

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3526 of 2017

M/s Hashtnagar Arms and Ammunition Dealers

Vs

Federation of Pakistan, etc.

DATE OF HEARING: 11-01-2018.

PETITIONERS BY: Mr Najeeb ur Rehman Abbasi Advocate.

RESPONDENTS BY: Mr Adnan Haider Randhawa Advocate, for
the respondent No. 4.
Dr Ms Farhat Zafar Advocate, for Collector
Customs, Peshawar.
Mr Israr ul Haq, Assistant Attorney General.
M/s Samroon George, S.O. (Imp-1) and
Ata M.I.Ansari, S.O. (Litigation) M/O
Commerce.

ATHAR MINALLAH, J.- Through this consolidated
judgment I intend to decide the instant petition alongwith following
petitions:

- i. W.P. No. 3650 of 2017, re: "M/s Diamond Star Arms
and Ammunition v. Federation of Pakistan, etc".

- ii. W.P. No. 3651 of 2017, re: "M/s Muhammad Nasim & Brothers Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- iii. W.P. No. 3652 of 2017, re: "M/s Hashtnagar Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- iv. W.P. No. 4087 of 2017, re: "M/s Ahmad & Company Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- v. W.P. No. 4088 of 2017, re: "M/s Biland Khan & Co. v. Federation of Pakistan, etc".
- vi. W.P. No. 4089 of 2017, re: "M/s Mian Anwar-ud-Din, Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- vii. W.P. No. 4090 of 2017, re: "M/s Khizar Hayat & Co. v. Federation of Pakistan, etc".
- viii. W.P. No. 4091 of 2017, re: "M/s Hidayat Ullah & Brothers, Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- ix. W.P. No. 4092 of 2017, re: "M/s Augusta Traders, Arms and Ammunition v. Federation of Pakistan, etc".
- x. W.P. No. 4281 of 2017, re: "M/s Kaka Khel Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- xi. W.P. No. 4279 of 2017, re: "M/s Nasir Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- xii. W.P. No. 4280 of 2017, re: "M/s Kohinoor Arms Co. Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- xiii. W.P. No. 4282 of 2017, re: "M/s Khitab Gul & Sons Arms and Ammunition Dealers v. Federation of Pakistan, etc".
- xiv. W.P. No. 85 of 2018, re: "M/s National Arms Company, Arms and Ammunition Dealers v. Federation of Pakistan, etc".

2. The facts, in brief, are that the petitioners are, inter-alia, engaged in the business of import and sale of arms and ammunition. The petitioners imported consignments of arms and ammunition and

filed respective Goods Declarations under section 79 of the Customs Act, 1969 (hereinafter referred to as the "**Act of 1969**"). The concerned officers of customs instead of processing the respective Goods Declarations sought advice from the Federal Board of Revenue. It appears from the record that the latter in return sought clarification from the Ministry of Commerce. The latter vide letter, dated 14-09-2017 advised the relevant authorities of customs to confiscate the 55 consignments. The relevant portion of the impugned letter, dated 14-09-2017 is as follows:

"It is to inform that after detailed deliberations on the matter, Ministry of Commerce has decided that the said 55 consignments of arms and ammunition imported by the commercial importers, held up by the Customs Authorities after 20th October, 2015, may be confiscated, being in violation of SRO 1112(1)/2014, dated 16-12-2014."

The petitioners are aggrieved on account of the direction given by the Ministry of Commerce regarding confiscation of the imported consignments.

3. The learned counsel for the petitioners has contended that; imported goods can only be confiscated in the manner prescribed under the Act of 1969; the Ministry of Commerce is not empowered to dictate to an officer exercising quasi judicial functions to decide a matter in a particular manner; the Goods Declarations filed by the

petitioners are required to be processed in accordance with law and, therefore, the direction to confiscate the consignment is without lawful authority and jurisdiction; proceedings under sections 79, 80 and 81 are of quasi judicial nature and, therefore, interference by the Ministry of Commerce is unwarranted; the impugned letter, dated 14-09-2017 is without lawful authority and jurisdiction.

4. The learned Assistant Attorney General has appeared alongwith Mr Samroon George, S.O. (Imp-1) Ministry of Commerce. The latter was asked whether the Ministry of Commerce is competent and empowered to direct the officials exercising quasi judicial functions under the Act of 1969 to take decisions in a particular manner. He has explained in detail the restrictions imposed on the import of arms and ammunition from time to time. He has emphasized that the imports of arms and ammunition are regulated under the policy notified vide SRO 1112(1)/2014. The officer was asked whether before issuing letter, dated 14-09-2017, the petitioners were afforded an opportunity of hearing or that each case was examined on the basis of the facts involved therein. He has answered in the negative.

5. The learned counsels and the representative of the respondents have been heard and the record perused with their able assistance.

