SRO and the Notification No. 53 dated 02.10.1953 and its further amendments in the form of SRO/67 dated 01.09.1967 and SRO 446/74 dated 04.04.1974 being limited in their scope did not empower customs officers to raid and seize goods in the areas not forming part of Karachi port-areas were illegal. It is pertinent to mention that this information was brought to the attention to the Hon'ble bench that through the 1961 Notification where the word "Federal Area" was substituted with "Karachi Division", but since no change was made in the Karachi-port area designatory notification, the Hon'ble Supreme Court maintained the view that "Collector of Customs, Deputy Collector of Customs, Assistant Collector of Customs or other Officers of Customs can have jurisdiction only in port area and not in entire Karachi".

9. Its pertinent to take into consideration that through Finance Act 2005 a new Section 3A was added to the 1969 Act which after 2007 substitution and 2017 amendment yielded to its present text that created a new directorate of Intelligence and Investigation and provided "The Directorate General of Intelligence and Investigation shall consist of a Director General and as many Directors, Additional Directors, Deputy Directors, Assistant Directors and such other officers as the Board may, by notification in the official Gazette, appoint" and thereafter a Model

Collectorate of Preventive having been carved out in the Customs House and the said Collectorate through SRO 13(I)/2019 dated 01.01.2019 notwithstanding having been given jurisdiction of "Civil districts of Karachi Division" excluding Jinnah International Airport (JIAP), Faisal Airbase, Mansoor Airbase, The Port of Karachi including Fish Harbor, Ibrahim Hyderi, Baghan, Jatti and Pakistan Customs Waters and similar creation and empowerment of Collector, Model Customs Collectorate of Port Muhammad Bin Qasim, Karachi for the Muhammad Bin Qasim Port, QIC Terminal and other all off-dock terminals situated in the civil districts of Karachi Central and Malir, the power of customs officers would not escape the harmonious reading of sub-clauses (o) and (b) of section 2 and section 3 of the Customs Act meaning thereby customs can have jurisdiction only in port areas and not entire Karachi. This view finds support of the judgment reported as PTCL 2016 CL. 793.

10. With this background when we come to the contents of the FIR the petitioners have been alleged to have committed offence under clause (s) section 2 of the 1969 Act. At this juncture it is worthwhile to reproduce full text of the said clause in the following:

> "smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or evading payment of customs-duties or taxes leviable thereon,- (i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or (ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred and fifty thousand rupees in value; or (iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly.

In the case at hand the goods are allegedly found in the petitioner's factory located at SITE Karachi, which clearly does not fall in the aforementioned jurisdiction of customs-officers under the Act, 1969 not being a Karachi Port, Karachi airport (JIAP), Faisal Airbase, Mansoor Airbase, Karachi Fish Harbor, Ibrahim Hyderi, Baghan, Jatti and Pakistan

Customs Waters in the jurisdiction of Port Muhammad Bin Qasim, QIC Terminal and any other all off-dock terminal within the jurisdiction of the customs and/or authorised officers. Goods even if considered having passed 2(s) tunnel {ie from a route declared under section 9 or 10 or from any place other than a customs-station} the question which intrigues our mind is that would charge of smuggling to the satisfaction of 2(s) would be maintainable? To our mind smuggling takes place in two parts. In the first part, goods are brought into or taken out of the country from a route other than a route declared under section 9 or 10 or from any place other than a customs-station. It is only this phase, powers and jurisdiction of the customs authorities subsist. In the second part, once the goods (alleged to have been smuggled under section 2(s)) pass through this narrow passage and land a non-custom area (as in the case at hand) provisions of the law known as Preventions of Smuggling Act, 1977 kick off where the processes of seizing such goods and making arrests etc. would be funneled by this Act 1977 where interestingly definition of the term smuggling is bowered from section 2(s) of the Act 1969.

