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DETAINED GOODS RELEASED – ACTION WITHOUT INFRINGEMENT VALIDATION FROM COMPETENT AUTHORITY

APPELLANT: M/S NAFEEES TRADERS, PESHAWAR.
RESPONDENT: THE ADDITIONAL COLLECTOR –II,
MCC APPRAISEMENT WEST, KARACHI and another.
DECISION: APPEAL ALLOWED.

After being aggrieved and dissatisfied by the order passed by the Additional collector-II Karachi for confiscating the impugned goods and imposing personal penalty of Rs. 25,000/- each on the importer and the Clearing Agent, Appellant filed an Appeal before the Custom Appellate Tribunal on the following grounds:

- That the goods were detained unlawfully without any complaint by the right holder of the trademark “TOSHIBA”, which was a requirement under the Rules 680 to 682 of the Customs Rules, 2001 dated 16-03-2017 and after which an action for seizure of imported goods containing false trade description or counterfeit trade mark could be taken under section 15 of the Customs Act 1969 by the Custom Authorities.
- That the seizure report was issued without holding any joint hearing, which was mandatory under rule 681(3) for identification of infringing goods. Even copies of formal infringement complaint and other necessary legal documents required for lodging a complaint were not provided by the Directorate IPR Enforcement.
- That the seizure was unlawful and uncalled for being in violation of SRO rules. The mark “TONOSHEBA” was visually and phonetically different from “TOSHIBA” and the security deposit which was mandatory, was deposited in the form of bank guarantee after lapse of one and half month. The enforcement right only applied to imported goods and not to parallel or gray market imports.
- That the statutory obligations were knowingly, deliberately not opted for their application during hierarchy of the seizure.
- That the seizure without notice to the Appellant was illegal and an abuse of power in violation of section 24A of the General Clauses Act, 1897.

After perusal of record and arguments advanced by all the parties, the Tribunal observed that the consignment was detained after the report submitted by Deputy Director (IPR), Custom House, Karachi on the ground of containing infringing goods, bearing trademark “TONOSHEBA”, on the basis of application filed by Legal Council of Discover Security Consultants and in the presence of said application the Discover Security Consultants submitted another application



which reflected the element of mala fide cause created by the department for getting undue advantage and ulterior motive, better known to applicant and department. The copy of bank guarantee available on record was contrary from prescribed procedure of law and rules made therein. It was also observed that in the presence of Customs Act under the provisions of which appointment of officers of custom and their powers were defined, the amended rules prescribed vide SRO-170(1)/2017 were trite and there could be no cavil with the statutory conditions and requirements of law. It was further observed that nothing had been concealed by the Appellant as evident from the declaration, which was true and correct in all respect and stood validated from the examination report. Therefore, confiscating the consignment of appellant was without any lawful authority instead in derogation of relevant provisions of the Trade marks Ordinance, 2001.

Thus the Appellate Tribunal held that the detail description given and referred about the intellectual property laws and protection obtained there under by citizens of any country were required to be maintained rightly for equitable justice. It was also the mandate of the court to do justice between the parties in accordance with the provisions of law, as the litigants, who approached the court for the relief were bound to substantiate, that the procedure should be adopted by them in accordance with law, because it was the elementary principle of law that if a particular thing was required to be done in a particular manner, it must be done in that manner, otherwise it should not be done at all. Consequently, the Appellate Tribunal followed the ratio decidendi observed by the superior courts and ordered that the show cause notice and the impugned orders passed during the hierarchy of the customs were infested with patent illegalities and declared it to be null and void and therefore, set it aside and allowed the appeal.

