

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

Customs Reference No.66929 of 2022

**Director Intelligence & Investigation-FBR, through
Additional Director, Faisalabad**

Versus

Muhammad Imran & others

JUDGMENT

Date of hearing: 05.04.2023.

Applicant-department by: Mr. Muhammad Khalid Chaudhry,
Advocate.

Respondent No.1 by: Mr. Raza Ahmad Cheema, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. Through instant Reference Application under Section 196 of the Customs Act, 1969 (**“the Act of 1969”**), following question of law, as was formulated vide order dated 07.11.2022, asserted to have arisen out of impugned judgment dated 18.08.2022, passed by learned Customs Appellate Tribunal, Lahore (**“Appellate Tribunal”**) has been pressed and argued for our opinion:-

Whether the notice under Section 32 of the Customs Act, 1969 could be issued from where the contravened or smuggled goods are recovered or at a place where these goods were imported (Karachi)?

2. Brief facts of the case are that staff of Directorate of Intelligence & Investigation Customs, Faisalabad intercepted a truck / trailer No.TLD-534 loaded with container No.CAIU-477654-5, a consignment of cloth imported by respondent No.1. The driver showed a copy of Goods Declaration showing import and clearance of 14,860 Kg of Un-Dyed Unfinished Fabric in Bales under PCT Heading 5407.5100, with assessed value of US\$ 3.8/Kg

as against declared value of US\$ 3/Kg. However, customs seal affixed on the container was broken and inside the container, bales of Georgette Chiffon fabric was found. The truck / trailer along with loaded goods was detained for further verification. A sample of fabric was drawn and was sent to the Customs Laboratory at Faisalabad Dryport for confirmation of its description / PCT Heading etc. After thorough examination, the fabrics / goods were found as Georgette Chiffon with weight of 15,740 Kg and its customs value was determined as US\$ 10.5/Kg. The fabric was seized and seizure report was sent to adjudication officer, who issued Show Cause Notice to respondents No.1 & 2 & others, which culminated in passing of order-in-original dated 21.02.2021, whereby seized goods were ordered to be released against payment of duty & taxes on the value of US\$ 5.48/Kg instead of US\$ 10.5/Kg, as the matter was subjudice before valuation committee. Respondent was also directed to furnish bank guarantee of differential duty & taxes of assessed value of US\$ 5.48/Kg, as assessed by the Collectorate of East, Karachi till finalization of matter by the valuation committee, with the understanding that if any liability is determined, the same would be recovered from the importer. The seized vehicle was also confiscated, however lawful owner was given option to redeem his vehicle along with container against redemption fine of Rs.50,000/- . Feeling aggrieved, applicant-department filed appeal before learned Appellate Tribunal, which was dismissed and the show cause notice as well as order-in-original was set aside having no legal effect, vide impugned judgment dated 18.08.2022. Hence, instant Reference Application.

3. Learned Legal Advisor for applicant-department, inter-alia, contended that respondent No.3 has no jurisdiction to adjudicate and decide the allegation of mis-declaration attracting offence under Section 32 of the Act of 1969 as violation had been committed at

import stage at Karachi port, resulting into short levy of duties, thus, the matter fell beyond the jurisdiction of respondent No.3.

4. Contrarily, learned counsel for respondents defends the impugned decision by supporting the reasons advanced by learned Appellate Tribunal.

5. Arguments heard. Available record perused.

6. The matter in hand requires determination of powers of cognizance, especially jurisdiction of adjudication, of customs officials deputed at Port / Station of Entry and Port / Station of Destination. In the instant case, the goods arrived at Karachi (Port / Station of Entry) and after clearance the same were transported to Faisalabad (Port / Station of Destination), where a sample of fabric was drawn and sent to Laboratory, followed by seizure, confiscation and demand of differential of duty & taxes. Needless to say that if any mis-declaration is made by the importer, it is deemed to be in contravention to the provisions of section 32(1) of the Act of 1969, however this provision does not provide any guidance in respect of jurisdiction for adjudication by the customs officials. This provision read with Rules 335 & 338 merely empowers the customs officials at the port of entry to examine whether the declaration made is correct and goods correspond to the declaration. These provisions give authority to customs officials at entry stage to take cognizance of the contravention, if any, but it will not confer the powers of adjudication as well which will remain with the customs officials posted at the port of destination.

Reference can be made to Collector of Customs v. M/s. Ayaz Ahmed (2007 PTCL 601).

7. Vide Notification No. S.R.O. 886(I)/2012, dated 18.07.2012, the Collectors, Collectorate of Customs (Adjudication) have been specified to adjudicate the cases relating to areas falling in the jurisdiction of the Collectorates and Directorates set out therein. In Para 2 of the Notification, it is mentioned that *the cases made out by the Directorates General of*

Intelligence and Investigation-FBR, Post Clearance Audit, Internal Audit (Customs) or by any other agency entrusted with the powers under section 6 of the Customs Act, 1969, falling in the jurisdiction of the Collectorates or Directorates mentioned in column (3) of the Table above, shall be adjudicated by the respective Collectorates of Adjudication mentioned in column (2) of the said Table. Vide Circular No.11(1)S(Lit HC)Cus/2018 dated 01.11.2018, issued by Federal Board of Revenue, it was clarified that *the Collectorate of Adjudication having jurisdiction as per SRO 886(I)/2012 dated 18.07.2012 may adjudicate the contravention cases relating to the areas falling in the jurisdiction of the Model Customs Collectorate from where such goods were imported and cleared.* Subsequently, vide Circular No.11(1)S(Lit HC)Cus/18 dated 12.01.2019, issued by Federal Board of Revenue, it was decided that *in cases, where seizure has been affected by D.G. I&I-Customs or any Customs field formation including any investigation done connected with the subject seizure, the case will be adjudicated by the Collectorate or Adjudication in whose jurisdiction the case has been affected.* However, if separate contravention case(s) are tailored-out in furtherance of investigation then the Collectorate of Adjudication will adjudicate the case(s) in whose jurisdiction such clearances had taken place.

The case in hand is not a contravention case rather in the instant case, the cause of action arose when the staff of Directorate of Intelligence & Investigation Customs, Faisalabad found the customs seal broken and inside the container, bales of Georgette Chiffon fabric were found, followed by laboratory examination and seizure. In such circumstances when seizure was made at Port / Station of Destination (Faisalabad), the Collectorate of Customs (Adjudication), Faisalabad had jurisdiction in the matter to make adjudication, assessment, confiscation and penalty etc., in the light of afore-referred

Notifications and the jurisdiction cannot be objected to merely because the goods were initially cleared by the Port / Station of entry.

8. In view of the above, we are of the considered opinion that show cause notice having been issued and adjudication made by the Collector (Adjudication) available at the Port / Point of Destination were lawful and not liable to be set at naught on the misconceived plea of being beyond territorial jurisdiction. Therefore, our answer to the proposed question is that adjudication under Section 32 of the Act of 1969 was rightly made by the customs authority available at the Port / Station of Destination (Faisalabad) i.e. the Collector, Collectorate of Customs (Adjudication), Faisalabad.

The instant Reference Application is **decided** in favour of applicant-department and against respondent No.1.

9. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal as per Section 196(5) of the Customs Act, 1969.

(Jawad Hassan)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Judge

Sultan