11. Chapter III of the Act 1977 prescribes procedure to be followed upon receipt of information pertaining to smuggling wherein section 8 empowers the Special Judge appointed under section 44 to require a person suspected of smuggling to appear before him when he acquires information that there is (within the limits of his jurisdiction) any person who is indulging in smuggling, and if he is of the opinion that there is sufficient ground for proceeding, he would require such person, in the manner hereinafter provided, to appear before him. Under section 9 if the Special Judge receives credible information that any person within his jurisdiction is indulging in smuggling but there was no sufficient ground for proceeding against him has been made out under section 8, the Special Judge is empowered to direct any Magistrate or police officer or officer of any other Department to hold a preliminary inquiry into the truth of such information and to submit his report within such period as the Special

Judge may specify and such Magistrate or officer has to comply with such direction and on the receipt of such report, if the Special Judge is satisfied that there is sufficient ground for proceeding against the person in respect of whom the report has been received, the Special Judge is empowered to proceed under section 8. When the Special Judge acting under section 8 deems it necessary to proceed against the person in respect of whom such information has been received, he under section 10 is empowered to make an order in writing setting forth the substance of such information and his reasons for taking action, and if the person in respect of whom such order is made is present in Court, the order is to be read over to him and, if he so desires, the substance thereof be explained to him, however if such person is not present in court, the Special Judge is empowered to issue a summons requiring him to appear. Provided that the Special Judge may, at any time, issue a warrant, bailable or non-bailable, for the arrest and production of such person before him if he is satisfied that (a) such person is purposely avoiding service of summons; or (b) such person does not appear inspite of service of the summons; or (c) for any other reason to be recorded, it is necessary to issue a warrant. Section 14 enables Special Judge to hold inquiry once an order made under sub-section (l) of section 10 has been read over under sub-section (2) thereof, or when any person appears or is brought before the Special Judge in compliance with, or its execution of, a summons or a warrant issued under subsection (3) of that section, the Special Judge has to proceed to inquire into the truth of the information upon which the action has been taken and to take such further evidence as may appear necessary and upon such inquiry shall, in the manner prescribed in the Code of Criminal Procedure, 1898 (Act V of 1898) for conducting trials and recording evidence in cases triable by a Court of Session, except that no charge need to be framed.

12. With this understanding, now when we look at section 185 of the Act 1969 which empowers Federal Government to appoint special judges, it is observed that the said section was only inserted in the year 1977 after

promulgation of the Act 1977 while earlier, special Magistrates of First Class were empowered by the Provincial Government were competent to pass a sentence of imprisonment for a term exceeding two years and of fine exceeding one thousand rupees for an offence under the 1969 Act. These special judges having been appointed under section 185 are empowered to take cognizance of any offence punishable under the Act 1969 by the following three modes under section 185-A(1):

(a) upon a report in writing made by an officer of customs or by any other officer especially authorized in this behalf by the Federal Government; or

(b) upon receiving a complaint or information of facts constituting such offence made or communicated by any person; or

(c) upon his own knowledge acquired during any proceeding before him under this Act or under the Prevention of Smuggling Act, 1977.

Sub-section (2) of section 185-A provides that once an a report has been received under clause (a) {ie from an officers of customs or any other officer authorised in this behlf} the special judge is to proceed with the trail of the accused under the provisions of Code of Civil Procedure, 1898 (“CrPC”), whereas under clause (b) and (c) above, the special judge is to hold preliminary inquiry meaning thereby the report provided under clause (a) has more sanctity and directly actionable through trial. It is important to note that CrPC is only applicable to the proceedings of the special judge and not to the proceedings taken by the customs authorities except under sections 25(12), 161(9)&(15), 163(3) and 165(2), the questions thus arises that would a report under section 185-A(1)(a) of the Act 1969 made to a Special Judge could be termed as First Information Report which nomenclature is reserved for a report made under section 154 of CrPC. For that purpose, one needs to look at the language of section 154 CrPC which is reproduced in the following:-

> **154. Information in cognizable cases:** information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall reduced to writing by him or under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as

> aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

As evident from the above language, an FIR could only be registered with regards commission of a cognizable offence (defined under section 4 CrPC to mean an offence for which a police officer, may, in accordance with the Second Schedule or under any law for the time being in force, arrest without warrant). As far as the Second Schedule of CrPC is concerned, it does not list any customs' related offences and with regards any other law for the time being in force (ie the Customs Act, 1969) none of the offences listed under Section 156 are cognizable, therefore equating a report made to a Special Judge under section 185-A(a) of the Act 1969 by a customs officer could not be equated with a First Information Report made under section 154 of CrPC thus calling such a report as an FIR (as attached on page 123 of the petition), in our humble view is extremely prejudicial and an utter misuse of the process of law. As a matter of fact, issue of filing of F.I.R. by customs officer, to our knowledge and as per the known material is still pending before the Hon'ble Supreme Court in the case of State v. Muhammad Nawaz reported as 2002 SCMR 634 where Leave to appeal has been granted by the Hon'ble Supreme Court inter alia to consider the points as to whether in view of the Notification issued under Section 3 of the Customs Act, 1969 the Principal Appraiser was an officer of the Customs and authorised to lodge an F.I.R., that even if the F.I.Rs. were defective, the same would not vitiate the trial once cognizance in respect of the alleged offence had been taken by the Special Judge properly, and that the ordinary course of trial would not have been deflected through filing of the miscellaneous applications under S.561-A, Cr.P.C.

13. From the above submission one could conclude that (a) Report titled as First Information Report (page 123) could not have this title; (b) the customs authorities have no jurisdiction beyond area designated as

part of sea ports, air ports, jetties, wharves, warehouse, container & off-dock terminals and routes specified under section 10 of the Act, 1969 globally known and context sensitively termed as the “areas of coastal trade”.

14. With regards Powers of customs authorities for search under section 163 of the Act 1969, these powers as deduced from the foregoing resume are only available to customs for goods passing through or stocked in the areas of coastal trade, in the light of the judgment of the apex court Collector of Customs v. Muhammad Mehfooz (supra) these powers do not extend to civil areas notwithstanding their mention in subservient SROs including SRO 13(I)/2019 on the basis on which jurisdiction of the respondents has been claimed on the goods found in the factory of the petitioners located in SITE Karachi. If there was an allegation of smuggling on the goods stationed in the factory of the petitioners, as stated above, appropriate course would be to take an action against the petitioners under sections 8, 9 and 10 of the Prevention of Smuggling Act, 1977 and not under the Customs Act, 1969 as contemplated by the respondents.

Without prejudice to hereinabove legal position as emerged from perusal of the provisions of Customs Act, 1969, and the judgment cited hereinabove, in terms of Section 162 of the Customs Act, 1969, a Gazetted Officer of Customs, has to approach the Magistrate in order to procure a search warrant before the search is carried out in terms of Section 162 of the Customs Act, 1969, whereas, the procedure as provided under Section 103 of the Criminal Procedure Code has to be adopted. However, under exceptional circumstances, provisions of Section 163 of the Customs Act, 1969, can be invoked subject to fulfillment of conditions mentioned therein. According to provisions of Section 163 of the Customs Act, 1969, any officer of Customs not below the rank of Assistant Collector of Customs, or any other officer of like rank

duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any document or under which in his opinion will be useful or relevant to any proceedings under the Customs Act, 1969, concealed or kept in any place, and there is danger that they may be removed before a search can be effected under Section 162 of the Customs Act, 1969, **he may prepare the statement in writing of his ground of his belief** and all the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.

Section 163 is a departure from the normal procedure, therefore, while conferring such a wide power on the officers to embark upon a search, without a warrant, the Legislature had, in its wisdom, placed certain restrictions on the exercise of this power. These restrictions were necessary in order to provide reasonable safeguard to the members of the general public. The various steps to be followed by the officers concerned in making search without warrant from a Magistrate are essential to the validity of the search and are imperative and absolute, and every step in the process must be followed with extreme precision. The preparation of the statement in writing of the grounds of belief is an important step in the matter of search, and since this condition has been prescribed for the benefit of and for protecting the citizens from colourable exercise of power by the concerned officers in making unnecessary and uncalled for raids upon their premises, the same cannot be dispensed with. Therefore, a search mad in contravention of the provisions of Section 163 of the Act is invalid and illegal. Reliance in this regard can be made to the case of S.M. Yousaf and others vs. Collector of Customs (PLD 1968 Karachi 599 F.B.).

