

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

W.P. NO.283 OF 2020

M/S HUMAK ENGINEERING PVT.LTD.
Vs.
COLLECTOR OF CUSTOMS, ETC

Petitioner by : Mr. Sikander Naeem Qazi, Advocate.

Respondents by : Ch. Muhammad Nawaz, Advocate.

Date of hearing : 25.02.2020

LUBNA SALEEM PERVEZ, J. Through instant writ petition, petitioner has assailed notice dated 08.01.2020, issued by Superintendent Vigilance Wing MCC Islamabad, whereby he detained the goods of the Petitioner on the allegation of mis-declaration of imported goods vide GD No. 1449 dated 03.01.2020.

2. Brief facts of the case are that the Petitioner imported, commercial air conditioning unit from Malaysia. The goods were cleared after verification and assessment of GD, vide computerized assessment order dated 06.01.2020, by the Assessment Officer after payment of duties and tax calculated vide Addendum No.1850. The assessment was also approved by Principal Appraiser and AC/DC Assessment on the same date as per procedure. The said consignment was detained for further verification, vide impugned order dated 08.01.2020, hence, present petition.

3. Learned counsel for the Petitioner submitted that the goods imported vide GD No. 1449 dated 03.01.2020, were cleared after completing all legal formalities prescribed under the Customs Act, 1969. Learned counsel further submitted that the GD was processed and assessed in terms of section 80 of the Customs Act, 1969, by the appropriate officer of the customs department through online processing system on the submission of documents such as bill of lading, commercial invoice, packing list, etc. All the due taxes and duties were paid as per online assessment of the goods. The duties were calculated in terms of Addendum bearing No. Misc/11/2015-VII/1825 dated 15.09.2015, and

goods were accordingly allowed to gate out on 07.01.2020. Learned counsel contended that risk management system works at the backend of WEBOC system and explained that the imported goods are cleared through the process of Risk Management System having three channels i.e. Green, Yellow and Red. The goods of the Petitioner have been cleared through Red channel which provide for thorough examination of goods as well as scrutiny of the documents. Learned counsel further contended that the impugned notice dated 08.01.2020, is illegal and unlawful firstly for the reason that the consignment of the goods imported were already subjected to proper verification as per law at the import stage by appropriate officers before payment of duties + taxes and cleared after the satisfaction of the concerned officer u/s 83 of the Customs Act, 1969. Secondly, Respondent No. 3 i.e. the Superintendent Vigilance Wing MCC Islamabad, is not the competent authority under section 80 of the Customs Act, 1969, to issue the impugned notice and has no jurisdiction being not an appropriate officer. Learned counsel added that sub sections 1 & 2 of section 80 do not empower Respondent No. 3 to pass order of detention and he has assumed the power not vested in him, therefore, the action of detention of duly verified goods is illegal and void *ab-initio*. It was further added that the Vigilance Wing was notified vide SRO 739(I)/79 dated 18.08.1979, but this notification does not empower officers to detain goods u/s 80 read with section 197. Learned counsel argued that Respondent No.3 has detained the consignment by relying on some “credible information” but has not given any lawful reason for detaining the goods. In support of his contentions, learned counsel relied on the case law reported as Shahzad Ahmed Corporation versus Federation of Pakistan (2005 PTD 23), M/s O.S. Corporation versus Federation of Pakistan (2015 PTD 560), Pakistan Telecommunication company Limited versus Directorate of Intelligence and Investigation-FBR Rawalpindi (2018 PTD 946) and Muhammad Ali versus Federation of Pakistan (2013 PTD 628).

4. On the other hand, learned counsel for the Respondent Department vehemently opposed the arguments of learned counsel for the petitioner and submitted that Respondent No.3 having authority u/s 80 (1) & (2) read with section 197 of the Customs Act has issued the impugned notice for verification of the goods. Learned counsel submitted that since, the petitioner violated the provisions of section 32, therefore, the custom authorities have the power to

reassess the duties & taxes, if not assessed correctly. Learned counsel further submitted that petition is not maintainable as the petitioner has not availed alternate/adequate and efficacious remedy available to it, as the petition contained factual controversy which cannot be resolved in the writ jurisdiction. Learned counsel argued that the goods were valued as per Addendum No. 1825 dated 15.09.2017, whereas, the assessment should have been finalized on valuation ruling No. 1053 dated 23.02.2017. Learned counsel relied on SRO 371(I) of 2002 dated 15.06.2002, and submitted that the Superintendent, Vigilance Wing, is appropriate officer for the purposes of Section 197 to exercise powers u/s 80 (1) & (2) of the Customs Act, 1969.