6. Admittedly, the petitioners have imported arms and ammunition and for the purposes of clearance thereof respective Goods Declarations were filed in each case under section 79 of the Act

of 1969. The authorities instead of processing the Goods Declarations sought clarification from the Federal Board of Revenue. The Ministry of Commerce vide letter, dated 14-09-2017 advised the authorities of customs to confiscate the 55 consignments of arms and ammunition which had been imported by commercial importers. The sole question which requires consideration by this Court is regarding the jurisdiction, powers and functions of the Ministry of Commerce in the context of the provisions of the Act of 1969. The precise question which is required to be answered is whether the Ministry of Commerce is vested with jurisdiction under the Act of 1969 to direct or advise the concerned officials exercising powers under the Act of 1969 to confiscate imported goods. In order to answer this question it would be advantageous to survey the relevant provisions of the Act of 1969.

7. The Act of 1969 is a self contained, comprehensive special statute. The object and purpose of enactment of the Act of 1969 is described in its preamble as to consolidate and amend the law relating to levy and collection of customs-duties and to provide for other allied matters. "Adjudicating authority" is defined in clause (a) of section 2 as meaning any authority competent to pass any order or decision under the Act of 1969. The definition excludes the Federal Board of Revenue, the Collector (Appeals) or the Appellate Tribunal. "Appropriate officer" is defined as the officer of customs to whom such functions have been assigned by or under the Act of 1969 or the rules made thereunder. Clause (bb) of section 2 provides that "assessment" includes provisional assessment, re-assessment and any order or assessment in which the duty assessed is nil. "Officer of customs" is defined in

clause (o) as meaning an officer appointed under section 3. Section 4 provides that an officer of customs appointed under section 3 shall exercise such powers and discharge such duties as are conferred or imposed on him by or under the Act of 1969 or the rules made thereunder. Section 5 empowers the Federal Board of Revenue by notification in the official gazette and subject to such limitations or conditions as may be specified therein to delegate powers by name or designation as described under clauses (a) to (d). Section 6 further empowers the Federal Board of Revenue to entrust either conditionally or unconditionally any functions of customs under the Act of 1969 to any officer of the Federal Government, Provincial Government, State Bank of Pakistan and Scheduled Banks. Sub section (2) of section 6 is couched in negative language and provides that no officer entrusted with any functions of an officer of customs under sub-section (1) shall interfere in any manner in the performance or discharge of any duty by an officer of customs in places notified under section 9. Section 16 vests the power in the Federal Government to prohibit or restrict the bringing into or taking out of Pakistan of any goods of specified description by air sea or land. Section 79 makes it mandatory for the owner of any imported goods to make entry of such goods for home consumption or warehousing or for any other approved purposes within fifteen days of the arrival of the goods by filing a true declaration thereof. The petitioners have filed respective Goods Declarations pursuant to the mandate under section 79. Sections 80 and 81 prescribes the procedure and vests the power in the concerned appropriate officers to assess the imported goods and allow them out of customs charges after duty and taxes have been assessed and

paid by the importers. Sub section (1) of section 83 explicitly provides that when the owner of any goods entered for home-consumption and assessed under section 80 or 81 has paid the import duty and other charges, if any, in respect of the same the appropriate officer, if he is satisfied that the import of the goods is not prohibited or in breach of any restrictions or conditions relating to the import of such goods may make an order for clearance thereof. It is implicit in the language used in section 83 that in case the appropriate customs officer is satisfied that the goods are prohibited or have been imported in breach of restrictions then the clearance thereof may be withheld and refused. In such an eventuality section 156 specifies various punishments and offences. The penalties described under column 3 of the table given in section 156, inter-alia, includes confiscation of goods. Section 168 empowers an appropriate officer to seize goods which are liable to confiscation under the Act of 1969. Sub section (2) further provides that where any goods are seized under sub-section (1) and no show cause notice in respect thereof is given under section 180 within two months of the seizure of the goods, the same shall be returned to the person from whose possession they were seized.

8. Section 179 describes the power vested in various officers of customs in the context of adjudication. Section 180 prescribes the procedure for the purposes of confiscation of goods or imposition of penalties. The said section is also couched in negative language and expressly provides that no order under the Act of 1969 shall be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods has been informed in writing

of the grounds on which it is proposed to confiscate the goods or to impose the penalty. It is further a mandatory requirement to give an opportunity of making a representation in writing to the person against whom the show cause notice has been issued. Section 181 empowers the adjudicating authority to give an option to pay fine in lieu of confiscation of goods.

