

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 640 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
1. For order on office objection No. 25. 2. For hearing of CMA No. 3141/2019. 3. For hearing of main case. 4. For hearing of CMA No. 3142/2019	

28.11.2025

Mr. Khalid Mehmood Rajper, advocate for applicant.
Mr. Ghulam Sarwar Thebo, advocate for respondent.

On 03.10.2025, following order was passed:-

“03.10.2025

Mr. Khalid Rajper, advocate for the applicant.

1. Deferred.
2. Exemption granted subject to all just exceptions.
- 3&4. Per learned counsel the respondent never appeared before adjudicating authority, yet the appellate forum decided in its favour. Counsel states that at best the appellate tribunal ought to have been remanded the case back to the adjudicating authority to consider the case of the respondent, however, no case arose to unilaterally accept the respondents plea. Counsel relies on Division Bench judgment dated 01.02.2021 passed in SCRA 771 of 2019. Operative part is reproduced as follows:

4. We have heard both the learned Counsel and perused the record. It appears that the Respondent at the time of seizure of the vehicle in question had furnished various documents including Delivery Order No. 6176 dated 05.12.2014, some auction Certificate, photo copy of the Bank Voucher and photo copy of Gate Pass. These documents when forwarded for verification, were found to be fake and bogus. It is also a matter of record that the Respondent never contested the matter before the Adjudicating Authority which passed the following order:-

“11. I have examined the case record and show cause notice. The owner / possession holder of the seized vehicle could not provide any legal import documents or evidence to provide lawful import of the seized vehicle. As per verification conducted by the detecting agency with PRAL database, no record has been found with respect to the import of the seized vehicle. The auction documents of the vehicle were also declared as fake by Deputy Collector MCC-Appraisement (East) Karachi, vide his Letter No. C.No.379/DET/ASO/2018/2969 dated 27.07.2018. Therefore it is established that the seized vehicle is smuggled one and has been brought into the country without payment of Customs Act, 1969 as leveled in the Show Cause Notice stand established. I, therefore, order outright confiscation of the seized vehicle “Mercedes Benz Car (S550 Series bearing Registration No. CZ-672 (Islamabad), Chassis No. WDD221712A142065, Engine No. Not Visible. Model 2007, Horse Power 5500CC” for violation of provisions of Customs Act, 1969 as mentioned in the instant show cause notice.”

5. The Respondent then preferred Appeal before the Appellate Tribunal and from perusal of the impugned order we have not been able to understand and convince ourselves as to how the above findings regarding fake and fabricated documents produced by the Respondent has been overturned by deciding the Appeal in his favour. Not only this, it is a matter of record that this vehicle has no Engine Number as the same is not visible. Moreover, while confronted, the learned Counsel for the Respondent has conceded that these documents are normally fake; but has made an attempt to argue the case on some legal settled principles of law. Wee may observe that there cannot be any cavil to any such settled principle of law; however, they will only come into force; and to the rescue of a person against whom there is an allegation of possessing a smuggled Vehicle, when he comes forward with documents to discharge the initial burden. In this matter, when it is admitted and has gone unrebutted that these documents are fake and fabricated, no case is made out by the Respondent and the Tribunal has seriously erred in allowing the Appeal.

6. In view of hereinabove facts and circumstances, Question Nos.. 2 7 3 are answered in negative, in favour of the Applicant and against the Respondent, whereas, Questions No. 1, 4 & 5 need not be answered. This Reference Application is allowed. The impugned order of the Appellate Tribunal stands set

aside. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.”

Admit reference; notice to the respondent; to come up on 17.10.2025. In the meanwhile, operation of the impugned judgment dated 16.04.2019 passed in Customs Appeal Nos.H-58/2019 is suspended.

Office is also instructed to place copy hereof in the connected file.”

Today, learned counsel for the respondent is present and states that it may be just and proper and in the interest of all parties concerned for the impugned judgment to be set-aside and matter be remanded back to the Collector (Adjudication) for adjudication afresh in accordance with law. Order accordingly.

A copy of this order may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

Ayaz p.s.