As already discussed hereinabove, we may observe that before embarking upon a search without warrant the customs officer is under legal obligation to prepare a statement in writing of the grounds of his belief that smuggled goods are concealed or kept in any place and that

there is a danger that they may be removed before a search can be effected under the provisions of Section 162 of the Act. To put it differently, it seems that this is a safeguard prescribed by the Legislature to ensure that the rights of the citizen in respect of private property are interfered with only for genuine reasons related to the prevention of smuggling and evasion of customs duty, etc. This safeguard can be effective only if the procedure prescribed by law is faithfully and honestly followed by application of mind in each individual case. Reliance in this regard can be placed in the case of S.M. Yousaf and others vs. Collector of Customs (PLD 1968 Karachi 599 F.B.).

In the instant case, admittedly neither any Show Cause Notice was issued nor any adjudication proceedings have commenced against the petitioners for violation of any provisions of the Customs Act, 1969, nor the petitioners were provided any opportunity to explain their position with regard to lawful possession of the skimmed milk. Customs Authorities in fact, raided the factory premises of the petitioners in the odd hours of night at 01:00 a.m., however, neither any approval from an officer of Customs not below the rank of Assistant Collector has been produced in terms of Section 163 of the Customs Act, 1969, authorizing the search and seizure to the Customs Authorities in the instant case, nor any reasons or grounds whatsoever, have been recorded in writing, which could otherwise justify the deviation from the lawful procedure to obtain search-warrant from the concerned Magistrate in terms of Section 162 of the Customs Act, 1969. It is settled legal position that if the legal requirements of search and seizure are violated the same can be challenged before the competent Court of jurisdiction, and once such proceedings are declared to be illegal and without lawful authority, the subsequent proceedings, including registration of criminal case and the prosecution by the Customs Authorities, is equally illegal and of no legal effect, therefore, the said proceedings can be

quashed by the High Courts while exercising jurisdiction under Article 199 read with Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, and/or under Section 561-A Criminal Procedure Code, to prevent the abuse of process of law.

15. In the case of ***Collector of Customs (Preventive) and 2 others v. Muhammad Mehfooz (PTCL 1992 CL 155)***, the Hon'ble Supreme Court while examining the scope of the provisions of Sections 162 and 163 of the Customs Act, 1969 has been pleased to hold as under:-

> "9. Perusal of the statement of grounds reproduced above clearly shows that grounds for belief in support of danger as such were not mentioned specifically as is required under section 163 of the Customs Act. This is a statutory requirement and there is legislative wisdom behind it which is to the effect that ordinarily a place is to be searched only after search-warrant is obtained from the Magistrate as is contemplated under the preceding section of the Customs Act and only in extraordinary cases this section can be dispensed with as is permissible under section 163 of the Customs Act but then grounds are to be stated by the Customs Officer who is allowed this facility for his belief and decision in not obtaining the search warrant. He must state the grounds which justify apprehension of danger of removal of goods. For example, information is received from such and such person that the party concerned has taken steps or is about to take steps for removal of goods and if search-warrant is obtained the same will consume time or the Magistrate is not available, hence there is no other way but to go for the search without warrant. By providing such statutory requirement, the intention of legislature is to provide safe-guard against mala fide interference with rights of citizens in respect of property and against violation of right of privacy. In the instant case in the statement of grounds reproduced above, reasons are not stated as to why and what danger was apprehended for removal of goods and it is not enough simply to say that "it is not expedient to obtain search-warrant". We are, therefore, in agreement with the finding of the High Court on the ground that search and seizure were defective and improper on account of non-compliance with the provisions of section 162 and 163 of the Customs Act.

10. Another point in the same context is whether Customs Authorities has territorial jurisdiction to make search and seizure at the place situate in Federal 'B' Are. Preamble of Customs Act, 1969 shows that this Act is to consolidate and amend the law relating to the levy and collection of Customs duties and to provide for other allied matters. The prime object of this Act is to effectively check smuggling and it is also a source of revenue. While construing fiscal statute one must read words and interpret them in the light of what is clearly expressed and should not rely upon meanings which are not expressed but are implied. In this Act definitions are given in section 2 thereof. "Customs airport" is defined to mean any airport declared under section 9 to be a Customs-airport. "Customs area" is defined to mean the limits of the Customs station specified under section 10 including any area in which imported goods or goods for export are ordinarily kept before clearance by the customs authorities. "Customs port" is defined to mean any place declared under section 9 to be a Customs port. "Customs-station" is defined to mean any Customs-port, Customs-airport or any land Customs-station. Section 9 of the Customs Act provides that Board may, by Notification in the official Gazette, declare places which alone shall be Customs-ports, Customs-airports, land Customs-stations, routes by which alone goods or any class of goods may pass from any land frontier, places which alone shall be ports for carrying on coastal trade with any specified customs ports in Pakistan."

