

IN THE HIGH COURT OF BALOCHISTAN QUETTA.

Custom Reference Application No. 11/2023

The Director, Directorate of Transit Trade, 100-B Chaman Housing Scheme, Quetta.
Appellant.

VERSUS

1. The Customs Appellate Tribunal Quetta Bench at Karachi. 2. M/s E-Movers (Pvt) Ltd. Bonded Carrier (License No. 3113), 52-Takery Colony Feroz Nana Road, Opp. Football Ground, Bath Island, Clifton, Karachi Through their Directors License No. 3113. 3. Driver Zahir CNIC No. 54000-1053098-1 (Absconder Driver), vehicle No. TLH-994 (as per Bonded Carrier manifest), c/o M/s E-Movers, Bonded Carrier Karachi (License No. 3113). Office Address: (1) New Stand Bank of Pakistan, LI Chundrigarh Road, Karachi. (2) 52-Takery Colony Feroz Nana Road, Opp. Football Ground, Bath Island, Clifton, Karachi.
Respondents.

CUSTOMS REFERENCE APPLICATION U/S 196 OF THE CUSTOMS ACT, 1969.

Custom Reference Application No. 12/2023

The Director, Directorate of Transit Trade, 100-B Chaman Housing Scheme, Quetta.
Appellant.

VERSUS

1. The Customs Appellate Tribunal Quetta Bench at Karachi. 2. Mushtaq Ahmed Sheikh s/o Haji Muhammad Piyaral Sheikh R/o 1st Floor, MPS Residency, Bath Island, Clifton Karachi. (Director E-Movers, Clearance Services) License No. 2556). 3. Driver Zahir CNIC No. 54000-1053098-1 (Absconder Driver), vehicle No. TLH-994 (as per Bonded Carrier manifest), C/o M/s E-Movers, Bonded Carrier Karachi (License No. 3113). Office Address: (1) New Stand Bank of Pakistan, LI Chundrigarh Road, Karachi. (2) 52-Takery Colony Feroz Nana Road, Opp. Football Ground, Island, Clifton, Karachi.
Respondents.

CUSTOMS REFERENCE APPLICATION U/S 196 OF THE CUSTOMS ACT, 1969.

Custom Reference Application No. 13/2023

The Director, Directorate of Transit Trade, 100-B Chaman Housing Scheme, Quetta.
Appellant.

VERSUS

1. The Customs Appellate Tribunal Quetta Bench at Karachi. 2. M/s. Abdul Bari s/o Bayan (Private Claimant), CNIC No. 54201-2280847-58 R/o Killi Haji Bayan, Chaman, Balochistan. 3. Driver Zahir CNIC No. 54000-1053098-1 (Absconder Driver), vehicle No. TLH-994 (as per Bonded Carrier manifest), C/o M/s E-Movers, Bonded Carrier Karachi (License No. 3113). Office Address: (1) New Stand Bank of Pakistan, LI Chundrigarh Road, Karachi. (2) 52-Takery Colony Feroz Nana Road, Opp. Football Ground, Bath Island, Clifton, Karachi.
Respondents.

CUSTOMS REFERENCE APPLICATION U/S 196 OF THE CUSTOMS ACT, 1969.

Custom Reference Application No. 14/2023

The Director, Directorate of Transit Trade, 100-B Chaman Housing Scheme, Quetta.
Appellant.

VERSUS

1. The Customs Appellate Tribunal Quetta Bench at Karachi. 2. M/s E-Movers Clearing Agent (License No. 2556), Having place Buisnes at Room No.1 Dinar Chamber, 12-West Wharf Road, Karachi 52/ Takery Colony Feroz Nana Road, Opp. Football Ground, Bath Island, Clifton, Karachi. (3). Mansoor Ahmed Sheikh S/o



Muhammad Piyaral Sheikh, Proprietor of M/s E. Movers (Director) License No.2556, R/o House No.52, Mohallah Bath Island Clifton Karachi. 4. Driver Zahir CNIC No. 54000-1053098-1 (Absconder Driver), Vehicle No. TLH-994 (as per Bonded Carrier manifest), C/o M/s E-Movers, Bonded Carrier Karachi (License No. 3113). Office Address: (1) New Stand Bank of Pakistan, I.I Chundrigarh Road, Karachi. (2) 52-Tinkery Colony Feroz Nana Road, Opp. Football Ground, Bath Island, Clifton, Karachi.

