

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-3323 of 2011

Date	Order with signature of Judge
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- 1) For orders on Misc. No. 16799/2011.
- 2) For hearing of main case.

17.11.2015.

Mr. Ziaul Hassan Advocate for the Petitioner.
Mr. Mirza Nadeem Taqi Advocate for the Respondent.
Mr. Ashfaq Rafiq Janjua, Standing Counsel.
Mr. Tariq Aziz, Principal Appraiser (CIU) Port Qasim.
Mr. Rehan Akram AC Auction.
Mr. Abdul Quddoos Shaikh AC (Law).
Mr Muzaffar Rizvi Principal Appraiser (Law) Port Qasim.

Through instant petition the petitioner has impugned auction of petitioner's goods being in violation of Section 201 of the Customs Act, 1969 and has further prayed for reimbursement of the full amount of Rs. 17169527/- being the value of the goods on the basis of assessment made by the respondents.

Counsel for the petitioner contends that the petitioner's consignment in question was out rightly confiscated vide Order in Original No. 3286 of 2008 dated 22.9.2008, against which the appeal preferred by the petitioner was allowed vide Order in Appeal dated 21.4.2009, which was further impugned by the department before the Customs Appellate Tribunal, and vide judgment dated 31.5.2010 the same was dismissed by the Tribunal, against which no further appeal / reference has been preferred by the respondents. He further submits that after passing of order dated 21.4.2009, and during pendency of respondent's appeal before the Tribunal, the goods in question were auctioned by the department on 27.1.2010, without any notice to the petitioner, whereas, the goods in question were supposed to be released to the petitioner after passing of Order in Appeal by the Collector of Customs (Appeals). Counsel submits that the petitioner is entitled for sale proceeds in terms of Section 201 of the Customs Act, 1969 and appropriate compensation as the auction carried out by the respondents was illegal and without any lawful authority.

Since the Counsel representing the respondents had pleaded no proper instructions, on our directions the officials of the Port Qasim Collectorate have entered appearance, whereas, Mr. Tariq Aziz Principal Appraiser submits that the goods in question were auctioned inadvertently because of change in jurisdiction and formation of separate Collectorate within the respondent department, whereas, the respondents have categorically submitted in Para 11 of the comments, that sale proceeds were offered to the petitioner in accordance with the Section 201 of the Customs Act, and are still available with the department, however, the petitioner has refused to receive the same. Without

prejudice to this submission, it has been further contended that the petitioner is not entitled for any compensation as Section 201 of the Customs Act does not provide any such compensation, whereas, in terms of Section 169 of the Customs Act, 1969 the respondent department was even otherwise entitled to auction the goods and subsection (4) & (5), whereof, provides that if the goods are auctioned during pendency of adjudication / appellate proceedings, and on being successful in appeal, the owner of the goods is entitled for sale proceeds as provided under Section 201 of the Customs Act, 1969.

We have heard the Counsel for the petitioner and the departmental representative and have also perused the record. The facts as stated hereinabove are not in dispute, which reflect that the goods were auctioned on 27.1.2010, after passing of Order in Appeal dated 21.4.2009, whereby, the Order in Original No. 3286 of 2008 dated 22.9.2008, was set aside. In the circumstances, the goods were supposed to be either released to the petitioner, or in the alternative, the respondent department should have sought suspension of the Order in Appeal from the Customs Appellate Tribunal which admittedly was not done, therefore, the goods in question could not have been auctioned, as they did not remain "confiscated" goods anymore. Notwithstanding, since the respondents have admitted that the goods were auctioned inadvertently, whereas, they are still agreeable to reimburse the petitioner with the sale proceeds as per Section 201 of the Customs Act, 1969, we have restrained ourselves from passing any adverse remarks against the delinquent officials who had auctioned the goods despite passing of order in favour of the petitioner, as according to us insofar as Section 169 of the Act is concerned, the same is not attracted in the given facts of this case, as it was the department's appeal which was pending before the Appellate Forum when the goods were auctioned, and not of the petitioner, who had already obtained a favourable order from the Collector (Appeals).

Be that as it may, in the circumstances, since the petitioner has been made to suffer for no fault on his part, hence, equity demands that he must be compensated. Therefore, we while disposing of instant petition direct the respondents to immediately pay the sale proceeds to the petitioner as provided under Section 201 of the Customs Act, 1969 along with mark up at the rate of KIBOR + 3% per annum as provided under Section 202A of the Customs Act, 1969 from the date of auction till the amount is paid to the petitioner.

Petition stands disposed of in the above terms.

JUDGE

JUDGE