

Taxhelpline Case No. 144 of 2013

[SINDH HIGH COURT]

**Constitutional Petition No.D-4040 of 2011, decided on 28th
November, 2012**

Before Aqeel Ahmed Abbasi and Sadiq Hussain Bhatti, JJ

**Omair Nisar for Petitioner. S. Mohsin Imam, Dilawer Hussain,
Standing Counsel and Muhammad Farooq Khan, Law Officer
for Respondents**

Messrs DEWAN CEMENT LIMITED

Vs

**FEDERATION OF PAKISTAN through Secretary, Revenue
Division and 4 others**

ORDER

AQEEL AHMED ABBASI, J.---Through instant petition, the petitioner has sought following relief (s):

(1) This Honorable Court may be please to declare the Impugned Warrant of Attachment bearing No.SI/MISC/33/1995-ACA-E/W-II dated 11-12-2011 issued by the respondent No.5 as illegal, unlawful, without lawful authority, corum non judice and ultra vires the law and the Constitution.

(2) This Honourable Court may be pleased to direct the respondents Nos. 1, 2 and 3 to assist the Learned respondent No. 4 i.e. Customs Appellate Tribunal, Karachi-Bench-III and to provide it with all requisite documents/maps/evidence whereunder the petitioner was granted complete exemption from Taxes and Duties so as to enable the learned respondent No.4 in reaching a just and lawful conclusion of the Appeal No.K-336 of 2006 pending therefore.

(3) This honourable Court may also be pleased to suspend the operation of the Impugned Warrant of Attachment bearing No.SI/MISC/33/1995-ACA-E/W-II, dated 11-12-2011.

(4) This honourable Court may be pleased to declare that the petitioner is legally entitled to the amount of refund to the tune of Rs.55,660,051 being held by the respondent No.5 inter alia illegally, unlawfully and collusively. This honorable Court may further be pleased to declare that holding of the said amount of refund by the respondent No.5 may be deemed to be compliance of the Order of this honourable Court dated 16-6-2011. The said amount, however, may not be adjusted towards the alleged outstanding duties/taxes, till final disposal of the Customs Appeal No.K-336 of 2006 by the learned respondent No.4 subject to appellate rights of any party to such disposal orders.

(5) This honourable Court may be pleased to direct the learned respondent No.4 to fix the subject appeal for 're-hearing' in the light of acceptance and allowing of the Rectification Application vide Order dated 20-1-2010.

(6) This honourable Court may be pleased to direct the respondent No.5 inter alia not to cause any harassment and/or intimidation to the petitioner related to the instant matter or otherwise and the respondents may be directed to withdraw the Impugned Warrant of Attachment forthwith.

Any other relief which this Hon'ble Court deems fit and proper may also kindly be granted.

2. Learned counsel for the petitioner has argued that the Impugned Warrant of Attachment dated 11-12-2011 issued by respondent No.5 for recovery of outstanding dues amounting to Rs.86848760 against the petitioner i.e. Messrs Pakland Cement (Dewan Cement) Limited Karachi, has not been issued under lawful authority, therefore, the same shall be set aside. Per learned counsel, a

substantial amount of refund has been withheld by the respondents, which is required to be adjusted against the impugned demand. Learned counsel has further argued that the impugned demand against the petitioner is otherwise sub-judice before the Customs Appellate Tribunal in Customs Appeal No.K-336 of 2006, therefore, the respondents are not justified to enforce the recovery of such demand through coercive measure till disposal of the above mentioned appeal by the Tribunal. It has been further submitted by the learned counsel that a huge amount of sale proceeds of the consignment of the petitioner is also lying with the respondents, which is required to be adjusted against the impugned demand, however, the respondents are not allowing such adjustment and have issued the Impugned Warrant of Attachment for the recovery of outstanding demand towards duty and taxes. Per learned counsel, the petitioner has already filed C.P. No.D-3000 of 2011, wherein the disposal of the petitioner's goods without complying with the legal provisions i.e. section 82 and section 201 of the Customs Act, 1969, have been impugned and it has been further prayed in that petition that the amount of sale proceeds i.e. Rs.55,660,051 shall be released to the petitioner. While concluding the arguments, learned counsel for the petitioner has submitted that the respondents shall be restrained from recovering the impugned demand, whereas they may be directed to either refund or adjust the above mentioned amount of sale proceeds in respect of auction goods of the petitioner before enforcing the recovery of the impugned demand.

