

**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D-2442 / 2023**

Date

Order with signature of Judge

**Present: *Mr. Justice Muhammad Junaid Ghaffar***  
***Mr. Justice Zulfiqar Ahmed Khan***

**Petitioner:**

**Malik Jamshed Javed,  
Through M/s. Muhammad Jamil &  
Sarosh Jamil, Advocates.**

**Respondent  
No. 1:**

**Federation of Pakistan.  
Through Mr. Qazi Ayazuddin Qureshi,  
Assistant Attorney General.**

**Respondent  
No. 3:**

**Additional Collector / Licensing  
Authority, Collectorate of Customs &  
Appraisalment (West),  
Through Mr. Aamir Ali Shaikh,  
Advocate.**

**Respondent  
No. 4:**

**The Director, Director General of  
Intelligence & Investigation-FBR  
(Customs Enforcement),  
Through Mr. Khalid Mehmood Rajpar,  
Advocate.**

**Date of hearing:**

**10.11.2023.**

**Date of Order:**

**10.11.2023.**

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the Petitioner has impugned Order-in-Original dated 18.03.2019 and Order-in-Appeal dated 11.02.2023 passed respectively by Respondents No. 3 & 4 whereby, the License of the Petitioner has been revoked which order has been maintained in Appeal. Per law settled in *Khatri Brothers*<sup>1</sup> (till Finance Act, 2023)<sup>2</sup> the order of Chief Collector passed under Rule 103 of the Customs Rules 2001 is not an appealable order in terms of Section 194-A of the Customs Act, 1969; hence, this petition.

<sup>1</sup> Khatri Brothers v Federation of Pakistan (2010 PTD 1225)

<sup>2</sup> Clause (g) added into Section 194-A of the Customs Act, 1969 w.e.f. 1.7.2023 which now provides an Appeal against such orders before the Customs Tribunal.

2. Heard learned Counsel for the parties and perused the record. It appears that a Show Cause Notice was issued to the Petitioner for alleged violation of Licensing Rules as notified in the Customs Rule 2001 including Rule 101 & 102 thereof. The Licensing Authority passed Order-in-Original on 18.03.2019, whereby the License of the Petitioner was revoked and the operative part thereof reads as under:-

"I have gone through the case record, the written reply of Show Cause Notice submitted by the Respondents as well as its rebuttal by the Department. The written reply of Show Cause Notice submitted by the Respondents Customs Agent is quite different from the statement, they have recorded before the Investigation Agency. The perusal of challan clearly indicates that the well planned conspiracy was hatched by Mr. Samiullah and the Respondent was also the part of conspiracy by giving his ID to scrupulous persons and thus abetted in facilitating the Custom fraud. Hence, the charges leveled vide Show Cause Notice stands established as the Customs Agent in connivance with the Importer and other accomplices have failed to perform his duties with due care and diligence as required under the Rule 101 (a) (c) (e) (i) (j) (k) and (r) of the Customs Rules, 2001, read with Rule 102 ibid. Therefore, I, in exercise of powers vested under Rule 102 the Customs Rules, 2001, hereby order to revoke the Customs Agent's License No.1717 held in the name of M/s. Orient Enterprises, with immediate effect. The security deposited in the shape of Defense Saving Certificates of the licensee is also ordered to be forfeited in favor of Government in terms of Rule 102 (2) (3) of the Customs Rules, 2001 along with its accrued profit thereon."

3. The Petitioner being aggrieved approach the Appellate Authority i.e. the Chief Collector of Customs in terms of Rule 103 of the Customs Rules, 2001, who has passed an Order-in-Appeal dated 11.02.203 and the operative part thereof reads as under: -

"06. I have gone through the record of the case and arguments of both sides. Written statement or supporting documents for his verbal claims have not been provided by the Appellant's representative despite multiple reminders. Under these circumstances and because the instant appeal cannot be kept pending indefinitely on account of Appellant's failure to substantiate his defence, there is no option but to reject the appeal based upon the above facts and legal position as detailed above read with the findings of adjudicating authority in the main case vide O-in-O No.142/2017-18 dated 07.09.2017. The Order-in-Original No.23/2019 dated 18.03.2019 passed by the Licensing Authority, is accordingly upheld."

4. From perusal of the two orders as above, it appears that insofar as the Licensing Authority is concerned, the order has been passed by placing reliance on statement of the Petitioner before the Investigation Agency pursuant to some FIR lodged by Respondent No.4 and the contents of challan filed before the Special Judge

Customs & Taxation. Nowhere, any other independent corroborative material or evidence has been discussed in the said order. Insofar as the Appellate Authority is concerned, it has, without giving any independent reasons or dilating upon the issue in hand, has relied upon the order of the Licensing Authority and has dismissed the Appeal.

5. It is an admitted position that insofar as the criminal proceedings are concerned, they have been decided in favour of the Petitioner by an order of the Special Judge Customs & Taxation dated 13.01.2021 which order was available when the Appellate Authority has passed its order. Notwithstanding this, it appears that the entire case of the Licensing Authority as noted from Order-in-Original is dependent upon the criminal proceedings which stands decided in favour of the Petitioner.

6. In view of the above, in our considered view, both the orders of the Licensing Authority as well as the Appellate Authority cannot be sustained for the reason that they are exclusively dependent on the outcome of the criminal proceedings which have culminated in favor of the Petitioner, whereas, no independent material has been discussed in the two orders so as to sustain the allegations in the show cause notice; hence, stands set aside. The License of the Petitioner stands restored, whereas, the Licensing Authority shall proceed further on the basis of Show Cause Notice already issued keeping in mind that the criminal proceedings stands decided in favor of the Petitioner, and thereafter, pass an appropriate order in accordance with law after granting opportunity of hearing to the Petitioner.

7. Petition stands allowed / disposed of in these terms. Let copy of this order be issued to all concerned.

**J U D G E**

Arshad/

**J U D G E**