16. In the case of ***Zaheer Ahmed v. Directorate General of Intelligence and Investigation-IR and 4 others (2015 PTD 349)***, a Divisional Bench of this Court, after having examined the large number of case law of various High Courts as well as of the Hon'ble Supreme Court has been pleased to hold as under:-

"8. Under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, High Court is responsible for the entire administration of justice, and being charged with responsibility of supervising all Courts subordinate to it, this Court is competent to take all appropriate measures for preventing maladministration of justice and abuse of the process of law in appropriate cases. When the case is of no evidence or very registration of the case is proved to be mala fide or the case is of purely civil nature or when there is unexceptional delay in the disposal of the case causing deplorable

mental, physical and financial torture to the person proceeded against, this Court is competent to take cognizance of the matter and by exercising inherent powers under section 561-A, Cr.P.C., to correct a wrong by ordering quashment of F.I.R. and proceedings emanating therefrom. Powers vested in High Court under section 561-A, Cr.P.C. are co-extensive with the powers vested in trial Court under sections 249-A and 265-K, Cr.P.C., and in appropriate cases, can be invoked directly without resorting to decision by the trial Court under sections 249-A and 265-K, Cr.P.C. to avoid abuse of process of Court.

9. In the case of The State v. Asif Ali Zardari and another 1994 SCMR 798, the Hon'ble Supreme Court while examining the scope of inherent powers under section 561-A, Cr.P.C. vested in High Court has held as under:--

> "9. Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercises its power under section 249-A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

This judgment was also followed in the case of Muhammad Khalid Mukhtar v. The State PLD 1997 SC 275.”

17. Before parting with this issue its worth expressing that though Sea Customs Act, 1878 had the similar objective of legislation *being consolidation and amendment of the law relating to the levy of customs duties* and its section 167 prescribed punishments of 80 offences in the alike tabular form, however other than the act of any officer of customs, or other person duly employed for the prevention of smuggling, being found guilty of a wilful breach of the provisions of the said Act, or when any person intentionally obstructed any officer of customs or other person duly employed for the prevention of smuggling in the exercise of any powers

given under this Act to such officer or person, punishment of imprisonment was not prescribed for remaining 78 offences, whereas in the Act 1961 punishment of imprisonment has been prescribed for more than 42 (out of 104) offences, giving us reasons to believe that the real intention of civil levy collection through the customs act has turned towards curtailment of personal liberties of the accused persons, which in fact is the subject matter of the Penal Code. This is why we found such an adamant reaction from the respondents who tend to act more like police officers rather than officers matured to collect levy for national exchequer.

18. Now coming to the act of sealing of premises of the petitioners after the raid, Chapter XVII of the Customs Act 1969 titled Offences and Penalties through lists over a hundred offences and respective penalties but none of these penalties pronounce sealing of the premises as ensuing punishment. The only context in which the word 'sealing' is used under the Act 1969 is the mode specified under section 63 titled "Sealing of conveyance" and provides that conveyances carrying transit goods for destinations outside Pakistan or goods from some foreign territory to a customs-station or from a customs-station to some foreign territory may be sealed in such cases and in such manner as may be provided in the rules. This, as evident, is to ensure proper packaging and sealing of the conveyances for the transit goods. Hence neither godowns, factories nor storage facilities could be sealed as a punishment under the Act 1969, thus the act of the respondents to seal factory premises of the petitioners on the alleged discovery of smuggled goods, which fact is yet to be ascertained after a full-fledged trial is illegal and misuse of authority and jurisdiction entrusted by the Act 1969.

