

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1671/2018.

M/s Hani Trading Company

Versus

Ministry of Commerce through its Secretary, Islamabad, etc.

Petitioner by: Khawaja Azhar Rasheed, Advocate.

Respondents by: Raja Muhammad Iqbal, Advocate.
Mian Muhammad Faisal Irfan, A.A.G.
Muhammad Ahmed, Section Officer,
M/o Commerce.
Faiz Ali, Additional Collector, MCC,
Peshawar.
Jamil Shah, Law Officer Supdt, MCC,
Peshawar.

Date of Decision: 04.09.2018.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, petitioner has assailed the order dated 23.04.2018, issued by the Ministry of Commerce, Government of Pakistan, whereby permission accorded to the petitioner for temporary Import-Cum-Export of live animals (50,000 Sheep & Goats, 3000 Horses and 3000 Mule (Khachar) from Afghanistan to Gulf countries vide the letter dated 01.01.2018 has been withdrawn.

2. Learned counsel for the petitioner contends that permission for import was granted to the petitioner under Import Policy Order, 2016 (IPO) in terms of Para-1 and Para 12C, whereas impugned order has been passed on the strength of Export Policy Order, 2016 (EPO) in terms of Para 9, which deals with the "re-export goods and does contain the livestock". Learned counsel for the petitioner further contends that once permission for import has been granted under IPO, 2016, the same could not be revoked or declared barred to re-export

the goods as restricted item under EPO, 2016. He further contends that under IPO, 2016 any goods manifested for a country outside Pakistan, which are bonded in Pakistan for re-export to that country is validly permissible and actions of the respondents for withdrawal of permission to the petitioner through the impugned order is contrary to law.

3. Conversely, learned counsel for the respondents alongwith AAG and Additional Collector Customs contend that the petitioner has imported 3000 sheep through GDs dated 29.01.2018 and 20.02.2018 for Pakistan. They further contend that livestock falls under the band category as per schedule 1 of the EPO, 2016; that once the goods were imported in Pakistan their export could only be regulated through Export Policy and not by the letter of Ministry of Commerce.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that petitioner/M/s Hani Trading Company, who is dealing with the import and export of livestock animals had obtained the permission (Temporary Import-Cum-Export of live animals) from Ministry of Commerce, Government of Pakistan and imported sheep from Afghanistan through two different GDs dated 29.01.2018 & 20.02.2018, where-after they have paid custom duties and other charges to the custom authorities as reflected form the bank challan. The petitioner has also obtained provisional release order dated 20.02.2018 from the Ministry of National Food Security & Research Animal Quarantine Department, Peshawar after payment of the requisite fee. Certificate dated 01.03.2018 was also issued by the Animal Quarantine Department, Karachi, where the destination of the export of live sheep consignment was referred as Sharja, UAE, however, they have been denied the export of livestock from Pakistan to any other country mainly on the ground that export of the livestock in terms of Clause 4 & 9 of the EPO, 2016 is not permitted as referred in Schedule-I.

6. I have gone through the record with the able assistance of learned counsel for the parties and also gone through the IPO, 2016 at the first instance and its relevant provisions i.e. Clause 4 & 12 are reproduced as under:-

4. Import of Goods. – *Import of all goods is allowed from worldwide sources unless otherwise elsewhere specified to be banned, prohibited or restricted in this Order.*

Provided that the amendments brought in this Order from time to time shall not be applicable to such imports where Bill of Lading (B/L) or Letters of Credit (L/C) were issued or established prior to the issuance of amending Order.

12. Temporary Import. – *Temporary import-cum-export of goods in respect of the following shall be allowed by the respective Collectors of Customs against submission of indemnity bond or bank guarantee to the satisfaction of the custom authorities to ensure re-export of the same within the specified period, namely:-*

(a)

(b)

(c) *any goods manifested for a country outside Pakistan, which are bonded in Pakistan for re-export to that country.*

7. I have gone through the above referred provisions of the import policy and there is no cavil to the proposition that the import of live animals is permitted in Pakistan subject to quarantine requirement of the Animal Quarantine Department of Ministry of National Food Security and Research, Government of Pakistan. The learned counsel for petitioner has heavily relied upon the concept of “*temporary import-cum-export of goods*”, whereas the said terms clearly provide the mechanism for those goods which were routed through Pakistan and notified under the said policy. However, in order to achieve the objectives under the said provisions the importer has to notify his intention to take benefit of the said provisions but it is important to mention here that the goods, which were imported to Pakistan for temporary period for the purpose of onward export to other countries, have to fall within the purview of Export Policy Order, 2016 as when goods were imported to Pakistan, the same shall fall within the EPO, 2016 for the purpose of export.

