

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD** **JUDICIAL DEPARTMENT**

**W.P.No.1331 of 2012**

M/s Azad Hafez Ltd and another

***VERSUS***

Chairman Federal Board of Revenue  
and others.

**Date of Decision:** 22.06.2012.

**Petitioners by:** Raja Aamir Abbas and Mr.  
Muhammad Safdar Janjua,  
Advocates.

**Respondents by:** Raja Muhammad Iqbal, Advocate.

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**MUHAMMAD AZIM KHAN AFRIDI, J :-** M/s Azad

Hafeez Limited has preferred the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, hereinafter referred to as Constitution with a prayer to issue writ of Mandamus/ Mandatory Injunction against respondents No.1 and 2 to release the consignments of "Polyester Printed Fabric" being consignments of transit under the Afghanistan-Pakistan Transit Trade Agreement (APTTA), 2010, or in alternative, respondents be directed to charge taxable import duties in the light of letter dated December 21<sup>st</sup>, 2011, so as to avoid

wastage and damage of the said imported consignments of fabrics.

2. Learned counsel for petitioner has argued that the petitioner is a Licensed Business Corporation engaged in export and import business. That the petitioner imported five consignments of "Polyester Printed Fabric" from China passing en route Pakistan from Karachi Port to Chaman under the APTTA, 2010. That the Customs Authorities withheld the said consignments due to no fault of the petitioner and in spite of repeated requests including offers for submission of sufficient guarantee with substantial amount to cover for any future eventualities. That the photostat copies of the Corporation of the petitioner were fictitiously used for clearance of earlier consignments in the name of the petitioner and as such the consignments cannot be withheld by the respondents on any such count.

3. Learned counsel for the contesting respondents has argued that the instant writ petition is not competent in its present form. That the petitioner has concealed the real facts from the Court. That the matter is pending in appeal before the Collector Customs (Appeals) Karachi. That the petitioner has failed to

furnish Cross Border Certificates in 52 instances suggesting that those consignments were pilfered en route by petitioner which had never actually reached Afghanistan which caused colossal loss to Pakistan National Revenue. That the act of the petitioner squarely falls within the ambit of smuggling. That 19 show cause notices have been issued to the petitioners regarding which proceedings are under process. That the case of instant consignments of "Polyester Printed Fabric" cannot be taken in isolation as proceedings initiated are against the petitioner-corporation and his business activities.

4. I have heard arguments of learned counsel for the parties and perused the record.

5. According to Article 174 of the Constitution, the Federation is either to sue or be sued by the name of 'Pakistan' and a Province may sue or be sued by the name of 'Province'. The petitioner has failed to sue the "Pakistan" in the prescribed manners. Moreover, the subject matter of the suit pertains to the territorial limits of the Sindh High Court as the consignments are retained at Karachi Port, and the cause of action has also accrued to the petitioner within the territorial

limits of Karachi as such this court lacks territorial jurisdiction to adjudicate over the matter.

6. Additionally, arguments of the learned counsel for the petitioner that the Photostat copy of the petitioner-corporation were fictitiously used for the alleged smuggling trigger a factual controversy which cannot be determined by a Court in exercise of extraordinary constitutional jurisdiction under Article 199 of the Constitution. Apart from the above, the controversy relevant to the petitioner-corporation is also stated under challenge in appeal before the Collector Customs (Appeals) Karachi, and as such the constitutional petition, for the reasons stated above, is not found maintainable.

7. In view of the above, the instant constitutional petition is dismissed being not maintainable.

**(MUHAMMAD AZIM KHAN AFRIDI)**  
**JUDGE**

**\*Qamar Khan\***