5. Arguments of learned counsel for the parties have been heard and relevant record has also been perused with their able assistance.

6. The impugned notice dated 08-01-2020 received by the Petitioner has been perused, which transpired that Respondent No. 3 the Superintendent, Vigilance Wing, MCC received credible information from Post Release Verification Cell of observing mis-declaration during verification process. In response thereof, Respondent No.3 while exercising powers u/s 80(1), 80(2) and 197 of the Customs Act 1969 detained the goods for verification imported by the Petitioner vide GD No. 1449. As Respondent No.3 assumed jurisdiction under sections 80 & 197 of the Act ibid, therefore, perusal of the same is necessary. Section 80, Section 2 (b) & (o) and Section 3 of the Customs Act, 1969 are reproduced below for ready reference:-

“80. Checking of goods declaration by the Customs.-

(1) On the receipt of goods declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.

(2) Officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;

(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty.

(4) *In case of the Customs Computerized System, goods may be examined only on the basis of computerized selectivity criteria.*

(5) *The Collector may, however, either condone the examination or defer the examination of imported goods or class of goods and cause it to be performed at a designated place as he deems fit and proper either on the request of the importer or otherwise.]”.*

2(b) “appropriate officer”, means the officer of customs to whom such functions have been assigned by or under this Act or the rules made thereunder;

2(o) “officer of customs” means an officer appointed under section 3;

Section 3 Appointment of officers of customs.—For the purposes of this Act, the Board may, by notification in the official Gazette, appoint, in relation to any area specified in the notification, any person to be—

- (a) a Chief Collector of Customs;
- (b) a Collector of Customs;
- (c) a Collector of Customs (Appeals);
- (d) an Additional Collector of Customs;
- (e) a Deputy Collector of Customs;
- (f) an Assistant collector of Customs;
- (g) an officer of Customs with any other designation.]

7. The bare reading of sub- section 80(1)&(2) shows that an officer of customs has been vested with powers to check the GDs filed for home consumption u/s 79 for the purposes of assessment and payment of the liability of duty, taxes and other charges, by requisitioning the documents during or after the release of goods by the officers. The jurisdiction for the purposes of this section in terms of SRO 371(I)/2002 dated 15.06.2002, has been given to those Superintendent / Principal Appraisers in whose area the imports have been effected, because as per scheme of section 3 above, the officer appointed under this section would be assigned powers and jurisdiction in relation to the areas specified by the Board through Notification in the official gazette. Perusal of provisions of Section 2(b) & (o) and Section 3 reveals that the Board enjoys the power to appoint the authorities for the specified areas and to vest the appointed authorities with certain powers through notification in the official gazette. Thus all the officers/authorities have been assigned their specific jurisdiction through official notifications as such powers u/s 80 have been granted to the Customs Officer to check the goods declaration imported u/s 79 to verify or reassess or examine the goods imported in the specified area where the imports have been effected. Moreover, in view of the scheme of appointment of authorities as per section 3 the Respondent No. 3 assumes only those powers and jurisdiction which have been entrusted upon him through a

notification issued by the Board. However, no such notification of his appointment has been produced during the course of hearing before this Court.

8. In the present case, the record appended with the petition shows that the goods have been imported by the Petitioner for home consumption. GD was processed and cleared through Red Channel of WBOC system, introduced by the Board, whereby, the documents of imports are subject of scrutiny and after examination of goods by customs, the GDs were assessed as per prevailing valuation ruling and after payment of duties and taxes same were released and were cleared for gate out. Thus, as per assessment note dated 06.01.2020, the Principle Appraiser in exercise of powers u/s 80 has checked and assessed the GD No. 1449 filed u/s 79 and issued the system generated assessment order to the Petitioner. It is observed that entire process of verification and assessment has been carried out by officer of customs as per the system introduced by the Board, and at no stage any objection to the verification was pointed out by the concerned customs authorities. Therefore, no action can be initiated for re-assessment/re-verification on the basis of presumed mis-declaration. Therefore, the Respondent No. 3 had no jurisdiction to re-assess the GD.

