Taxhelpline Case No. 166 of 2013

[LAHORE HIGH COURT]

Writ Petition No.6435 of 2009, heard on 21st January, 2013

Before Ibad-ur-Rehman Lodhi, J

Mian Abdul Ghaffar for Petitioner. Muhammad Akhtar Qureshi with Syed Muhammad Ali Rizvi, Deputy Superintendent for Respondents Nos.2 to 8
Messrs YASIR ENTERPRISES through Ch. Basher Ahmed
Vs
FEDERATION OF PAKISTAN through Secretary and 7 others

JUDGMENT

IBAD-UR-REHMAN LODHI, J.---The petitioner imported a consignment of 25 containers declared to be petroleum residue consisting of 3400 drums having net weight of 527000 kilograms from Jeddah Kingdom of Saudi Arabia. After taking samples from such consignment, the Customs authorities found the same as comparable with the High Speed Diesel. This resulted in the issuance of show cause notice dated 27-5-2009, by the Additional Collector in Customs Model Collectorate, Multan and simultaneously registration of a criminal case by means of F.I.R No.01, dated 3-4-2009 in Investigation and Prosecution Branch of Model Customs Collectorate, Customs House, Multan. On the basis of show cause notice, the proceedings on original side were initiated, which culminated into passing of an Order-in-Original No.43 of 2010, dated 4-4-2011.

2. Being aggrieved of the said order, the present petitioner filed an appeal before the Collector of Customs (Appeals), Lahore, which was partly accepted so far as it relates to 14 containers, examined, assessed and cleared by the Customs authorities while the order-in-original in respect of rest of the consignment consisting of 11 containers was maintained vide order dated 10-11-2011, passed in appeal.

3. Such findings were challenged in Custom Appeal No.312-LB of 2011 before the Customs Appellate Tribunal Bench-II, Lahore and vide judgment dated 19-5-2012, the adjudication proceedings, as well as, the superstructure built thereon was declared to be infested with legal infirmities and in violation of the provisions contained in section 179(3) of the Customs Act, 1969, and according to the findings of the Appellate Tribunal, the subsequent proceedings were, thus, declared as void ab-initio and as a consequence thereof, the impugned order in appeal, as well as, order-in-original were set aside.

4. Through the present Constitutional Petition, not only the original proceedings, but also the steps taken in the meanwhile, including the auction of the seized material, registration of a criminal case etc., were called-in-question, and the act of registration of the criminal case against the petitioner without waiting the final outcome of the adjudication proceedings, was sought to be declared as illegal and mala fide on the part of respondents Nos.3 to 8, besides the same being premature.

5. Today, when the parties appeared with reference to the judgment dated 19-5-2012, passed by the Customs Appellate Tribunal Bench-II, Lahore, in Custom Appeal No.312/LB/2011, it has been pointed out that the orders passed in original, as well as, appeal in the adjudicating proceedings, have been set-aside and the remedy as provided under section 196 of the Customs Act, 1969, by filing a reference before this Court, has not been availed within the prescribed period of limitation and, thus, the same attained finality.

6. The adjudicating proceedings were initiated on the basis of a show cause notice dated 27-5-2009 and as noted earlier, the same ended into findings of the Tribunal, wherein such proceedings were declared void ab initio. The findings so arrived at have attained finality.

7. The perusal of F.I.R. No.01, dated 3-4-2009, when considered in

juxtaposition with the show cause notice, it comes out that both contain the same allegations and when in adjudicating proceedings within the departmental hierarchy, the proceedings have been declared as null and void ab initio, how on the same allegations, criminal proceedings could have been allowed to be continued, which in fact were initiated at some premature stage without waiting the result of adjudicating proceedings. The stance of the Department has been proved to be without substance and when the show cause notice has lost its any relevance and efficacy, it cannot be expected from the Criminal Court that on the same facts and same material, it can take some other view.

8. The learned counsel for the respondent-Department has half-heartedly conceded to the position that the findings arrived at by the learned Tribunal have not further been challenged and limitation provided for filing a reference before this Court has also elapsed, yet argued that the petitioner has an alternate remedy by moving an application under section 265-K, of Cr.P.C. before the Criminal Court and on account of availability of such alternate remedy, the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is not competent.

9. While entertaining this writ petition in this Court, it was ordered on 29-6-2010 that proceedings against the petitioner under F.I.R No.01, dated 3-4-2009, shall remain stayed and today I have been told that even the challan in the Criminal Court has not yet been filed. The proposed proceedings under section 265-K of Cr.P.C. can only be pressed, if the challan is pending before a Court and trial has commenced. There is no denial of the fact that trial in the criminal matters commences from the stage, when copies of prosecution documents are supplied to the accused facing trial, which stage had never reached in the trial on the basis of F.I.R No.01 of 2009. As noted above, the requirement of section 265-K of Cr.P.C. is that if the accused facing trial or inquiry, is/are not to be ultimately convicted in view of the trial Judge, then he/they can be acquitted of the charge/charges at any stage. In order to apply the provision of section 265 of Cr.P.C, there must be some charge and as noted earlier, when the trial is not commenced, there was no occasion with the trial Court to frame any charge; thus, it cannot be

said that remedy under section 265-K of Cr.P.C. is available to the petitioner before the trial Court. Even otherwise, after final adjudication by the learned Tribunal with regard to the adjudication proceedings, it would be an illusion to send the petitioner to face trial of almost a redundant matter. This is a proper and fit case, where Constitutional Jurisdiction of this Court is to be exercised.

10. Resultantly, by allowing this writ petition, it is ordered that F.I.R No.01 of 2009, dated 3-4-2009, is liable to be quashed, as there is no possibility of any conviction on the basis of such F.I.R, particularly, keeping in view the outcome of the original proceedings, which culminated in the judgment dated 19-5-2012, passed by the Customs Appellate Tribunal.

11. This petition stands allowed and F.I.R. No.01 of 2009, dated 3-4-2009 is hereby quashed.