

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application No. 446 of 2019

<i>Date</i>	<i>Order with signature of Judge</i>
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Priority.

1. For orders on office objection No. 34.
2. For orders on CMA No. 2501/2019.
3. For hearing of main case.
4. For orders on CMA No. 2502/2019.

04.02.2021:

Mr. Muhammad Rashid Arfi, Advocate for Applicant

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Mr. Abdul Latif Chandio Advocate files Vakalatnama for respondent, which is taken on the record.

Through this Special Customs Reference Application, the Applicant has impugned judgment dated 18.02.2019 passed by the Customs Appellate Tribunal at Karachi, in Customs Appeal No. H-220 of 2018, proposing various questions of law.

Learned Counsel for the Applicant has read out the judgment and submits that the respondent has failed to produce any goods declaration and or import documents to discharged the burden as the Vehicle in question was a smuggled Vehicle, and therefore, the Tribunal was not justified in passing the impugned judgment.

On the other hand, learned Counsel for respondent has supported the impugned judgment.

We have heard both the learned Counsel and perused the record. The Vehicle in question was seized on the ground that it was a smuggled Vehicle, whereas, allegedly, the Respondent had failed to produce documents of its lawful proof and import. The show cause notice was adjudicated by way of an Order against the Respondent and in Appeal the Tribunal has allowed the same through the impugned order in the following terms:

“6. Arguments heard record perused. The appellants in this case has taken a firm stand that the impugned vehicle was earlier completely burnt in an accident in which a trawler carrying 15 cars was

caught fire and due to leakage of oil from the tanker many vehicles which were struck at the back of the trawler were also burnt resulting into death of 2 persons and may were injured at the spot. Regarding the incident an FIR No. 145/2010 was lodged at Police Station, Gadap City, District Malir under section 320/427 PPC on 07.09.2016. Copy of FIR is available on the record. To verify the contention of the appellant, the learned departmental representative (DR) was asked to visit the said Police Station and to confirm whether the registration number of the subject vehicle was rightly mentioned in the above mentioned FIR and other details of the said incident. The DR on the next date of hearing appeared and had made a statement that he was himself verified the contents of the FIR from the said Police Station according to him the Mazda Truck No. JY-1390 was found mentioned in the record of the case as completely burnt vehicle. The learned Counsel for the appellant was also produced a verified certificate issued by the Sindh Engineering Company according to which the said Company has undertaken as under:

"These vehicles have been fabricated / imported by us and all government dues such as Customs Duty, Sales Tax etc. have already been paid on the above vehicles."

7. It is also established from the record that the impugned vehicle was sent to Khalil Motors (Authorized Dealers of Sindh Engineering Company) who further sold it to Mr. Noor Habib s/o Hyder Shah. It is also pertinent to mention that the invoice papers of the said vehicle were also re-verified by Sindh Engineering (Pvt) Ltd vide letter dated 25.10.2018 which is also available on file. The learned DR was also directed to enquire / verify that whether registration of any other vehicle is available against the same chassis number to which his answer was in negative which shows that the re-punching of the same chassis number on the same vehicle is definitely due to the reason that it was completely burnt during the above mentioned incident. The appellant also produced sale receipt issued by N.R. old Spare Parts, Shop No. 1 Bismillah Godown Near AGS Battery Company, Sher Shah, Karachi from whom the appellant purchased the spare parts and accessories which were used for reconditioning of the said vehicle.

8. In view of what has been discussed above it is established beyond any shadow of doubt that the impugned vehicle was legally imported into the country and was part of the incident earlier discussed. The appeal is accordingly allowed with direction to respondent to release the impugned vehicle to its lawful owner, with no order as to cost."

Perusal of the aforesaid findings reflects that the Tribunal after a detailed factual ascertainment and inquiry, has come to a definite conclusion that the Vehicle in question was owned by the respondent as a subsequent purchaser, and the reasons for re-punching of a same chassis number as alleged, was due to an accident, which was duly reported through FIR No.145/2010 registered at PS Gadap, Malir, Karachi. It is also a matter of record that Applicant through its representative confirmed the contents of the FIR and the fact that the same Vehicle was involved in such accident; hence, mere re-punching of the same / identical chassis number would not ipso facto make it a smuggled Vehicle. It is further available on the record that the Vehicle in question was initially sold by Sindh Engineering Company Limited which at the relevant time was the manufacturer and seller of Mazda Trucks, and when approached for reverification, it responded in favor of the Respondents claim vide its letter dated 25.10.2018. These facts on record have not been controverted before us in any manner.

In our considered view, the matter is entirely dependent upon factual aspect which has been dealt with properly by the Tribunal; hence no question of law arises out of the impugned judgment. Accordingly, this Special Customs Reference Application being misconceived is hereby dismissed along with pending applications. Let copy of this order be sent to the Tribunal in terms of section 196(5) of the Customs Act, 1969.

J U D G E

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Aamir, PS