8. A combined reading of the Act of 1969, particularly the provisions highlighted above, clearly shows that the legislature has prescribed the procedure for the purposes of confiscation of goods. It is, therefore, obvious that imported goods can only be confiscated in the manner and by the authorities explicitly empowered in this regard under the Act of 1969. The Federal Board of Revenue is vested with power and jurisdiction to appoint officers of customs or to delegate and entrust powers and functions to them as provided under sections 4, 5 and 6 of the Act of 1969. Neither the Ministry of Commerce nor the Federal Government has the power to assess the imported goods under section 80 and 83 nor to adjudicate and, inter-alia, order confiscation thereof under sections 179 and 180. The power to adjudicate and confiscate the goods exclusively vests in the authorities who have been expressly mentioned under the aforementioned provisions of the Act of 1969. Moreover, the proceedings leading to confiscation of goods inevitably have to be in accordance with the manner prescribed under the Act of 1969. Confiscation of goods on account of violation of prohibition or restriction imposed by the Federal Government pursuant to powers conferred under the Imports and Exports (Control) Act, 1950 (hereinafter referred to as the "**Act of**

1950") expressly vests in the adjudicating authorities vested with jurisdiction under the Act of 1969. The powers and functions exercised by the adjudicating authorities are quasi judicial in nature. The legislature in its wisdom has expressly barred interference with the discretion of an appropriate officer of customs who is exercising quasi judicial functions as is expressly mandated in the proviso of section 223 of the Act of 1969. The Federal Board of Revenue, therefore, is not vested with power or jurisdiction to interfere with the quasi judicial functions or powers vested in an adjudicating authority under the Act of 1969. The august Supreme Court in the case titled "Messrs Central Insurance Co. and others v. The Central Board of Revenue, Islamabad and others" [1993 SCMR 1232] in the context of the Income Tax Ordinance, 2001 has observed and held that the Federal Board of Revenue though has administrative control over the functionaries discharging functions under the statute but it does not figure anywhere in the forums provided for adjudication of an assessee's liability relating to tax. The august Supreme Court, therefore, has held that instructions and directions of the Federal Board of Revenue are binding on the functionaries discharging their functions so long as they are confined to the administrative matters while interpretation of any provision of the statute could only be rendered by the hierarchy of the forums provided under the provisions of the statute. As a corollary the adjudicating authorities vested with jurisdiction inevitably have to adjudicate in the manner prescribed under a taxing statute.

9. In the context of the instant petition it would be beneficial to refer to two passages from the celebrated *treaties* by De Smith, as

quoted with approval by the august Supreme Court of Pakistan in the case of *M.A.Rahman Versus Federation of Pakistan and others* [1988 SCMR 691]. The said two passages are as follows:

“The relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.”

And:--

“An authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. In at least two modern Commonwealth cases licensing bodies were found to have taken decisions on the

instructions of the heads of Government who were prompted by extraneous motives. But, as less colourful cases illustrate, it is enough to show that a decision which ought to have been based on the exercise of independent judgment was dictated by those not entrusted with the power to decide, although it remains a question of fact whether the repository of discretion abdicated it in the face of external pressure. And it is immaterial that the external authority has not sought to impose its policy."

10. The august Supreme Court observed and held in the case of M.A Rehman supra that a discretion must be exercised only by the authority to which it is committed, and that in exercising the same the authority must genuinely address itself to the matter before it and must act in good faith, and have regard to all relevant considerations. It was further held that in exercising discretion, the authority must not be swayed by irrelevant considerations, nor must it seek to promote purposes alien to the letter and/or spirit of the legislation that gives it the power to act and, therefore, must not act arbitrarily or capriciously. It is, therefore, obvious that the officers who are vested with the power and jurisdiction to adjudicate under the Act of 1969 have a statutory duty to proceed and act independently, having regard to all relevant considerations and pursuant to the purpose and object of the statute. Any interference or dictation by authorities who are not vested with jurisdiction under the Act of 1969 will vitiate the proceedings.

11. In the light of the above principles and law laid down by the august Supreme Court and the survey of the provisions of the Act of 1969 as highlighted above neither the Ministry of Commerce nor the Federal Government is vested with power and jurisdiction to dictate to the adjudicating authorities specified under the Act of 1969 to decide a matter in a particular manner. Confiscation of goods or imposition of penalty can only be adjudicated in the manner and that too by the authorities explicitly contemplated under the Act of 1969. The impugned letter, dated 14-09-2017, whereby the Ministry of Commerce has advised or directed confiscation of 55 consignments has been issued in violation of the provisions of the Act of 1969. The said letter is, therefore, declared as illegal, having issued without lawful authority and jurisdiction. The letter, dated 14-09-2017 is, therefore, set aside.

12. This Court has been informed that the assessment relating to the goods imported by the petitioners has not been completed as yet. The concerned appropriate officers are, therefore, directed to complete the assessment, inter-alia, under sections 80, 81 and 83 of the Act of 1969. In case the appropriate officer is satisfied that the goods imported by the petitioners are hit by any prohibition or restriction and thus liable to confiscation, then he or she shall proceed in the manner prescribed under the Act of 1969, inter-alia, having regard to sections 179 read with sections 180 and 181 of the Act of 1969. If the matter is referred to the competent adjudicating officer then the latter is expected to proceed and adjudicate independently

without being influenced by any extraneous authority not envisaged under the Act of 1969.

12. All these petitions are, therefore, allowed and disposed of in the above terms.

(ATHAR MINALLAH)
JUDGE

Approved for reporting

Tarveer Ahmed.

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