

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Mahmood A. Khan

C.P. No. D-5756 of 2019

Abdul Hameed Sheikh
 Versus
 Federation of Pakistan & another

ALONG WITH

Special Customs Reference Application No.704 of 2019

Director, Directorate General
 Intelligence & Investigation (Customs)
 Versus
 Abdul Hameed Sheikh & another

Date of Hearing:	24.11.2021
Petitioner in CP & respondent No.1 in SCRA:	Through Ms. Dil Khurram Shaheen Advocate
Applicant in SCRA and Respondent No.2 in petition:	Through Mr. Muhammad Khalil Dogar Advocate.
Respondent No.1/ Federation in petition:	Through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General along with Mr. Hussain Bohra, Assistant Attorney General.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Through this common judgment we intend to dispose of Special Sales Tax Reference Application and the connected petition as the same involve common question and for the sake of convenience the Reference Application is being treated as leading matter and the answers to the question proposed therein will decide the fate of the petition as well.

2. Special Customs Reference Application has been filed by the department wherein order of the Tribunal dated 28.06.2019 has been challenged.

3. Mr. Muhammad Khalil Dogar, learned counsel appearing for applicant department, submitted that the findings and the conclusion of

the Tribunal could not be reconciled with the evidence as the same are totally contrary to the evidence available on record. He has taken us to a letter of Motor Registration Wing, Government of Sindh, available as Annexure 'D' at page 57, which disclosed that the subject registration of vehicle i.e. GP-3508 is for a Toyota Crown whereas the registration book allegedly relied upon is of Toyota Surf Station Wagon. Department itself claimed to have taken into custody Toyota Surf SUV.

4. Mr. Dogar has also relied upon a letter/certificate of Deputy Collector (Headquarters) titled as "to whom it may concern" that a vehicle having registration No.GP-3508, with same chassis and engine number as of the subject vehicle, is with the department and is allocated for operational and protocol duties at headquarter.

5. Learned counsel appearing for the respondent contended that tax slip suggests registration of a particular vehicle and registration book attached leaves no doubt about the vehicle being smuggled one.

6. We have heard the learned counsel and perused material available on record.

7. The findings of the Tribunal contained in paragraph 15 of the impugned order are not at all reconcilable with:

- (a) Registration book of subject vehicle being claimed by the respondent is of Toyota Surf Station Wagon and
- (b) The Motor Vehicle Possession Slip, issued by the Motor Registration Wing, Government of Sindh, which disclosed that the registered vehicle as GP-3508 is in fact Toyota Crown whereas
- (c) A vehicle with the same registration number is also claimed to be in operational/protocol duties at customs headquarter.

8. We are unable to reconcile all such data in the impugned order. Registration with GP number suggests that it is government owned vehicle and an individual has come forward for its release. The case of the applicant

in the show-cause notice is that the subject vehicle Toyota Surf Jeep having registration No.GP-3508 was not lawfully imported but in fact a smuggled one. Had it been registered then perhaps the lawful presumption would have attached to such registered document but no such document constitute evidentiary value for the purposes of the impugned order passed by the Tribunal as such data of all the aforesaid documents are different and distinguishable and are not reconcilable. The impugned orders, at least of the Tribunal, is not clear at all, particularly as to on what basis the vehicle is being released as the Motor Vehicle Tax Slip, Annexure-D to the memo of Reference, discloses the identity of the subject vehicle as Toyota Crown as against claimed vehicle Toyota Surf Jeep.

9. Thus, we deem it appropriate to remand the case to the concerned Collector who passed the Order-in-Original. Accordingly, the Reference Application is allowed, the two orders passed by the forum below are set aside and the case is remanded to the concerned Collector for a *De Novo* proceedings with directions that all relevant documents, be officially called/produced, either by the parties or by the concerned department, whereafter appropriate orders in accordance with law be passed.

10. Connected petition, in view of above observation, also stands disposed of accordingly.

11. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-III, Karachi, as required by section 196(5) of Customs Act, 1969.

Dated:

Judge

Judge