Respondents.

CUSTOMS REFERENCE APPLICATION U/S 196 OF THE CUSTOMS ACT, 1969.

J U D G M E N T

Custom Reference No.11/2023

Date of hearing. 20.03.2023 Announced on 31.03.2023
Appellant by: Mr. Abdus Samee Babar, Advocate,
Respondent No.2 by: M/s. Mazhar Ali Khan & Muhammad Qaseem Khan,
Advocates.

Custom Reference No.12/2023

Date of hearing. 20.03.2023 Announced on 31.03.2023
Appellant by: Mr. Abdus Samee Babar, Advocate,
Respondent No.2 by: M/s. Mazhar Ali Khan & Muhammad Qaseem Khan,
Advocates.

Custom Reference No.13/2023

Date of hearing. 20.03.2023 Announced on 31.03.2023
Appellant by: Mr. Abdus Samee Babar, Advocate,
Respondent No.2 by: M/s. Mazhar Ali Khan & Muhammad Qaseem Khan,
Advocates.

Custom Reference No.14/2023

Date of hearing. 20.03.2023 Announced on 31.03.2023
Appellant by: Mr. Abdus Samee Babar, Advocate,
Respondent No.3 by: M/s. Mazhar Ali Khan & Muhammad Qaseem Khan,
Advocates.



Shaukat Ali Rakhshani, J. The Director, Directorate of Transit & Trade, Quetta ("appellant") has put in the captioned custom references before us seeking relief to nullify the judgment dated 31-10-2022 ("impugned judgment") rendered by the Customs Appellate Tribunal, Quetta Bench at Karachi ("Appellate Tribunal"), whereby Customs Appeal Nos.Q-232, Q-263, Q-264 & Q-283 of 2022 were accepted; penalties imposed upon Bonded Carrier and Clearing & Forwarding Agent

("C&F Agent") and driver were waived off and directions were made to release the confiscated textile fabric and vehicle destined for Spin Boldak Afghanistan through Transit Trade by Bonded Carrier M/s E-Movers (Pvt) Ltd.

2. As the captioned customs references are knitted with similar thread of *lis*, stemming from the common judgment impugned herein, therefore, the same are being decided through this consolidated judgment.

3. Unfurled facts of the case are that a contingent of Directorate of Transit Trade, Quetta on receipt of a credible information that container bearing No.BEAU6039429 loaded with textile fabric carried by a vehicle bearing Registration No.TLH-994 is being unloaded at a private godown on the way from Karachi by multi-modal transit system through Bonded Carrier, namely M/s E-Movers, (Chall No.2556) to Pak-Afghan Border Chaman, henceforth in swift response a team headed by Deputy Director, Customs Transit Trade ("CTT") raided Haji Muhammad Azeem godown, where except a watchman no other person was found present; the tracking device was found affixed, but vehicle with container was found de-sealed and the textile fabric China origin was superseded with Urea Fertilizer bags bearing marks of Fauji Fertilizer Brand on vehicle No.TLH-994. Thus, the Bonded Carrier M/s, E-Movers (Chall No.2556) and driver Zahir of vehicle were held liable for the criminal act of en-route pilferage of bonded goods under transit, as such the respondents were indicted for violation of provisions of section 2(s), 129 of the Customs Act, 1969 ("Act of 1969") read with Rule 641 notified *vide* SRO 450 (I)2001 Customs Rules, 2001 ("Rules of 2001") dated 18.06.2001, further read with Rule 329,338 and 339 of rule *ibid*, punishable under the clause 1, 8, 64 & 39 of section 156(1) & section 157(2) of the Customs Act, 1969.

The recovered goods along with the vehicle were seized under section 168 of Customs Act, 1969 and notice under Section 171 *ibid* were issued. The Collector Customs (Adjudication), Quetta after issuance of show cause notices to the respondents on the addresses pertaining to the seized goods i.e. textile fabric, (polyester printed & dyed fabrics) China Origin, 579 Bales (G.W 26880 Kgs-N.W 26680 Kgs), Fauji Fertilizers (Pak Origin), 800 Bags, vehicle bearing Registration



No.TLH-994, Model 1987, Chassis No.4161141000929, Engine No.635813, Container No.BEAU6039429.