19. These petitions are accordingly allowed, the report produced on page 123 as Annexure P/3 dated 02.09.2020 (illegally and wrongfully titled as First Information Report) describing acts of the respondents allegedly violative of Section 2(s) of the Customs Act, 1969 and shown to be

punishable under sections 156(1)(8), (89) read with 156(2) of the said Act is declared illegal, void *ab initio and* accordingly quashed; further, any action taken in pursuance thereof is accordingly declared void and nullity in the eye of law. Goods seized in pursuance of the said report (of which samples have already been taken) be unseized and returned to the petitioners, and factory premises located outside areas of coastal trade (beyond custom authorities' jurisdiction) be immediately de-sealed. Reliance in this regard can be made to the judgment of the Divisional Bench of Lahore High Court, while dealing with the similar provisions of the Sales Tax Act, 1990, in the case of ***Taj International (Pvt) Ltd. and others v. Federal Board of Revenue and others (2014 PTD 1807)***, has been pleased to hold as under:-

> "18. Review of the penalties above, clearly shows that the measure of sentence is linked with the "amount or loss of tax involved." Infact, the above linkage, uses the tool of penalty as a mode of recovery of tax. Hence, criminalization under the Act goes beyond the pale of retribution and deterrence and appears to be principally focused on recovery of tax. The said linkage between "fine" and the "amount of tax due" is missing, if we examine the criminal provisions under the Income Tax Ordinance, 2001. Part XI of Chapter X of the said Ordinance provides for criminal prosecution under Sections 191 to 200, which simply provide for imposition of "fine" but does not link it with the "tax loss or amount of tax" (except for compounding the offence under section 202). In the case of Federal Excise Act, 2005, such a linkage is visible, however, it has been pointed out that no criminal proceedings have been initiated under the said law without prior assessment of tax. It, therefore, appears that criminalization under the Act is being treated differently when compared with other tax laws.
>
> 19. The background and the departmental justification to this over-criminalization has been frankly pointed out by the learned counsel for the respondent department. He submitted that the civil proceedings leading to assessment of tax and penalties followed by the recovery procedure under section 48 has not proved successful over the years. Hence, to fast track recovery, it had to be criminalized. Without commenting on the legality of this over-criminalization, it is settled law that recovery of tax is possible only after the tax has been duly assessed and the amount of "tax due" determined under the Act. Recovery under civil law is initiated once tax has been assessed through the civil adjudicatory process provided under the Act. Tax assessment becomes doubly necessary, when

recovery stands criminalized and entails criminal consequences. Other than the penalties hinged on "amount or loss of tax involved," criminalization of recovery of tax is also evident from section 37A(4) of the Act. This provision permits compoundability of the offence if the amount of tax due and penalties as determined under the Act are paid at any stage of the criminal proceedings. Criminal mode of recovery, reinforces the requirement of prior assessment of tax liability under the Act.

20. Talking the offence of tax fraud under clause 13 of section 33 (above). Tax fraud has been defined in section 2(37) of the Act as:--

> ""tax fraud" means knowingly, dishonestly or fraudulently and without any lawful excuse (burden of proof of which excuse shall be upon the accused)--
>
> (i) doing of any act or causing to do any act; or
>
> (ii) omitting to take any action or causing the omission to take any action, including the making of taxable supplies without getting registration under this Act; or
>
> (iii) falsifying or causing falsification the sales tax invoices in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax liability for two consecutive tax periods or overstating the entitlement to tax credit or tax refund to cause loss of tax."

In essence tax fraud is falsifying a tax invoice with the intention to understate the tax liability, or to underpay the tax liability or overstate the entitlement to tax credit or tax refund to cause loss of tax. Even if we assume that the Special Judge convicts the taxpayer, he cannot award the sentence, as "fine" is dependent on the "amount or loss of tax involved" and it is not within the competence or jurisdiction of the Special Judge to assess tax or determine the "amount or loss of tax involved" which is not part of the offence but of the sentence. Further, the facility of compoundability under section 37(A)(4) is not available to the taxpayer, unless the amount of tax due and penalties as determined under the Act.