9. Further according to the contents of the impugned notice dated 08.01.2020, the goods were detained alleging for mis-declaration on the basis of credible information received from Post Release Verification Cell during verification process. In this regard sub-section (3) of Section 80 has been perused which provides that if the declaration, documents or any information furnished is found incorrect, the goods shall be re-assessed to duty and taxes and other charges levied thereon. The Respondent No. 3 on the basis of vague and undetermined allegation of mis-declaration detained the consignment of import, for verification without communicating any specific charges e.g. filing of incorrect declaration or submission of false documents, etc. That the action of Respondent No. 3 is contrary to law as before embarking for initiation of any such action the respondent being a state functionary must possess definite and proper documentary evidence which could establish the charge of contravention of law against the petitioner. Thus, Respondent No.3 indulged in fishing and roving exercise for digging material against the Petitioner by detaining the goods for verification.

10. The Respondent No. 3 in the impugned notice has also referred section 197 of the Customs Act, 1969 for assuming power to proceed against the Petitioner, and during arguments learned counsel for the Respondent relied on SRO 371 (I)/2002 dated 15.06.2002, whereby, the Board assigned powers and jurisdiction to the appropriate officer defined in section 2(b) of the Act of 1969. The said notification as well as another notification bearing 486 (I)/2007 dated 09.06.2007 have been examined and it transpired that powers u/s 197 vide SRO 371 dated 15.06.2002 has been assigned to Inspector/Preventive Officer/Examiner and vide SRO 486 dated 09.06.2007 jurisdiction has been assigned to Director General, Director, Additional Director and Assistant/Deputy Director of Intelligence and investigation. Thus, Respondent No. 3 has misdirected himself in exercising powers and jurisdiction u/s 197 of the Act 1969, as Superintendent, Vigilance Wing.

11. Learned Counsel for the Petitioner has relied on the case titled ***Muhammad Ali versus Federation of Pakistan(2013 PTD 628 (SHC)*** in support of his contentions whereby the Hon'ble High Court of Sindh has held that:

“After having examined the ratio of the above referred judgments it can safely be concluded that once goods have been examined and assessed to duty and taxes which have been paid, clearance of the consignment has been made and the goods are ‘out of charge’, the Customs Authorities have no jurisdiction to refuse release of such goods nor the same can be detained on the basis of alleged misdeclaration of some previous consignment. Customs Authorities can re-assess only if the duty and taxes are not levied correctly by invoking the provisions of section 32 of the Customs Act, 1969, provided the same is attracted to the facts and circumstances of the case”

Further, this Court vide judgment passed in case titled *Pakistan Telecommunication Company Limited Vs. Directorate of Intelligence and Investigation-FBR Rawalpindi* reported as (2018 PTD 946) has held that :-

“10. There is no cavil to the proposition that grave abuse of discretion vested in public functionaries renders an act or proceedings as illegal. In the instant case the goods were seized after they had been given out of customs charge by the concerned officials at a notified customs station. There is no allegation relating to "smuggling" or "fiscal fraud". Moreover, it is also not alleged that the goods were cleared with the collusion of the concerned customs officials who had examined and then completed the assessment thereof. The description of the goods mentioned in the Goods Declaration and the documents delivered for the purposes of clearance under section 79 read with

section 80 are not alleged to be tampered, forged or fake. It is also not denied that the goods were presented for physical examination before the concerned customs officials.....

In the facts and circumstances of the instant case the act of seizing the goods was obviously neither fair nor just. It is settled law that where express statutory power is conferred on a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably. Excessive use of lawful power is itself unlawful. Reliance is placed on "Independent Newspapers Corporation (Pvt.) Ltd. and another v. Chairman, Fourth Wage Board and Implementation Tribunal for Newspaper Corporation (Pvt.) Ltd. and another" 1993 SCMR 1533.

12. For the forgoing discussion, the impugned action of Respondent No. 3 is held to be without jurisdiction and void *ab initio* to the relevant provisions of law. Instant petition is allowed and the impugned notice dated 08-01-2020 is hereby set aside. Respondents are directed to release the petitioner's goods, forthwith.

(LUBNA SALEEM PERVEZ)
JUDGE

Jasaid Usman