3. Conversely, learned counsel for the respondent No.5 has vehemently opposed the submissions made by the learned counsel for the petitioner and has referred to the comments/objections filed by the respondents in this regard. It has been contended by the learned counsel that the petitioner has approached this Court with unclean hands, whereas huge demand of Rs.88,748,760 towards custom duty and taxes is outstanding against the petitioner since long. Per learned counsel, several opportunities have been given to the petitioner to make payment of the arrears demand, however, the petitioner instead of making such payment has been filing frivolous proceedings either before the Customs Appellate Tribunal or before this Hon'ble Court through Constitutional Petitions. Per learned counsel, similar request of the petitioner seeking stay of

demand was declined by the Customs Appellate Tribunal in Custom Appeal No.K-336 of 2006 vide order dated 15-4-2011 whereby the appellant was directed to deposit the amount of Rs.88,748,760 to the government exchequer within 15 days time in shape of bank guarantee and the respondents were directed not to encash such security till final disposal of the case. However, per learned counsel, the petitioner instead of making payment of the outstanding amount either in cash or through bank guarantee, filed Constitutional Petition before this Court i.e. C.P. No.B-2003 of 2011 seeking somewhat similar relief which has been sought through instant petition. Per learned counsel, the above mentioned petition was disposed of vide order dated 16-6-2011 by consent of both the parties, whereby the petitioner was required to submit bank guarantee to the satisfaction of the Collector of Custom to the extent of 50% of the impugned demand, however, the petitioner has not even complied with such consent order and has filed another petition i.e. C.P. No.D-3000 of 2011 claiming similar relief with the prayer to stay the recovery of impugned demand. It has been contended by the learned counsel for the respondent that the conduct of the petitioner is very dubious, whereas by filing frivolous proceedings, the petitioner has chosen not to make the payment of its legitimate outstanding liabilities towards duty and taxes and the legal process is being abused by the petitioner. Per learned counsel, instant petition, besides being false and frivolous, has been filed to circumvent and frustrate the consent order dated 16-6-2011 passed by this Court in C.P. No.D-2003 of 2011, therefore, the same is liable to be dismissed with heavy cost.

4. We have heard both the learned counsel and perused the entire record. From perusal of the record, it appears that an amount of Rs.88,748,760 towards duty and taxes is outstanding against the petitioner pursuant to orders passed by customs authorities, which has been assailed by the petitioner by filing Custom Appeal i.e. Appeal No.K-336 of 2006 before the Customs Appellate Tribunal. During pendency of such appeal, the petitioner moved an application for stay of demand, which was disposed of by the Customs Appellate Tribunal, vide order dated 15-4-2011 in the following terms:--

"9. The last point raised by the appellant is that unless this

application is granted grave prejudice shall be caused to the appellant and they will suffer irreparable losses. On this point we are of the considered view that according to the decision of this tribunal since 1994-1995 the appellant is liable to pay short levied amount of Rs.88,748,760 on account of duties and taxes payable to the Government, but still in spite of the decision in their favour the government is waiting for the revenue, payable by the appellant, therefore the plea of the appellant for stay that irreparable losses shall be caused to him is unsustainable. However, we after going through the record of the case and keeping in mind, all the circumstance of the case, decide that the appellant has failed to convince that the respondents be restrained from the recovery of the amount payable by the appellant to the Government Exchequer on account of short levied duties and taxes determined by the tribunal, therefore the appellant should pay the amount of Rs.88,748,760 to the Government Exchequer within 15 days time in shape of Bank guarantee. The respondents are directed not to encash this security till final disposal of this matter. Application is hereby disposed of accordingly."

5. The petitioner instead of making payment of the outstanding amount or furnishing bank guarantee of the said amount pursuant to order of the Tribunal, filed a C.P. No.D-2003 of 2011 before this Court, challenging the recovery proceedings initiated in terms of section 202 of the Customs Act, 1969 by the respondents, and seeking stay of the above mentioned impugned demand. The said petition was disposed of by consent of the parties vide order dated 16-6-2011 by a Division Bench of this Court in the following terms.

"16-6-2011

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