

IN THE HIGH COURT OF SINDH AT KARACHI

Present:**Mr. Justice Syed Sajjad Ali Shah.****Mr. Justice Muhammad Junaid Ghaffar.**

C. P. NO. D-2835 / 2015

Muhammad Waseem ----- Petitioner

Versus

The Director, Directorate General of Intelligence

& Investigation and others ----- Respondents

C. P. NO. D-2737/ 2015

Abdul Karim Shah Hashmi ----- Petitioner

Versus

The Director, Directorate General of Intelligence

& Investigation FBR and another ----- Respondents

Date of hearing: 3.6.2015

Petitioners: Through Mrs. Ismat Mehdi and Mr. Sohail Muzaffar
Advocates.Respondents: Through Mr. Kashif Nazeer and Mr. Dilawar Hussain
Standing Counsel.
Assisted by I.O. Rana Gulzar Sr. Intelligence Officer and
I.O. Muhammad Sadiq Intelligence Officer.J U D G M E N T

Muhammad Junaid Ghaffar, J. Through this common judgment we intend to dispose of the aforesaid petitions, in which common facts and law is involved, whereby, the petitioners have impugned the alleged unlawful detention of their consignments by the Directorate of Customs Intelligence, Karachi, (“respondent”) after they have been duly cleared by the respective Customs Authorities and registration of FIR lodged before the Special Judge, Customs & Taxation at Karachi.

2. The precise facts involved are that the petitioners have imported consignments of (a) printed / Misprinted alum/poly coated paper waste (b) printed / misprinted aluminum foil with poly backing waste and (c) plastic colour / transparent film in rolls and had filed Goods Declaration(s) with the Customs authorities which have been duly examined,

assessed and out of charged after payment of assessed duty and taxes. It has been further stated that the respondent has seized /detained their consignments, at the time of delivery of the same from the port area, and, thereafter, has also registered FIR's, against the petitioners, for alleged violation of Section(s) 16, 32 and 79 of the Customs At, 1969 punishable under clause (9) and (14) of Section 156(1) of the Customs Act, 1969.

3. Learned Counsel for the petitioners submit that the respondent has no jurisdiction and lawful authority to detain or seize the consignments, which have been duly assessed and out of charged, by the respective Customs Collectorates, whereas, even otherwise, the petitioners have imported consignments which are not hit by the provisions of para 11 of Appendix B of the Import Policy Order, 2013, as neither, they have imported any misprinted plastic paper scrap, having any known brand, nor they relate to any edible products, for which the condition of "cut into pieces" would be applicable. Learned Counsel for the petitioners further submitted that without prejudice, and at the most, the case in hand was of violation of Section 16 of the Customs Act, 1969 for having imported goods in violation of para 11 of Appendix B of Import Policy Order, 2013, and, for such violation, clause (9) of Section 156(1) of the Customs Act, 1969, only prescribes confiscation of goods and imposition of penalty, whereas, no criminal proceedings can be initiated for the alleged violation of Import Policy Order, 2013. It has been prayed that in view of such position, the goods imported by the petitioners, may be directed to be released, whereas, the FIR lodged by respondent, being without any lawful authority and jurisdiction may be quashed.

4. Conversely learned Counsel for the respondent has contended that since the imported goods are liable to confiscation for violation of section 16, 32 and 79(1) of Customs Act, 1969 therefore, they have been seized in terms of Section 168 of the Customs Act, 1969. Learned Counsel further submits that the impugned consignments contain brand name of edible products, and therefore, they are hit by Para 11 of Appendix B of Import Policy Order, 2013 and their release by the Customs Authorities is not

proper. Therefore, respondent has taken the impugned action, for detention of the goods as well as registration of FIR.

5. We have heard all the learned Counsel, perused the record and the samples placed before us by the respondents. We had also directed the respondents to place the assessment / examination report of the respective Customs Authorities, on the basis of which they had assessed and released the consignment in question. It appears that on merits, the precise controversy which has been raised in the instant matter, is in respect of the applicability of Para 11 of Appendix B of the Import Policy Order, 2013 and it would be advantageous to refer to the same, which reads as under:-

Part-II
PROCEDURAL REQUIREMENTS

S.No.	Pct Codes	Commodity Description	Conditions
1.	-	-	-
2.	-	-	-
9.	-	-	-
10.	-	-	-
11	Respective headings	Misprinted plastic /paper scrap having brand of edible products	Importable only in completely "cut into pieces" form so that no piece contains the complete brand name.

