

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.2682 OF 2022

(Against Judgment dated 17.05.2022
passed by the Peshawar High Court,
Peshawar in Customs Reference No.106-
P/2019)

Collector Customs, Model Customs ...Petitioner
Collectorate, Peshawar

Versus

Muhammad Ismail and others ...Respondents

For the Petitioner Mr. Mukhtar Ahmad Maneri, ASC
(Video Link from Peshawar)
Mr. Muhammad Sharif Janjua, AOR

For the Respondents : N.R.

Date of Hearing : 11.05.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the Judgment dated 17.05.2022 passed by the Peshawar High Court, Peshawar in Customs Reference No.106-P/2019 whereby the Customs reference filed by the petitioner was dismissed.

2. The corpus of the litigation unveils that on 24.03.2019 the Customs Mobile Squad No.1, Peshawar intercepted a vehicle bearing Registration No.LES-10-1544 close to the Motorway Toll Plaza, Peshawar which was driven by the respondent No. 1, Muhammad Ismail. Upon searching the vehicle the Customs Mobile Squad found foreign origin cloth and called upon the driver/respondent No.1 to produce import documents in order to justify the lawful possession of the goods, which he failed to do. Consequently, the cloth was seized under Section 168 of the Customs Act, 1969 for violation of Sections 2(s) and 16 of the Customs Act, 1969 read with Section 3(1) of the Import and Export (Control) Act, 1950 and the vehicle used for transportation was also seized under Section 157 of the Customs Act,

1969. The matter was put up before the Adjudicating Authority and, *vide* the Order-in-Original dated 23.04.2019, the seized goods were outrightly confiscated along with the vehicle. Against this the respondents preferred an Appeal bearing No.Cus-111/PB/2019 before the Customs Appellate Tribunal, Peshawar which was allowed and, *vide* judgment dated 17.06.2019, the Order-in-original was set aside and the seized vehicle was released unconditionally. Being aggrieved, the petitioner filed Custom Reference No.106-P/2019 in Peshawar High Court, which was also dismissed *vide* the impugned judgment dated 17.05.2022, hence the petitioner brought this civil petition for leave to appeal.

3. The learned counsel for the petitioner argued that the learned High Court failed to consider the facts of the case and arrived at a wrong conclusion. It was further argued that the driver of the vehicle failed to produce the import documents of the cloth and was trying to smuggle foreign origin cloth in order to evade duties and taxes. It was further contended that the seized cloth was non-duty paid and the detained vehicle was used in smuggling therefore, after fulfillment of formalities, the concerned officer issued a show cause notice dated 09.04.2019 to the respondent Nos.1 and 2 for violation of Sections 2(s) and 16 of the Customs Act, 1969 *ibid*, read with Section 3(1) of the Import and Export (Control) Act, 1950 which is punishable under Sections 156 and 157 of the Customs Act, 1969. He further contended that the vehicle was rightly confiscated under Section 157 of the Customs Act, 1969, read with clause (b) of S.R.O. 499(I)/2009.

4. Heard the arguments. In actuality, the petitioner approached the Customs Appellate Tribunal against the outright confiscation of vehicle in view of the Order-in-Original passed by the Adjudicating Authority which was set aside by the learned Tribunal on an appeal filed by Muhammad Ismail/respondent No.1 (driver) and Ishaq/respondent No.3 (owner of the vehicle). Predominantly, the learned Tribunal had set aside the Order-in-Original on the basis that no show cause notice was served upon Ishaq/respondent No.3, nor any opportunity of hearing was afforded to him before passing the confiscation order, whereas the inventory memo prepared on 24.03.2019 cites the name of Ishaq/respondent No.3 as owner of the vehicle.

5. The record reflects that the show cause notice incorporated the entire episode of raid conducted in order to secure the alleged smuggled goods and confiscation of vehicle in question. It was contended in the show cause notice that no proof regarding lawful import or *bona fide* possession of these goods was produced, therefore the goods were seized in terms of Section 168 of the Customs Act, 1969 for violation of Sections 2(s) and 16 of the Customs Act, 1969, read with Section 3(1) of the Import and Export (Control) Act, 1950 for penal action under Section 155 of the Customs Act, 1969 read with Section 3 of the Import and Export (Control) Act, 1950, whereas the vehicle was also seized in terms of Section 157 of the Customs Act, 1969. The show cause notice was issued in exercise of the powers conferred under Section 180 of the Customs Act, 1969 to Muhammad Ismail/respondent No.1 (Driver) and Jawaid Iqbal/respondent No.2 (owner of the goods), but no show cause notice was issued to the owner of the vehicle, Ishaq/respondent No.3, before passing the confiscation order, despite showing his name as owner of vehicle in the inventory memo.

6. The skimming and analysis of Section 168 and 180 of Customs Act, 1969 deciphers that both are somewhat related to seizure of things liable to confiscation and issue of show cause notice before confiscation of goods or imposition of penalty. The appropriate officer may seize any goods liable to confiscation under this Act but no such order for the confiscation of any goods or for imposition of any penalty may be passed unless the owner of the goods, if any, or such person is issued show cause. According to clause (i) of Section 2 of the Customs Act, 1969, "goods" mean all movable goods and includes (i) conveyance; (ii) stores and materials; (iii) baggage, and (iv) currency and negotiable instruments. For the ease of convenience, Sections 168 and 180 of Customs Act, 1969 are reproduced as under:-

168. Seizure of things liable to confiscation.- (1) The appropriate officer may seize any goods liable to confiscation under this Act, and where it is not practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) 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 goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of two months may, for reasons to be recorded in writing, be extended by the Collector of Customs by a period not exceeding two months:

Provided further that the limitation prescribed under sub-section (2) shall not apply to goods specified under the first proviso to section 181.

