

ORDER SHEET

IN THE LAHORE HIGH COURT

MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

Customs Reference No.07 of 2024

Director, Directorate of Intelligence & Investigation, Customs, Multan VS. Customs Appellate Tribunal, etc.

Sr. No. of order/ proceeding.	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
	25.11.2024	Syed Naveed-ul-Hassan Bukhari, Advocate for applicant. Rana Asif Saeed, Advocate for respondent No.3.

Through this reference under section 196 of the Customs Act, 1969 ("Act"), *inter alia*, the following questions of law arising out of the impugned judgment dated 18.01.2024 passed by the Customs Appellate Tribunal, Bench-II, Lahore have been proposed for our opinion:-

a. Whether the learned Tribunal was justified to decide the case ex-parte without sending a copy of appeal or hearing the Department in Customs Appeal No. 418-LB/2022 and in absence of any para wise comments by the department?

b. Whether the impugned judgment which is passed without affording the opportunity of hearing to the appellant and without receiving the reply of the appeal is sustainable in the eye of law and is not in violation of right of fair Trial as guaranteed Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973?

2. Through the impugned consolidated judgment, two separate Customs Appeals bearing No.417/LB/2022 and No.418/LB/2022, former of the two filed by Meharban s/o Abdul Jabbar (not a party in this reference) and latter by Israr Ahmad son of Inayat ullah (Respondent No. 3 herein), against two separate Orders-in-Original Nos. 170 and 171 of 2022, both dated 13.04.2022, passed by Collector of Customs (Adjudication), Faisalabad

Camp Office at MCC, Multan relating to allegedly smuggled Foreign Origin goods i.e. Cloth, Cigarettes, Betel Nuts, Welding Electrodes etc. have been decided, wherein both the appellants in their separate defense took stance that they had purchased the same against payment of price and duties through official auction of seized smuggled goods conducted by different camps/offices of Customs department. Learned counsel for the applicant/Director, Directorate of Intelligence & Investigation, Customs, Regional Office Multan ('**Applicant**') states that the learned counsel Ms. Aneela Jamil, Advocate ('**Counsel**' / '**Advocate**'), whose attendance was marked on behalf of the applicant (respondent in Customs Appeal No. No.418/LB/2022 before the Appellate Tribunal), was actually the counsel for the Collectorate of Customs (Enforcement), Customs Department, Multan, respondent in the connected Customs Appeal No.417/LB/2022, which falls under a separate branch in the Customs department and she was only representing the said respondent, whereas she had not been engaged as a counsel by the applicant for appearing on his behalf in the Customs Appeal No.418/LB/2022, yet without any legal justification and perhaps inadvertently her attendance was marked on behalf of respondents in both the aforesaid appeals, which were based on separate and distinct facts, resulting in passing of the impugned consolidated judgment and he claims the same to be against the facts of the case and law on the subject. Further states that neither any notice was issued to the applicant nor any reply was sought or opportunity of hearing was afforded before passing the impugned judgment against the applicant. Moreover the Customs Appellate

Tribunal had no justifiable reason to mark attendance of Ms. Aneela Jamil, Advocate on behalf of Director, Directorate of Intelligence & Investigation-Customs, Multan, as she did not hold any brief and power of attorney on his behalf, hence it claimed that the applicant has not been provided a fair trial and has been condemned unheard, which has prejudiced his rights and *inter alia*, on the basis of afore-mentioned facts and grounds prays for setting aside the impugned judgments.

3. Although learned counsel for the respondent No.3 has vehemently defended the impugned judgment by stating that facts of the case and law on the subject have been properly appreciated by the Tribunal while reaching final conclusion in the matter, which he has tried to justify on various factual and legal grounds, yet he has not been able to show from the record power of attorney in favour of the aforementioned advocate authorizing her to appear on behalf of applicant and represent him in the appeal No. 418/LB/2022 decided by the Tribunal and we are not convinced that the applicant was duly represented before the Customs Appellate Tribunal and his stance was taken into consideration for decision of the said appeal through consolidated judgment impugned herein. Hence, the question arises that whether there was compliance of due process and the applicant has been provided with a fair trial as mentioned in Article 10-A of the Constitution of Pakistan.

4. The Supreme Court of Pakistan in the case titled *Jawad S. Khawaja and another v. Federation of Pakistan and others* (PLD 2024 SC 337) while considering scope and essential ingredients of right of fair trial in reference to

Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 "*the Constitution*" has held that basic ingredients for a fair trial in the light of Article 10-A of the Constitution are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. Hence, the ultimate objective is to ensure fairness in the process and proceedings and fairness itself being an evolving concept cannot be confined to any definition or frozen at any moment, with certain fundamentals which operate as constants. Independence of the decision maker and their impartiality is one such constant. A reasoned judgment before a judicial forum is another constant without which the right of fair trial would become meaningless. Right of an independent forum of appeal is another relevant constant which ensures fair trial.

