

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. CrI. Acq. Appeal No.20 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : Collector, Model Customs Collectorate,
through Mr. Ashiq Ali Anwar Rana,
Spl. Prosecutor Customs.

Versus

Respondent No.1 : Haji Abdul Razziq
Respondent No.2 : Special Judge (Customs, Taxation &
Anti-Smuggling) at Karachi.

Date of hearing : **16.11.2020**

Date of Decision : **25.11.2020**

JUDGEMENT

NAZAR AKBAR, J:- This Spl. CrI. Acq. Appeal is directed against the judgment dated **01.10.2019** passed by the Special Judge (Customs & Taxation) Karachi in **Case No.51/2017** whereby the trial Court has acquitted Respondent No.1.

2. Brief facts of the prosecution case are that M/s. Haji Abdul Raziq & Brother imported various consignments of Old and Used Hino Trucks/Sprinkler Lorries and filed Goods Declaration for release of these vehicles through their clearing agent M/s. Speedy Enterprises. As per Import Policy Order, 2013 notified vide SRO 193(I)/2013 dated 8th March, 2013, import of Sprinkler Lorries was permissible in terms of clause 10(iv) of Appendix-C of Import Policy Order, 2013 which allows import of vehicles only not more than 5 years old. However, this condition was not applicable on the imports against Letter of Credit (L/C) opened prior to the issuance of said

order. The importer sought clearance of the imported consignments of Old and Used Hino Trucks/Sprinkler Lorries in terms of para-4 of the above SRO on the basis of their original LC opened on 23.01.2013, amounts thereof enhanced from time to time, through amendment in LC. The Federal Board of Revenue vide its letter C.No.1(10)/Tar-III/2008/131740-R dated 30.09.2013 directed to withhold clearance LC dated 23.1.2013 opened prior to 08.03.2013 subsequently amended after 08.03.2013, was received from the Ministry of Commerce and the State Bank of Pakistan. The Importer, M/s.Haji Abdul Raziq & Brothers challenged the stoppage of clearance before the Hon'ble High Court, Islamabad by filing a Writ Petition No.3795/2013. In compliance of the Hon'ble High Court's order, on furnishing the postdated cheques by the importer, the vehicles were released. However, the Hon'ble Islamabad High Court vide its judgment dated 07.4.2014 dismissed the Writ Petition. In view of Hon'ble Islamabad High Court's order, the securities in the form of postdated cheque Rs.60 million furnished by M/s.Haji Raziq & Brothers were sent to the Bank M/s.National Bank of Pakistan, SITE, Area Branch, Hyderabad for encashment. These Post-dated-Cheques were returned by the Bank with the remarks "insufficient funds". Thus the FIR bearing Crime No.86/B.G.Cell/MC/Hyderabad for an offence under Section 156(1)(14)(14-A) was lodged for committing fiscal fraud under Section 32A & 95A of the Customs Act, 1969.

3. After usual investigation, charge was framed against accused/respondent No.1 to which he pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **01.10.2019** acquitted accused/Respondent No.1 by extending him

benefit of doubt. Therefore, the appellant/State has filed instant Special Criminal Acquittal Appeal against the said judgment.

4. Learned counsel for the appellant has filed written arguments, in which learned counsel contended that Respondent No.1 committed offence from the initial stage of his illegal import nearly to hoodwink the concerned Government Department by filing "Goods Deceleration" electronically by misstating the facts and on illegal documents, thus committed fraud falling Under Section 32(1) 32A(1)(a) of the Customs Act, 1969. The act of filing false and forged security in shape of various cheques in compliance of the interim order of Hon'ble High Court of Islamabad, which have been bounced when presented before the concerned bank as is evident from bank statement, tantamount to committing fraud and violation of penal clause 95A of section 156(1) of the Customs Act, 1969.

5. It is further averred that respondent No.1 had submitted postdated cheques on the interim order passed by the Hon'ble Islamabad High Court on 07.04.2014 in in CP No.3795/2013 filed by the Respondent No.1 which was dismissed. Respondent No.1 produced copy of order dated 05.9.2013 passed in the CP No.D-3293/2013 and tried to misguide the department that recovery against the accused was stayed. It is averred that said petition was filed on valuation dispute which has no relevancy with the cheques deposited by the accused. Therefore, Respondent No.1 was legally bound to facilitate the department to encash to postdated cheques deposited in compliance of Interim Order.

6. It is further averred that Respondent No.1 has not only defrauded the department but caused loss to national exchequer and also hoodwinked the Hon'ble High Court and get interim relief

regarding release of subject vehicles by furnishing post-dated cheques with intent not to pay the amount. He further contended that Respondent No.1 may be convicted by setting aside the impugned order.

7. I have perused the record as well as written arguments submitted by the learned counsel for the appellant.

8. The perusal of the impugned order shows that the learned trial Court has rightly observed that:-

.....“if there is no liability existed for the release of the vehicle then need for encashment of surety was not at all aroused. The Hon’ble High Court of Sindh even in its order dated 06.02.2018 has gone to the extent of refunding the surety/security obtained from as many as six different importers including the present one. If this security was liable to be returned back to the importers then what offence remains alive in this FIR.”.....

.....“There is no arrears, now outstanding against the accused. The value of the vehicles has been accepted which is declared by the importer.”.....

.....“Nonetheless the Hon’ble Islamabad High Court had not permitted the Customs Authorities for encashment of surety/security but Customs Authorities acted at its own initiative by trying to encash this surety without getting the amount adjudged by the competent forum nor getting any orders from the Hon’ble Islamabad High Court for encashment of these securities. The Appellate Tribunal has not adjudged any amount liable to be furnished by the importers. Even otherwise the post-dated cheques were submitted before Hon’ble Islamabad High Court, neither Bill of Lading nor Goods Declaration, etc are false or forged, there is no outstanding amount against the accused, there is no loss to the Government Exchequer, even the refunds cheques have been issued by the Customs Authority, therefore, Section 32 & 32(1) of the Customs Act, 1969 are also not applicable in the instant case.”.....

.....“The basic foundation of these cases has been shaken the structure built thereon is liable to fall. In view of the findings given by the

Hob'ble High Court there is no chance of conviction of accused.".....

9. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Spl. Crl. Acq. Appeal is dismissed.

JUDGE

Karachi
Dated: **25.11.2020**

SM