21. Learned counsel for the department took pains to argue that the amount determined under section 37A (4) of the Act is the amount calculated by the department and is not the tax assessed under section 11 post adjudication. This argument is seriously misconcieved. It is settled proposition of law that "tax due" means amount duly determined under the law through an independent process of adjudication. Further, language of section 37A (4) is unambiguous and is directly supportive in this regard. Reliance is placed on Agricultural Development Bank of Pakistan v. Sanaullah Khan and others (PLD 1988 SC 67) and Abdul Latif v. The Government of West Pakistan and others (PLD 1962 SC 384) and

Agricultural Development Bank of Pakistan and another v. Abid Akhtar and others (2003 CLD 1620).

22. Collective reading of sections 11, 25(5), 33, 37A and 72B of the Act indicates that the criminalization under the Act is principally to effectuate recovery or is being largely used to effectuate recovery. Two clear pointers are: dependence of fine on the "amount or loss of tax involved." and the window of compoundability available to the taxpayer who can pay the "amount of tax due along with such default surcharge and penalty as determined under the provisions of this Act." If the purpose was simple retribution and deterrence, there was no need to load the fine with the amount or loss of tax involved. However, if the fine under criminal prosecution is to be loaded with the amount or loss of tax, such a criminal construct must be prefaced with the mandatory requirement of assessment of tax through civil adjudication provided under section 11 of the Act. This precondition is the minimum constitutional requirement to ensure fair trial and due process under Articles 4 and 10-A of the Constitution.

25. As a conclusion, we once again reiterate that civil and criminal proceedings can run independently and simultaneously or otherwise. The purpose and objective of criminalizing tax fraud and tax evasion is retribution and deterrence which is achieved through punishment or fine or both. If the law, however, goes further and criminalises recovery of tax in addition to retribution and deterence, then tax assessment has to take place first under the provisions of the Act. In this background the term "shall be further liable" re-appearing several times in section 33 of the Act holds a chronological significance i.e., that criminal prosecution follows adjudication and assessment of tax under section 11 of the Act.

20. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the search and seizure by the Customs Authorities of the factory premises of the petitioners in the odd hours of night at 01:00 A.M. without obtaining search warrants from the concerned Magistrate under Section 162 of the Customs Act, 1969 invoking the provisions of Section 163 of the Customs Act, 1969 in the absence of approval by the Competent Authority, without recording reasons in writing, and consequently registration of criminal case (FIR) is without lawful authority based on malafide on the part of the Customs Authorities. We may further observe that in the absence of determination of liability of duty and taxes against the petitioners, if any, through process of assessment or

adjudication under the Customs Act, 1969, as the case may be, resort to initiating criminal proceedings against the petitioners, including search, seizure and registration of the FIR, without providing any opportunity of being heard to the petitioners, otherwise amounts to violating the principles of natural justice and denying the fair trial to the petitioners, as guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan. It is pertinent to note that the respondents while specifically confronted to assist the Court as to whether while raiding the factory premises of the petitioners, the condition as prescribed under Sections 162 and 163 of the Customs Act, 1969 read with Section 103, Cr.P.C. relating to search were fulfilled, however, in response, officials present in Court could not demonstrate the fulfillment of the requirement of law, as referred to hereinabove, and have further conceded that there has been no determination of liability in respect of duty and taxes against the petitioners, hence the conviction of the petitioners at this stage of the proceedings is not possible. Accordingly, vide our short order dated 23.09.2020, the above petitions were allowed in the following terms:-

> *"For the reasons to be recorded later on, above petitions are allowed along with listed application(s), consequently, the FIR No.ASO-374/2020(HQ) dated 02.09.2020 and the proceedings emanating therefrom are hereby quashed. However, respondents may be at liberty to initiate adjudication proceedings against the petitioners, if they are in possession of some material and may pass appropriate orders after providing opportunity of being heard to the petitioner, in accordance with law. Whereas, the goods seized by the respondents shall be returned to the petitioners after making inventory or drawing samples, if so required, within seven (07) days of this order, in accordance with law. The surety furnished before the Nazir of this Court by the petitioners may be released to the surety after proper identification and verification."*

21. Above are the reasons of the said short order.

Karachi ____ November, 2020 **JUDGE**

JUDGE