5. Moreover, it is also important to note that Article 10-A, of the Constitution had provided the right of a fair trial and due process to accused or person likely to be affected, which included his right to be represented by a counsel of his own choice or at least a counsel in order to protect his rights. Every person accused of howsoever heinous crime, has the right under the law to be represented by a counsel of his own choice and if, for some reason, it was not possible, Court if possible, might take care thereof in accordance with law. Reliance in this regard in addition to aforementioned judgment of Supreme Court may also be placed on the judgments reported as *Tahir Mehmood vs. The*

State (1997 PCrLJ 565), Muhammad Umair vs. The State and another (2024 PCrLJ 183) and Rajab Ali vs. The State (2019 MLD 1713).

6. It is pertinent to mention here that due process also includes reasonable right of hearing for the purpose of explaining position of a party before proceeding against it and the same is recognized as a fundamental principle of Natural justice and very important right in justice system to ensure that injustice and unfairness is not done to any party. While explaining the same, the Supreme Court of Pakistan in case titled Muhammad Yousaf vs. Province of Sindh and others (2024 SCMR 1689) has observed that due process is a prerequisite that needs to be respected at all strata. Right to fair trial is a fundamental right. In case of stringency and rigidity in affording this right, it is the function, rather a responsibility, of the court to protect this right so that no injustice and unfairness is done to anybody. The concept of natural justice is intended to restrain arbitrary actions within the bounds of upholding and protecting the supremacy of law. This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial or administrative, except where the law specifically and unambiguously excludes its application in the peculiar facts and circumstances of the case. The solitary pragmatic importance of the rule of natural justice is to prevent injustice and miscarriage of justice, and ensure that justice is not only done, but is also manifestly and undoubtedly seen to be done.

7. Now coming to the impugned judgment. The subject matter is issue in both the above mentioned appeals decided through the impugned consolidated judgment belonging to separate persons (appellants

before the Appellate Tribunal, mentioned above) was entirely different, alleged smuggled goods were claimed to have been purchased through auctions held by Customs Authorities at camps in its various offices and related to seizure of different kinds of allegedly smuggled foreign origin goods belonging to different person and even the seizing agencies were different and the matter in issue in both cases/appeals though may be claimed by the respondents to have various similarities yet had no direct nexus with each other in various aspects peculiar to transactions, specially relating to claim of lawful purchase through payment of price and duties in those cases, which required analysis on case to case basis. In the present case proper notice has not been effectively served upon the applicant denying him right to present his stance, which should have been taken into consideration while passing the final judgment and it is also claimed that the detailed facts of the case and distinguishable features of both the cases were not properly appreciated while passing the impugned judgment and the learned counsel whose attendance was marked on behalf of the applicant (respondent in the appeal) was neither engaged as counsel nor was authorized to represent the applicant and also did not hold brief on his behalf to render proper assistance to the Tribunal relating to dispute and issues subject matter of the appeal filed against the applicant, which related to a different and entirely distinct transaction from the one for which the said learned counsel had been engaged by a separate Collectorate of Customs Department, to represent it. Had the applicant been provided opportunity of audience and to submit a reply, he could have presented his stance and valid reasons to defend the

Order-in-Original under challenge in appeal and the Tribunal would have been in a better position to reach a just conclusion in the matter, which may have gone in favour of either party. Hence, it is concluded that through inadvertence, applicant has not been provided with a fair opportunity to be represented by a counsel of his own choice and present his case, hence has been condemned unheard, which besides being against the principles of natural justice is also against the principles of due process and fair trial enshrined by Article 10-A of the Constitution mentioned with approval in the afore-referred judgments, hence prejudice has been caused to the applicant.

8. On the basis of the foregoing discussion, both the questions of law proposed for our opinion referred to above are decided in the **negative**.

9. In view of what has been discussed above, the impugned judgment to the extent that the same deals with Customs Appeal No.418/LB/2022 is not sustainable and therefore, we *allow* this reference and *set aside* the impugned judgment and remand the said appeal to the Learned Appellate Tribunal for providing proper opportunity of hearing to the parties and then to conclude/decide the said Customs Appeal afresh on its own merits in accordance with law expeditiously preferably within a period of two months from the date of receipt of certified copy of this order.

10. Office is directed to send a copy of this order to Customs Appellate Tribunal, Lahore.

(ASIM HAFEEZ)
JUDGE

(MUZAMIL AKHTAR SHABIR)
JUDGE

APPROVED FOR REPORTING