

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3768/2020

Ehram Ud Din, etc.
Versus
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05-03-2021	Mr Sikandar Naeem Qazi, Advocate for petitioner. Syed Muhammad Tayyab, Dy. Attorney General. Mrs Misbah Gulnar Sharif, Advocate for respondent no.3. Syed Jalal Haider, Assistant Collector Customs.

Through this petition, the petitioners have raised an extra ordinary grievance. The staff of Model Customs Collectorate had seized a consignment of zeera and raisins in a settled populated area i.e. the Rawalpindi District. The goods were being transported through public transport from Quetta to Islamabad and nothing is available on record to show that there existed a reasonable ground to have suspected that the goods were of foreign origin. Nonetheless, the goods were seized and thereafter adjudicated by the Collector (Adjudication), vide Customs Order-in-Original no.316/2020, dated 08-10-2020.

The learned Collector (Adjudication) after careful perusal of the record concluded that the goods were being lawfully transported from Quetta to Islamabad and that the Customs Department had failed in proving the factum of the goods having been smuggled. It was a Departmental adjudication and yet an appeal was preferred to the learned Customs Appellate Tribunal. The learned Tribunal is not functional because the Federal Government, in derogation of its statutory obligations, has failed to constitute the Tribunal within a reasonable time. The goods which were seized, have been ordered to be released pursuant to the adjudication order passed by the Collector (Adjudication).

2. Pursuant to notice, *Syed Jalal Haider*, Assistant Collector Customs, has appeared. He was asked whether the Order-in-Original, dated 08-10-2020, has been suspended or any injunctive order has been passed by the learned Tribunal? He has answered in the negative. He was further asked to show any material that would remotely indicate that the perishable items i.e. zeera and raisins

were of foreign origin or had been smuggled? The learned officer stated that the petitioners had taken contradictory stance and, therefore, an appeal has been preferred. However, no material is available on record to, prima facie, indicate that the Collector (Adjudication) had misread or non-read the material placed before him by the Department. Even before this Court, the Department was unable to give a plausible explanation for refusing to release the goods in the absence of a restraining order. The officer of the Department could also not satisfy the Court that the owners of the perishable goods would be compensated if they are damaged due to delay in giving effect to the Order-in-Original.

3. The matter has been adjudicated by a Departmental forum i.e. the Collector (Adjudication) who has passed a well reasoned Order-in-Original and nothing is available on record to, prima facie, show that it suffers from any legal infirmity. Moreover, the learned Tribunal is not functional and the likelihood of deterioration of the perishable goods appears to be

imminent. The owners of the perishable goods are indeed exposed to irreparable loss. This Court is satisfied in the aforementioned exceptional circumstances that no other adequate remedy is available to the owners of the perishable goods to avoid irreparable loss. A, prima facie, case for conditional release of the perishable goods is also made out.

4. In the light of the above discussion, this Court, in exercise of the extra ordinary jurisdiction vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, hereby directs the respondents to release the perishable goods to its owners subject to furnishing pay orders equal in amount to the duty and taxes alongwith an indemnity bond. The pay orders will be returned to the owners of the perishable goods if the learned Tribunal upon becoming functional refuses to grant an injunctive order or dismisses the appeal preferred by the Department.

5. The vehicle is public transport and has been ordered to be released vide the Order-

in-Original, dated 08-10-2020. Refusing to release the vehicle is arbitrary and abuse of statutory powers vested in the respondents. The vehicle is also directed to be released subject to furnishing an indemnity bond by its owners.

6. The Secretary, Ministry of Law and Justice is directed to ensure that the Chairman of the learned Tribunal and all its members are appointed not later than the next date fixed. In case the learned Tribunal does not become functional by the specified date, then the Secretary, Ministry of Law and Justice is directed to appear in person and identify the officials / authorities responsible for delaying the constitution of the learned Tribunal.

7. Relist on 07-04-2021. The petition will be taken up at 10:30 a.m. on the date fixed.

8. The office is directed to send a copy of this order to the Secretary, Ministry of Law and Justice for compliance.

(CHIEF JUSTICE)