

IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No.D-5596 of 2020

M/s Zarif Khan Hussain Zai & Brothers
Versus
Federation of Pakistan & another

ALONG WITH

Special Customs Reference Application No.246 of 2020

The Collector of Customs
Versus
Zareef Khan

Date of Hearing:	06.12.2021
Petitioner in CP & respondent in SCRA:	Through Sardar Muhammad Ishaque Advocate
Applicant in SCRA:	Through Mr. Khalid Rajpar Advocate.
Respondent No.1/ Federation in petition:	Through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General along with Mr. Hussain Bohra, Assistant Attorney General.
Respondent No.2 in CP:	Through Ms. Masooda Siraj Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Through this common judgment we intend to dispose of Special Customs Reference Application under section 196 of Customs Act, 1969 and the connected petition as they involve common questions and for the sake of convenience the Reference Application is being treated as leading matter and the answer to the questions proposed in the Reference will decide the fate of the petition as well, which was filed for compliance/implementation of Tribunal's order.

2. Respondent imported two used Hino Concrete Transit Mixer Trucks YOM 2012 in terms of Import Policy Order 2016. A show-cause was

however issued on 24.12.2016. It (show-cause notice) disclosed that reference GD was selected for scrutiny in terms of Section 80 of Customs Act, 1969 and was referred for examination to confirm description, quantity and other physical attributes of the goods. The examination Committee reported, as summarized in paragraph 3 of the show-cause notice, that “as per VIN Decoder (VIN-INFO) the subject chassis number manufacturing year is indicated as 2006” which are more than five years old, which is not importable in terms of Para 9 and Sub-Para 5 of the Import Policy Order 2016 and hence vehicle was liable to be confiscated.

3. The Order-in-Original proceeded for outright confiscation of the two vehicles along with penalty. The order was challenged before Customs Appellate Tribunal which allowed the appeal of the respondent setting aside the Order-in-Original hence this Reference along with petition for implementation of the order.

4. We have heard the learned counsel appearing for the parties and perused material available on record.

5. Hino Concrete Transit Mixer Trucks (Japan) were imported under Import Policy Order of 2016. Clause 9(ii)5 of Import Policy Order 2016 provides that the construction companies, mining, oil, gas and petroleum sector companies are also allowed to import specialized vehicle-mounted machinery and transport equipment such as mobile transit mixer, concrete pumps, crane lorries, concrete placing trucks, dumpers designed for off highway use, cement bulkers and prime movers ‘280’ HP and above, etc. including those specified in Appendix-I. Policy further provides that Import of said specialized machinery or transfer equipment as mentioned above shall however be subject to prior pre-shipment inspection in the exporting country from any of the internationally recognized pre-shipments inspection companies listed at Appendix-H to the effect that the said machinery or transport vehicles

are (a) Euro-II compliant (b) manufactured as such by Original Equipment Manufacturer (OEM); and (c) not older than five years.

6. Let us now see whether the goods, as imported by the respondent, fulfill the conditions highlighted above. Appendix 'H' of Import Policy Order 2016 provides list of Pre-shipment Inspection Companies which includes M/s SGS whose certificate was provided by the respondent at the time of import. The Committee, allegedly constituted for compliance of Import Policy Order 2016, however considered the manufacturing year of the vehicle as 2006 on the basis of seatbelt, which perhaps is extraneous consideration; there is no serious challenge to the pre-shipment report of M/s SGS which is one of the pre-shipment inspection companies, as structured in Appendix 'H' of Import Policy Order 2016. There has to be material of evidentiary value to form a different view than the one disclosed in M/s SGS certificate.

7. The above referred inspection report was verified by the customs officials who confirmed the same to be genuine. The eligibility of the respondent company in terms of certificate of Pakistan Engineering Council was also satisfied in terms of certificate attached, which was also valid till 31.12.2016, which verified that Zareef Khan Hussain Zai & Brothers to whom licence was issued for the construction and operation of engineering works were obliged to undertake and operate engineering works till the validity of such certificate. Applicant's counsel did not dispute that the respondent (Zareef Khan) is proprietor of "Zareef Khan Hussain Zai & Brothers".

8. M/s SGS certificate disclosed the model year as 2012 which was importable when goods declarations were filed as it was not older than five years at the time of import in terms of SGS certificate. The challenges to such certificate as far as model year is concerned, would then take us to factual controversy which perhaps is not the mandate of

this Court under Reference jurisdiction under section 196 of Customs Act, 1969. Even otherwise no evidence of any nature is filed with this Reference to disclose that the manufacturer of Hino (Japan) has disclosed the year of its manufacture as other than 2012 hence entering into such debate at the reference stage is not permissible under the law unless satisfactory evidence is available on record.

9. The report of Hino Pakistan (Assemblers), allegedly relied upon by the applicant is not of Hino manufacturer Japan but in fact is of a local assembler of Hino whose office is situated at Manghopir Road, SITE, Karachi, hence in presence of requisite document, as required under Import Policy Order 2016, such letter could only be an extraneous material which was rightly not taken into consideration by the Tribunal. The questions of law, as framed, are thus answered in favour of the respondent and against the applicant. Resultantly Special Customs Reference Application is dismissed whereas petition is allowed in these terms.

10. Above are reasons of our short order dated 06.12.2021 whereby Special Customs Reference Application was dismissed whereas petition was allowed.

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-II, Karachi, as required by section 196(5) of Customs Act, 1969.

Dated:

Judge

Judge