(3) The appropriate officer may seize any documents or things which in his opinion will be useful as evidence in any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

180. Issue of show-cause notice before confiscation of goods or imposition of penalty.- No order under this Act shall be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person-

(a) is informed in writing (or if the person concerned consents in writing, orally) of the grounds on which it is proposed to confiscate the goods or to impose the penalty;

(b) is given an opportunity of making a representation in writing (or if the person concerned indicates in writing his preference for it orally) within such reasonable time as the appropriate officer may specify, against the proposed action; and

(c) is given a reasonable opportunity of being heard personally or through a counsel or duly authorized agent.

7. The analysis and exploration of aforesaid Sections highlights the noticeable uniformity and evenness. For instance, under Section 168, the appropriate officer may seize any goods liable to confiscation and where it is not practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. Whereas under Section 180, no order can be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty. No doubt under Section 168, the letter of law articulates that the appropriate officer may seize any goods liable to confiscation, but he cannot pass the order for the confiscation of any goods, or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing of the grounds on which it is proposed to confiscate the goods or to impose the penalty and he shall also be given an opportunity of making a representation

in writing with reasonable opportunity of being heard personally or through a counsel or duly authorized agent. The case in hand relates to the confiscation of vehicle and admittedly no show cause notice was issued to the owner of vehicle despite the disclosure of his name in the inventory memo, rather the show cause notice was issued to the Driver/respondent No.1 and Jawaid Iqbal/respondent No.2 (owner of the goods). The penal action was taken against the owner of vehicle without complying with the requisite formalities envisaged under Section 180 of the Customs Act, 1969 and, due to non-adherence and compliance of a mandatory provision the learned High Court maintained the judgment of Customs Appellate Tribunal.

8. A show cause notice is served by an authority under the relevant provisions of law in order to provide a reasonable opportunity to defend the allegations and to explain as to why any penal action should not be taken against him. In essence, it is a well-structured process to provide a fair chance to the accused to respond to the allegations and explain their position within the stipulated timeframe or, in other words, it provides a levelheaded course of action to ensure impartiality, justness and rectitude to the person in receipt of notice with an opportunity to explain why he is not guilty of any violation of law. The show cause must contain all the allegations categorically and unambiguously, including the legal provisions related to the transgression of law or default.

9. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, give explanation and contest it before he is found guilty and condemned. The doctrine of natural justice is destined to safeguard individuals and whenever civil rights, human rights, Constitutional rights or other guaranteed rights under any law are found to be at stake. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-

defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice [Ref: Sohail Ahmad Vs. Government of Pakistan through Secretary of Interior Ministry, Islamabad and others (2022 SCMR 1387) & Inspector General of Police, Quetta and another Vs. Fida Muhammad and others (2022 SCMR 1583)]. In the case of Commissioner of Income-Tax, East Pakistan Vs. Fazlur Rahman (PLD 1964 SC 410), this Court held in an Income Tax matter that where the proceedings are judicial or quasi-judicial in nature it is sufficient to entitle a party to a hearing in the absence of a specific provision to the contrary. At the same time it should be pointed out that the right to be heard is not confined to proceedings which are judicial in form. As has been held by this Court in The Chief Commissioner, Karachi v. Mrs. Dina Sohrab Katrak (PLD 1959 S C (Pak.) 45) the maxim "no man shall be condemned unheard" is not confined to Courts but extend to all proceedings, by whomsoever held which may affect the person or property or other right of the parties concerned in the dispute, and the maxim will apply with no less force to proceedings which affect liability to pay a tax. In the case of University of Dacca through Vice Chancellor and another Vs. Zakir Ahmed (PLD 1965 SC 90), this Court held that nevertheless, the general consensus of judicial opinion seems to be that, in order to ensure the "elementary and essential principles of fairness" as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and "to correct or controvert any relevant statement brought forward to his prejudice." Of course, the person, body or authority concerned must act in good faith, but it would appear that it is not bound to treat the matter as if it was a trial or to administer oath or examine witnesses in the presence of the person accused or give him facility for cross-examining the witnesses against him or even to serve a formal charge-sheet upon him. Such a person or authority can obtain information in any way it thinks fit, provided it gives a fair opportunity to the person sought to be affected to correct or contradict any relevant statement prejudicial to him. In other words, in order to act justly and to reach just ends by just means the

Courts insist that the person or authority should have adopted the above "elementary and essential principles" unless the same had been expressly excluded by the enactment empowering him to so act. Whereas in the Mrs. Anisa Rehman vs. P.I.A.C. and another (**1994 SCMR 2232**), it was held by this Court that there is judicial consensus that the Maxim *audi alteram partem* is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read in as a part of every statute if the right of hearing has not been expressly provided therein.

10. In the wake of above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned High Court. Consequently, this petition is dismissed and leave is declined.

Judge

Judge

Islamabad
11.05.2023
Khalid
Approved for reporting.