

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Shafi Siddiqui, J.
Agha Faisal, J.

CP D 4917 of 2021 : Penta International vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Zain A. Jatoi, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Mr. Hussain Bohra
Assistant Attorney General

Mr. Mohabbat Hussain Awan
Advocate

Date of hearing : 08.09.2021

Date of announcement : 08.09.2021

ORDER

Briefly stated, a consignment imported by the petitioner was subject to adjudication proceedings, culminating in the Order in Original dated 16.07.2021 ("Impugned Order"). The findings therein confiscated the consignment, however, extended the benefit of SRO 499(I)/2009 dated 13.06.2009 ("SRO 499") to the petitioner and directed that the consignment be released *intar alia* upon payment of duties and taxes, in addition to a redemption fine of Rs. 1,194,611/- and personal penalty. The petitioner was not aggrieved by the Impugned Order and sought its implementation, however, the respondent no. 3 (being the Deputy Collector Air Freight Unit MCC JIAP Karachi) demanded an additional quantum of Rs. 9,895,510/- as a condition precedent to the release of the consignment. Hence, this petition.

2. Petitioner's learned counsel submitted that the findings in the Impugned Order were final, hence, no further adjudication was merited in respect thereof otherwise than in appeal (admittedly not filed by the department). It was further submitted that the respondent no. 3 was not conferred with any adjudication authority and even the authority, having rendered the Impugned Order, could not have delegated any such power thereto.

3. Mr. Muhabbat Hussain Khan, Advocate represented the department (respondent nos. 2 & 3) and submitted that the respondent no. 3 acted in pursuance of the directions given in the Impugned Order, being "*However, the Collectorate may re-check the calculation of fine with respect to value of the offending goods prior to release of the consignment*". It was submitted that the demand was predicated upon such directions, being in accordance with the law.

Mr. Kafil Ahmed Abbasi (learned Deputy Attorney General) submitted that the Impugned Order was appealable within the statutory hierarchy and any person aggrieved ought to have assailed it in appeal, therefore, no case for invocation of the writ jurisdiction was made out.

4. We have heard the learned counsel and also considered the record placed before us. Admittedly, the Impugned Order extended the benefit of SRO 499 to the petitioner, subject to payment of duties, taxes, redemption fine and penalty. However, while concluding the Impugned Order the adjudicating authority expressly directed the collectorate to re-check the calculation of the fine with respect to the value of the offending goods, prior to release of the consignment.

Petitioner's case is that only the quantified sum, being the differential in the quantum of duties / taxes adjudicated and the amount paid, is payable as the redemption fine. However, it is the department's case that the petitioner is liable to pay the redemption fine predicated upon the value of the goods.

5. The Impugned Order explicitly states the payable quantum of duties and taxes is Rs. 4,242,527/-; whereas, amount deposited by the petitioner was Rs. 829,352/-. The differential amount equals Rs. 3,413,175/- and 35% thereof is Rs. 1,194,611.25/-, being the quantum of fine stipulated in the Impugned Order. However, it is observed that the quantification in the Impugned Order is not definitive as the order itself requires the collectorate to re-check the calculation of the fine with respect to the value of the offending goods. Therefore, it is apparent that the quantitative finding is *prima facie* qualified.

6. SRO 499 permits for the facility for redemption of qualifying confiscated items against payment of a redemption fine in addition to the payment of the relevant duties and levies. However, this fine is calculated as a percentage on the *customs value of the goods* and not upon the differential in the quantum of duties / taxes adjudicated and the amount paid.

7. Per the underlying show cause notice¹, the value of the goods was found, in terms of invoice/s discovered, to be USD 248,115/- and the value declared was USD 46,350/-. The Pak Rupee equivalent of thirty five percent of the differential thereof was Rs. 11,090,121/-, therefore, the department demanded an amount of Rs. 9,895,510/-, in addition to Rs. 1,194,611/- (as the aggregate equals Rs. 11,090,121/-). The demand made by the respondent no.3, thus, appears to follow the dictate of SRO 499.

8. If we were to accept the petitioner's reading of the Impugned Order then the same would *prima facie* be dissonant with SRO 499. However, the petitioner always remained at liberty to assail the Impugned Order before the statutory hierarchy, if it considered the findings inconsistent and / or otherwise dissonant with the law in any manner whatsoever.

9. In view hereof, we are of the considered view that no case for invocation of the discretionary² writ jurisdiction is made out by the petitioner, hence, this petition, along with pending application, is dismissed.

JUDGE

JUDGE

¹ Dated 26.05.2021.

² Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.