After adhering to the formalities, the matter was fixed for hearing but despite several opportunities, no one entered appearance on behalf of M/s E-Movers (Chall No.2556), except a reply was received thereof.

4. The learned Collector Customs (Adjudication), Quetta by his order-in-original bearing No.12/2022 dated 20-01-2022 confiscated the goods in question along with vehicle and container, which order was assailed by the respondents before learned Customs Appellate Tribunal, Quetta Bench at Karachi, which set-aside the impugned order-in-original and show cause notices *vide* judgment dated 31-10-2022, whereof the captioned customs references have been preferred before this Court.

5. Learned counsel appearing on behalf of the applicants *inter alia* contended that the impugned order rendered by the Appellate Tribunal is illegal, which cannot hold field for being contrary to law and facts. He mainly argued that despite there being an overwhelming evidence, the private respondents have been exonerated from the charge of pilferage and fraud by the Appellate Tribunal merely on the basis that the show cause notice was void *ab-initio*, henceforth, the order-in-original being a result of a void show cause notice was unsustainable. Learned counsel for the applicants also contended that M/s E-Movers Pvt. Ltd, having (Chall No.2556) and M/s e-Movers Pvt. Ltd having (Chall No.3113) are one and the same but to deceive and defraud the Custom authorities, more particularly, the transit trade officials have shown them to be two different entities, but the Appellate Tribunal failed to take into consideration such aspect of the matter, which has made the impugned judgment erroneous and liable to be set at naught.

Whereas on the other hand, Mr. Mazhar Ali Khan, learned counsel for the private respondents strenuously controverted the contentions so put forth by learned counsel for the applicants and urged that the confiscation order was illegal and perverse, which was rightly overturned by the Appellate Tribunal. It was also argued that since no separate show cause notice was issued to the M/s E-Movers (CHALL No.2556) therefore, they were condemned unheard while passing the order-in-



original, which has been corrected through impugned judgment, which needs not to be interfered with.

6. Heard. Record scanned cover to cover. The instant matter relates to transit trade from Karachi to Afghan territory, which is governed by Afghan-Pakistan Transit Trade Agreement 2010 ("APTTA 2010") and SRO.601(I)/2011 dated 13.6.2011 subject to Rules of 2001. In the instant case the private respondents have individually and collectively been held for en-route pilferage of goods, so defined under section 2(s) of the Act of 1969. Rule 599(xxx) defines "office en-route" to be any customs office through which goods in transit pass during the course of a Customs transit operation. It further elaborates that if office of departure is Karachi then the office of en-route shall be Torkhan-Chaman and Afghan Customs office on the other side of the border and the office destination shall be custom station inside Afghanistan where afghan goods declaration is filed. So, undeniably the transit goods cannot be de-sealed within the territory of Pakistan.

The private respondents have been indicted for en-route pilferage as they have brought the textile fabrics in the container, which were to be taken to Afghanistan, but they illegally de-sealed the containers and replaced the same with urea in utter violation of the provisions of the Act of 1969, Rules framed thereunder and policy of the AP TTC 2010. At the relevant time, when the raid was conducted by the contingent of Directorate of Transit Trade Unit neither driver Abdul Zahir of vehicle bearing Registration No.TLH-994 nor any other concerned was found present except watchman of the godown Mohibullah, which fact demonstrates their malice and involvement in the offence of en-route pilferage, showing from their absence as well, besides other factors. Had there been any explanation, someone concerned must have been there to tender explanation to that effect, as such Bonded Carrier as well as the driver were rightly found by the Collector Customs (Adjudication), Quetta to be responsible for en-route pilferage.

7. Likewise, Rule 480 clause (2) enunciates that the transport operator shall be responsible and bound to carry the goods to its destination within prescribed time limit through a designated route. Clause (5) and same rule further enumerates that in case of any accident on the way between office of departure and office en-route, which may cause delay in delivery beyond the specific time, the transport



Handwritten signature and circular stamp, likely an official seal or mark.

operation shall communicate the office of departure and office en-route telephonically or electronically. Rule 641 has also laid responsibility in the similar fashion upon the bonded transport operator. The provisions referred herein before clearly manifests, whereby an obligation and duty is entrusted upon the transit trade officer concerned to supervise, and upon the Bonded Carrier, C&F Agent, in-charge of the transport as well as the driver of the vehicle to proceed from the office of departure to the office of destination i.e. point of delivery of goods, but the Appellate Tribunal has failed to attend to this very aspect and has failed to decide the matter in accordance with the above referred provisions of the Act of 1969 and Rules of 2001.