8. The petitioner imported live animals (sheep) to Pakistan from Afghanistan, paid the duties requirement under the law, and later on approached the authorities for re-export of sheep to Gulf countries, whereby he

was confronted with the EPO, 2016 and letter dated 23.04.2018 was issued by the Ministry of Commerce, which deals with the explanation of IPO, 2016, and the petitioner is mainly aggrieved with the said letter whereby the provisions have been explained and applied for the export of goods. In order to understand the said restriction, I have gone through the EPO, 2016 and observed the relevant Clause 4(1), which is reproduced as under:

4. Export of goods.- (1) Export of all goods shall be allowed except those specified in Schedule I. Export of goods specified in Schedule II shall be subject to the conditions given therein.
Provided that export of goods, materials, technology and equipment useable in nuclear and biological weapons and their deliver systems having commercial applications shall be subject to No objection certificate (NOC) from SECDIV, Ministry of Foreign Affairs.
(underlining for emphasis is mine)

9. The above referred clause placed certain goods in Schedule-I, which were not allowed to be exported, as only those items and goods were allowed to be exported which do not fall within the banned or restricted items. Similarly, I have also gone through another relevant clause pertaining to the re-export of items, i.e. Clause 9 of the EPO, 2016, which is reproduced as under:

9. Re-export of Goods or items (except banned items as per schedule-I and items on the negative list of Afghan Transit Trade as specified in Schedule III and items falling under Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act 2004 (Act No.V of 2004). Export of imported goods in their original and unprocessed form shall not be allowed except.
(underlining for emphasis is mine)

Besides the above referred clauses, I have also gone through Schedule-I referred in the abovementioned provision, which is reproduced as under:

S.No.	HS Code	Description	Exceptions
(1)	(2)	(3)	(4)
1.
2.
3.
4.
5.
6.	0102.0000 0104.0000 0106.1900	Live Stock	
7.

10. From the above referred situation, it is made clear under the said policy that the banned or restricted items mentioned in Schedule-I were not allowed under the law, whereas "Item No.6, HS Code 0102.0000, Live Stock" falls under the said category, even otherwise, as per principle of interpretation of statute, when meaning of any statute is clear and the plain language of the statute requires no other interpretation, then the intention of the legislature conveyed through such language has to be give full effect. Plain and unambiguous words must be expounded in their natural and ordinary sense. The language of the statute referred above was plain and simple, and carries a clear message, therefore, it could be given effect in the way it was couched and no other interpretation or meaning could be extracted there-from on any hypothetical construction, extraneous to the intent of the legislature. Reliance is placed upon PLD 2016 Peshawar 298 (Abdul Jabbar vs. Chairman NAB), 1998 SCMR 841 PIAC Karachi vs. Wafaqi Mohtasib, PLD 2012 SC 501 (Ghulam Haider, etc. vs. Murad), and PLD 2012 SC 923 (Baz Muhammad Kakar, etc. vs. Federation of Pakistan).

11. In view of above, this Court believes in the simple interpretation of Schedule-I whereby livestock is not allowed to be exported from Pakistan in any manner. The petitioner has imported sheep and livestock to Pakistan and his intention has been reflected in the two GDs filed by him and attached with the writ petition before this Court, whereby the country of destination referred in Column No.20 is Pakistan, and even in Column No.28, the place of delivery is Pakistan, therefore, no other meaning could be abstracted. Similarly, the export of goods has to be dealt under the EPO, 2016, wherein the livestock falls within the banned goods or items, and letter dated 09.01.2018 is based only on provision of the IPO, 2016 and by any stretch of imagination can be considered as

permission to export. Hence, the export of these livestock is banned and petitioner's claim regarding the export of livestock is not maintainable. Accordingly, the instant petition is hereby *dismissed* for being devoid of merits.

MOHSIN AKHTAR KAYANI

JUDGE

Zahid

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