

IN THE HIGH COURT OF SINDH AT KARACHI

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

C.P. No. D-8570 OF 2019

Nisar Ahmed
Versus
Federation of Pakistan & others

ALONG WITH

Special Customs Ref. Application No.22 of 2020

The Collector Model Customs Collectorate
Versus
Nisar Ahmed & another

Date of Hearing:	16.12.2021
Petitioner in CP & respondent in SCRA:	Through Ms. Dil Khurram Shaheen Advocate
Applicant in SCRA:	Through Mr. Muhammad Bilal Bhatti 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 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. This Reference was argued by the department mainly on the questions:-

(1) As to whether the appellate Tribunal was justified to hold that the seizing agency has failed to comply with the provision of law and the proceedings as envisaged under section 26 of Customs Act, 1969? and

(2) Whether on account of tampered chassis number, the vehicle is required for outright confiscation and be declared as smuggled one?

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

4. At the very outset we have enquired as to how these questions could arise when the show-cause notice is absolutely silent about the propositions as raised in the proposed questions, for which no reasonable answer was extended.

5. We have perused the impugned judgment passed by the Tribunal which had impliedly set aside the Order-in-Original as the vehicle was directed to be released unconditionally subject to verification of documents of ownership. The concluding paragraphs of the impugned judgment are as under:-

“7. I have heard arguments of the learned counsel of the appellant as well as examining the relevant record. The study of impugned Order-in-Original reveals that the seized Toyota Hiace was confiscated outright by the learned adjudicating authority, on the charge of smuggled and also because “the piece of chassis frame bearing seized is welded and replaced at the site of original chassis number”, as per FSL report. The seizing agency failed to comply with the provision of law and proceedings envisaged under section 26 of the Customs Act, 1969. Admittedly no notice under section 26 of the act was served to the relevant quarters including the Motor Registration Authorities and the Deputy Collector of Customs, MCC Hyderabad who carried summary adjudication and passed Order-in-Original No.35/2013 dated 23.03.2013 to redeem/regularize the under reference vehicle on payment of leviable duties and taxes under SRO 172(I)/2013, dated 05.03.2013. I have perused the show cause notice dated 19.02.2019 which not reflects the original chassis number of the vehicle claimed as replaced. In view thereof, the learned adjudicating

authority has travelled beyond the domain of show cause notice. The Superior Courts have taken serious view for taking penal action on points/issues which are not part of the show cause notice. In the aforesaid circumstances, it would not be fair to confiscate the vehicle outright because it negates the spirit of Articles 4, 24 and 25 of the Constitution of Islamic Republic of Pakistan. More importantly, it would not be lawful to deprive a person of his property unless his implicit or explicit involvement in the act of smuggling is proved. The respondent department has not established any mens rea on the part of the appellant.

8. In view of above, the confiscated Toyota Hiace Van bearing registration Number JF-8453 is allowed release unconditionally subject to verification of the documents of ownership/claimant of the vehicle. The impugned Order-in-Original is set aside and the appeal is allowed.”

6. The subject vehicle was undisputedly registered with the Motor Registration wing and no correspondence was made with the concerned department registering the vehicle as to whether the related documents of import were/are available with the department at the time of registration of this vehicle. In the absence of such clear evidence and inaction on the part of the department, it cannot be presumed, solely on the basis of alleged tampering of the chassis number, that it (the subject vehicle) is smuggled one. It may at the best lead to a case of stolen vehicle but it does not give presumption that it is smuggled one when undisputedly the vehicle was registered with the Motor Registration Wing and no communication contrary to above is available. The presumptions of a lawful import is attached when the vehicle is claimed to have been registered unless the department prove otherwise that either it was fake registration or fake import documents on the basis of which vehicle was registered which is not the case here.

7. More importantly during detention period when the owner of the vehicle namely Nisar Ahmed son of Jameel Ahmed, the respondent herein, produced copy of all documents of Amnesty Scheme 2013 and showed payment of duties and taxes through Amnesty Scheme in the

name of Hameedullah son of Din Muhammad, no exception was made by the department.

8. There is not an iota of evidence available to disagree with the observation of the Tribunal which ordered its (vehicle's) release unconditionally however subject to verification of ownership. This being situation no question has arisen to deviate from the findings of the Tribunal and proposed question No.1 is answered in affirmative as the seizing agency has failed to comply with the provisions as required under section 26 of Customs Act, 1969 whereas the proposed questions No.2 is irrelevant for the purpose of declaring the subject vehicle as an smuggled vehicle.

9. Upshot of the above discussion is that Special Customs Reference Application is dismissed as held by a short order whereas petition, which is filed for implementation of the impugned judgment of the Tribunal, is allowed as prayed.

10. 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: 16.12.2021

Judge

Judge