8. The Appellate Tribunal while setting at naught the order-in-original rendered by learned Collector Customs (Adjudication), Quetta was persuaded that no show cause notice was ever issued to the Directors of M/s e-Movers (Chall No.3113) namely Mr. Azizullah Khan Afridi and Mr. Muhammad Essa Afridi, but penalties were imposed on both the directors, thus they were not afforded an opportunity of a fair trial enshrined under Article 10A of the Constitution. The relevant para (ii) of the order-in-original dated 20.01.2022 reads as under;

"(ii) That from the above it is clear that the learned Adjudication Authority penalized the clearing agent, M/s. E-Movers CHAL 2556 without any reason. We are of the firm view that any show cause notice, or Order -In-Original based on assumption has no legal value and void ab initio. The record also shows that no show cause notice was ever issued to Directors of E-Movers (Pvt) Ltd. (CHAL # 3113) namely Mr. Azizullah Khan Afridi CNIC 42301-3970107-1 and Mr. Muhammad Isa Afridi CNIC No. 42301-7380317-9 but penalties were imposed on both of these Directors."



9. We believe for the foregoing reasons that the Appellate Tribunal has erred and wrongly concluded so, because the perusal of order-in-original No.12/2022 dated 20.01.2022 clearly shows the presence of Mr. Mazhar Ali Khan, Advocate on behalf of M/s e-Movers (Chall No.3113), whereas it also reveals that albeit there was no one in attendance before the Collector Customs (Adjudication), Quetta on behalf of M/s E-Movers (Chall No.2556), but reply was

received, whereby the show cause notice was factually and legally contested, which finds mention in para-7 of the order-in-original No.12/2022.

In such view of the matter, we believe that both the respondents namely M/s E-Movers (Chall No.2556) & M/s e-Movers (Chall No.3113) were not condemned unheard as they had availed their right of audience. Furthermore, in the para above learned Tribunal has mentioned both the companies as "E-Movers" having two different chall numbers, whereas the company with (Chall No.2556) begins with capital "E" but the name of company having (Chall No.3113) begins with small "e", but the Appellate Tribunal has also failed to distinct between both of them.

10. The paramount question revolves around the question as to whether E-Movers are one and the same or two different entities and that whether both are in league with each other are responsible for commission of en-route pilferage. During hearing before the Collector Customs (Adjudication), Quetta, a detailed report was submitted by Mr. Imran Jozeph Inspector Transit Trade, Quetta pertaining to both the companies. The relevant para thereof relating to comparison of the companies reads as under;

M/S E-Movers (CHAL-2556)	M/s e-Movers (Pvt) Ltd (CHAL-3113)
(1) As per record received from AC licensing, WeBOC user ID has been issued to M/s E-Movers (CHAL-2556) against NTN 3997321(Annex-A) and vehicle bearing registration No. TLH-994 was found registered against same NTN 3997321. This NTN pertains to M/s E-Movers (Pvt) Ltd. (Annex-B), therefore, FIR was lodged against it.	(1) On 04.08.2021, M/s e-Movers (Pvt) Ltd as a Customs Bonded Carrier (CHAL-3113) issued Carrier manifest against the GD No. ITTK-AT-2590 dated 26.07.2021 relating to the seized goods in the instant case. (Annex-C)
(2) Screen shot of WeBOC ID received from AC licensing shows that NTN 3997321 appears against both the companies M/s E-Movers and M/s e-Mover Pvt Ltd. (Annex-D)	(2) Screen shot of WeBOC ID received from AC licensing shows that NTN 3997321 appears against both the companies M/s E-Movers and M/s e-Mover Pvt Ltd. (Annex-D)
(3) In a letter of M/s e-Movers (Pvt.) Ltd addressed to the Deputy Collector, Licensing & Appraisalment, Custom House, Karachi dated 27.09.2013, a request has been made as Custom Agent License No.2556 stating that they were performing the business of bonded carrier vide CHAL No. 2556. If it would have been an error then why	(3) M/s e-Movers (Pvt) Ltd submitted a bank guarantee No. 0042LG130191 vide their letter No. Sub/2556/Guarantee dated 28.03.2019 as security of Custom Bonded Carrier against license No. 2556. (Annex-F)