6. From perusal of the aforesaid provision, it appears that the import of misprinted plastic / paper scrap, having brand of edible products has been made permissible / importable, only in completely "*cut into pieces*" form, so that no piece contains the complete brand name. This appears to have been notified for the reason that no unscrupulous person / importer can misuse the brand name of an edible product by using the misprinted plastic / paper scrap in selling inferior / spurious quality of goods by packing them with such plastic / paper scrap. On perusal of the samples placed before us, we have noticed that in fact the consignments do not contain any such brand name of an edible product, which is either being used or imported in Pakistan, whereas, the language in which the name and other details have been printed on such scrap of plastic and paper is also, not in English, but in some other language. On such examination of the samples, it appears to us that the contention of respondent is not justifiable and appears to be misconceived, as apparently the goods in question do not appear to be hit by the provision

of Para 11 of Appendix B of the Import Policy Order, 2013, and the restriction attached thereto. It is perhaps for this reason that the Customs Collectorate, after having examined the goods and checking of other aspects, including the importability of such consignments, has released the same, after payment of duty and taxes in accordance with law. In view of such position, we are of the view that the detention / seizure of goods in question by the respondent for alleged violation of condition / Para 11 of Appendix B of the Import Policy Order 2013, is not justified. Accordingly the goods covered through instant petitions, which are already out of charged by the respective Customs Collectorates, are directed to be released to the petitioners, forthwith. The petitioners are also entitled for issuance of delay and detention certificates which shall be issued by the respondents in accordance with Section 14A of the Customs Act 1969 immediately.

7. Coming to the second aspect of the matter with regard to registration of FIR against the petitioners, the learned Counsel for the respondent was confronted as to how any cognizance can be taken by the Special Judge (Customs & Taxation), Karachi, for alleged violation of Section 16 read with Clause (9) of Section 156(1) of the Customs Act, 1969, as clause (9) does not prescribe or entails any criminal proceedings. The learned Counsel could not controvert such legal position nor could respond satisfactorily to such query of the Court with any substantial material or other supporting documents, whereas, the Officers present in Court, also could not controvert such position. However, the learned Counsel submits that since Section 32 read with Clause (14) of Section 156(1) of the Customs Act, 1969 has also been invoked against the petitioners, which entails punishment for a term not exceeding three years, therefore, the Special Judge (Customs & Taxation), Karachi, can take cognizance in the instant matter. On perusal of the record as well as the provisions of clause (9) and (14) of Section 156(1) of the Customs Act, 1969, we are of the view, that primarily and at best, the case of the respondent against the petitioners, is in respect of alleged violation of Section 16 of the Customs Act, 1969 for which the relevant penal clause is clause (9) of Section 156(1) of the Customs Act, 1969, which does not provide for initiation of any criminal proceedings, whereas, the provision of Section 32 of the Customs Act, 1969 is not attracted in the instant matter, as the

respondents have not alleged any mis-declaration against the importer, nor any such mis-declaration is borne out from the record. It further appears from perusal of the assessment and examination report placed before us today by the respondent's Counsel, that the petitioners, before filing of Goods Declaration, had sought permission for examination of goods before filing of Goods Declaration under Section 79(1) (b) of the Customs Act 1969, which had been duly granted to them by the Customs Collectorates. Therefore, even otherwise, the question of any mis-declaration on the part of the petitioners does not arise. In fact what the respondents have alleged is, that the petitioners have imported goods in violation of the Import Policy Order, 2013, and the restrictions placed thereon, for which the relevant provision which could be invoked is Section 16 read with clause (9) of Section 156(1) of the Customs Act, 1969 and merely for the fact that the respondents have mentioned Section 32 of the Customs Act, 1969 in the contravention report, no FIR could be lodged in the given facts and circumstances of the instant case. However, since cognizance has already been taken by the Special Judge (Customs and Taxation), Karachi, in the instant matter, we are not inclined to pass any order in this regard, however, the petitioners are at liberty to file appropriate proceedings, before the Special Judge (Customs & Taxation), Karachi, under Section 265-K Cr.P.C, and seek quashment of the proceedings, whereas, the learned Special Judge (Customs & Taxation), Karachi, shall decide such application preferably within a period of 30 days from filing of such application, in accordance with law and keeping in view the observations recorded herein above. Both the aforesaid petitions are disposed of in the above terms along with listed applications.

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