

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-II:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Athar Minallah
Mr. Justice Malik Shahzad Ahmad Khan

Civil Petition No.3391 of 2024

(Against order of the Lahore High Court, Lahore
dated 28.06.2024 passed in W.P No.20130/2024)

Khalid alias Muhammad Khalid and others

....Petitioner(s)

Versus

Collector of Customs (Adjudication), Custom House, Lahore, etc.

....Respondent(s)

For the petitioner(s): Mr. Abdul Rehman Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For the respondent(s): Raja Muhammad Shafqat Abbasi, DAG
Saleem Ahmed Malik, Superintendant
Customs Enforcement, Lahore
Huriya Fatima, Legal Advisor, FBR
Waheed Iqbal Bhatti, Inspector

Mr. Nadeem Mehmood Mian, ASC
(for private respondent)
(From Lahore via video-link)

Date of hearing: 09.08.2024

ORDER

Syed Mansoor Ali Shah, J.- The short but important question of law involved in the present case is whether the Customs Appellate Tribunal ("Tribunal") has the power to execute orders passed in exercise of its appellate jurisdiction under Section 194-A and 194-B of the Customs Act 1969 ("Customs Act"), or whether the writ jurisdiction of the High Court is to be invoked for the execution of such orders. This question has arisen in the following factual context.

2. The officials of the Customs Collectorate (Enforcement), Lahore, seized a certain quantity of gold, alleged to be smuggled, along with a vehicle transporting the said gold, from the possession of Umer Farooq and Mussarat Shaheen (appellants 3 and 2). During the investigation, Muhammad Khalid (appellant 1) claimed ownership of the seized gold and asserted that Umer Farooq was merely his representative, who was transporting the gold to his shop in Faisalabad. All three appellants were charged with contravening several provisions

of the Customs Act and the Imports and Exports (Control) Act 1950. By its order dated 29 November 2021, the Collector of Customs (Adjudication), Lahore, confiscated the seized gold and car, allowing the release of the car subject to the payment of a redemption fine. The appellants appealed this order before the Tribunal under Section 194-A of the Customs Act. By its judgment dated 20 December 2022, the Tribunal partially allowed the appeal to the extent of certain pieces of gold that were not found to be of foreign origin and ordered their unconditional release. The Tribunal also ordered the release of the car to its lawful owner upon payment of the redemption fine at the rate of 20% of the customs value. The order of the Collector (Adjudication) was maintained regarding the pieces of seized gold found by the Tribunal to be of foreign origin.

3. Both the appellants and the Collector of Customs preferred customs references against the Tribunal's judgment. During the pendency of these references, the appellants submitted an application to the Collector of Customs (Enforcement), Lahore, seeking implementation of the Tribunal's judgment and contending that its operation had not been stayed by the High Court in the reference proceedings. Receiving no response from the Collector of Customs (Enforcement), the appellants filed a writ petition in the Lahore High Court, praying that the Collector of Customs (Enforcement) be directed to comply with the Tribunal's judgment. The Lahore High Court dismissed the writ petition by its order dated 28 June 2024 ("impugned order"), observing *inter alia* that the appellants could not seek implementation of the Tribunal's judgment since they themselves had assailed it in the reference proceedings. Hence, the appellants have approached this Court through the present petition for leave to appeal.

4. We have heard the arguments of the learned counsel for the parties and have examined the record of the case.

5. As per the facts presented before us, the Tribunal's judgment has not been stayed by the High Court in the reference proceedings. The Tribunal's judgment is, thus, fully operative and executable.¹ In this regard, there is also a Customs General Order

¹ Abdul Hafeez Abbasi v. Managing Director, PIAC 2002 SCMR 1034. In this case relating to Federal Service Tribunal, the Court observed: "[A]fter passing of judgment dated 29-5-2001 by Federal Service Tribunal, PIAC had an obligation to honour it and re-instate the employees ... or if PIAC had any reservation in not implementing the judgment then a stay order should have been obtained by them from

(CGO) No. 2 of 2024, issued by the Federal Board of Revenue in exercise of its powers under Section 223 of the Customs Act, which directs customs officials to implement orders passed by the Tribunal or any other adjudicating forum, except where stay orders have been issued by the next appellate forum. The issue, however, arises when, despite this legal position, the customs officials fail to implement the orders of the Tribunal, even though their operation has not been suspended in the reference proceedings, as in the present case. What remedy is then available to redress the grievance of the person seeking implementation of the Tribunal's order? Does the Tribunal that passed the order have the power to execute and ensure its implementation?