the said M/s e-Movers (Pvt.) Ltd had not applied for correction. (Annex-E)	
(4) As per Active Taxpayer List (ATL), NTN 2469383 has been allotted to M/s E-Movers (CHAL-2556) (Annex-G). Furthermore, Taxpayer registration profile indicates that M/s E-Movers having NTN 2469383-9 is AOP and owner is Mansoor Ahmed Shaikh (Annex-H)	(4) As per ATL, NTN 3997321 has been allotted to M/s E-Mover (Pvt) Ltd. (CHAL-3113). (Annex-I) Furthermore, Taxpayer registration profile indicates that M/s E-Movers (Pvt) Ltd having NTN: 3997321-2 is a company and owner is Muhammad Isa Afridi. (Annex-J)
(5) M/s E- Movers was nominated in FIR on the basis of WeBOC record found in the system as Bonded Carrier CHAL No. 2556 as provided by the Assistant Collector Licensing (Annex-A)	(5) Letter of M/s e-Mover (Pvt) Ltd dated 27-09-2013 clearly reveals on the letter head as "Custom Bonded Carrier" in reference they have also written "Custom Agent License No. 2556 and also stated thereunder as: "We are performing the business as a Bonded carrier vide license No. 2556". (Annex-E)
(6) Vehicle bearing registration No. TLH-994 was found registered against M/s E-Movers (Pvt) Ltd bearing NTN 3997321 (Annex-B), therefore, FIR was lodged against them.	(6) Vehicle bearing registration No. TLH-994 was found registered with the bonded carrier M/s e-Movers Pvt Ltd. (CHAL-3113) as confirmed by the Deputy Director Transit Trade, Karachi (Annex-K)

The above table shows that both the companies are distinct but are being managed and run by persons in league and collaboration with each other having same interest to cook up stories of shifting blames on each other with the purpose to create confusion and get benefit thereof to commit fraud and play with the system, which has further been elaborated with various details mentioned in para-26 of the order-in-original passed by Collector Customs (Adjudication), Quetta.



11. The perusal of the document "Carrier Manifest" shows that the goods in question were booked by e-Movers Pvt. Ltd (Chall No.3113) having container No.BEAU-6039429, GD No.ITTK-AT-2590 dated 26.07.2021 Vehicle No.TLH-994 Driver Zahir (CNIC No.54000-1053098-1), whereas E-Movers (Chall No.2556), while contesting the show cause notice before Collector Customs (Adjudication), Quetta distant itself, showing no concern with the goods in question.

12. As discussed hereinabove, both the companies to deceive and create confusion have registered the companies with identical titles, which obviously needs to be probed into and investigated thoroughly as to how both the companies have been issued identical titles, who are actually distinct identities with similar address, fax numbers, landline numbers in contravention to trademarks and intellectual property rights.

13. In wake of the above, we are of the considered view that the order-in-original No.12/2022 dated 20-01-2022 drawn by Collector Customs (Adjudication), Quetta has been passed correctly in accordance with law and facts, whilst the impugned judgment dated 31-10-2022 penned by Appellate Tribunal suffers from legal infirmities, has been found by us to be erroneous and perverse, having been passed on the basis of wrong conclusion and facts, which merits to be overturned and the order-in-original No.12/2022 dated 20-01-2022 is liable to be maintained.

14. Corollary, the Customs References No.11, 12, 13 & 14 of 2023 are allowed, the impugned judgment dated 31-10-2022 passed by Appellate Tribunal is set aside, and in consequence thereof the order-in-original No.12/2022 dated 20-01-2022 handed down by Customs Collector (Adjudication) Quetta is maintained with further direction to the Chief Collector Customs to initiate a thorough probe and investigation with regard to the identical titles i.e. M/s E-Movers (Chall No.2556) and M/s e-Movers Pvt. Ltd having (Chall No.3113) being violative of law and proceed against them accordingly so to avoid any confusion and misuse of similar identities.



SD/-SHAUKAT ALI RAKHSHANI
JUDGE

SD/-MUHAMMAD HASHIM KHAN KAKAR
JUDGE

Announced in open Court:
This 31st day of March 2023.

Sharifullah
SHARIFULLAH
Assistant Registrar
(Judicial DB)
High Court of Balochistan
Quetta.