6. There is no provision in the Customs Act that specifically provides for the power of the Tribunal to execute its orders. However, it is a well-established principle of statutory construction, as stated by Maxwell² and approvingly cited by this Court in *Ali Sher Sarki*,³ that where a statute confers jurisdiction, it also grants, by necessary implication, the powers to do all such acts or employ all such means as are essentially necessary for its execution. An express grant of statutory power carries with it, by necessary implication, the authority to do all such acts that are necessary to make such a grant effective.⁴ A statute that expressly confers a substantive power upon a court or tribunal also impliedly grants all incidental and ancillary powers necessary for the effective exercise of that substantive power. These incidental and ancillary powers thus necessarily flow from the express substantive power.

7. There is no doubt that the Tribunal functions as a judicial body within the limits of its jurisdiction. It has all the powers expressly conferred upon it by the statute, i.e., the Customs Act. Furthermore, being a judicial body, it also possesses all those incidental and ancillary powers necessary for the exercise of the jurisdiction conferred upon it and to make fully effective the grant of statutory substantive powers. Such powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal or because its jurisdiction is plenary, but because it is the legislative intent that the power expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully

this Court. Admittedly no stay order was obtained by PIAC, therefore, the judgment of Federal Service Tribunal remained operative.

² Maxwell on Interpretation of Statutes, (11th Ed.) p. 350.

³ *Commissioner, Khairpur v. Ali Sher Sarki* PLD 1971 SC 242.

⁴ Sutherland Statutory Construction, (3rd Ed.), Articles 5401 and 5402.

exercised. The powers of the Tribunal are, no doubt, limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, can only include such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective.⁵

8. As held in *Vishwabharathi*⁶ by the apex court of a neighbouring jurisdiction, a statutory tribunal that has been conferred the power to adjudicate a dispute and pass an order on it also has the power to implement that order. Even if this power has not been specifically spelled out in the statute, it must be deemed to have been impliedly conferred upon the statutory tribunal. Courts and statutory tribunals must be held to possess the power to execute their own orders; for when a court or tribunal is conferred jurisdiction or substantive power to make an order, the power to execute such an order, being ancillary and incidental, is also impliedly conferred by the statute. This is necessary because the jurisdiction or substantive power would be useless if the order passed in exercise thereof could not be executed and enforced. The same principle applies to the jurisdiction and substantive power of the Tribunal under Sections 194-A and 194-B of the Customs Act. The power to execute an order passed under these express provisions of the Customs Act, being ancillary and incidental, is also impliedly conferred upon the Tribunal by the Customs Act. We thus conclude that the Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Sections 194-A and 194-B of the Customs Act. Consequently, since an adequate remedy is provided by law, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the Tribunal.

9. In view of this legal position, we maintain the impugned order of the High Court dismissing the writ petition of the appellants, but for the reasons stated above. The petition is dismissed and leave to appeal is declined. The appellants, however, may approach the Tribunal for execution of the order passed by it, if so advised.

⁵ Union of India v. Paras Laminates (1990) 4 SCC 453. See also Income Tax Officer v. Mohammed Kunhi AIR 1969 SC 430.

⁶ State of Karnataka v. Vishwabharathi House Building Coop. Society (2003) 2 SCC 412. See also M/s Hal v. Commissioner of Commercial Taxes 2014 SCC Online Orissa 71 (DB).

10. A copy of this order shall be sent to the Member (Customs), Federal Board of Revenue, for information and for issuing an appropriate warning or taking suitable action against customs officials who are not adhering to CGO No. 2 of 2024.

Judge

Islamabad,
09th August, 2024.
Approved for Reporting.
*M. Azhar Malik/**

Judge

Judge