

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

SCRA 11 of 2020 : Collector, MCC Hyderabad vs.
Faiz Muhammad & Another

CP D 296 of 2020 : Faiz Muhammad vs.
Federation of Pakistan & Others

For the Applicant : Mr. Muhammad Khalil Dogar, Advocate

For the Petitioner : Mr. Abdul Latif Chandio, Advocate

Date of hearing : 15.04.2021

Date of announcement : 15.04.2021

JUDGMENT

Agha Faisal, J. A bus bearing registration number BSA-232 (“Bus”) was intercepted on the highway and a search thereof led to the discovery of a specially designed concealed cavity, containing foreign origin smuggled cigarettes (“Contraband”). Pursuant to a show-cause notice, an order in original was rendered, whereby the Contraband and the Bus were outright confiscated. The order in original recorded that the Bus had a tampered chassis, based upon a forensic report, and contained a concealed cavity, ostensibly designed to ferry contraband. The Collector Appeals was pleased to reject the appeal filed there before while recording the admission of the appellant that the Bus did *in fact* have a concealed cavity wherefrom the Contraband was recovered. However, in appeal, to the extent of the Bus, the learned appellate tribunal, in perceived reliance on SRO 499(I)/2009 dated 13.06.2009 (“SRO”) and vide Judgment dated 08.10.2019 (“Impugned Judgment”), allowed the release of the Bus against payment of fine equal to twenty percent of ascertained customs value. The present reference application has assailed the Impugned Judgment; whereas, the present petition seeks implementation of the same. Since the two matters are interconnected, therefore, they were heard conjunctively and shall be determined vide this common judgment.

2. Learned counsel for the applicant assailed the Impugned Judgment, by raising various questions of law, and submitted that the same was in *prima facie* dissonance with the law. On the other hand, the petitioner’s learned

counsel submitted that the Impugned Judgment ought to be maintained in the interests of justice.

3. We have heard the respective learned counsel and have also perused the documentation to which our surveillance was solicited. It appears to be admitted that the Contraband, being ferried in the concealed cavity in the Bus, was smuggled; hence, the confiscation thereof has not been impugned. The only issue that remains is whether the Bus could be ordered to be released per the SRO. In view hereof, the question re-framed for determination is *“Whether in the present facts and circumstances the Bus could be released per the SRO”*.

4. Petitioner’s counsel has articulated no cavil to the factum that the Contraband being carried in the Bus was smuggled. It was admitted before us that the Bus had a specially designed concealed cavity, wherefrom the Contraband was discovered. In such regard it is also considered expedient to reproduce the operative finding contained in the order in appeal:

“I have examined the record. The appellant did not deny the presence of specially designed cavities in the impugned vehicle wherefrom the impugned goods were recovered. This makes it abundantly clear that the vehicle is used for smuggling of goods. There are no grounds to interfere with the original order, the same is upheld. The appeal being without merit fails.”

(Underline added for emphasis.)

5. It is observed that the learned Appellate Tribunal did not consider the import of the admitted existence of a concealed cavity, in the Bus, wherefrom the Contraband was recovered; did not weigh the factum that the tampering of the chassis of the Bus could not be dispelled, by the claimant of the Bus, either in the original adjudication proceedings or the proceedings before the Collector Appeals; and proceeded to predicate its decision on the absence of reference to the forensic report in the show cause notice.

6. It is imperative to denote that the SRO expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein¹. In view of the admitted factum that the Bus was found carrying smuggled Contraband in false / concealed cavities, no case has been made out before us to justify the extension of the benefit of the SRO in the said facts.

¹ ... the Federal Board of Revenue is pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of ... (a) smuggled goods ... (b) lawfully registered conveyance ... found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods...

7. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*², wherein it was held that release of a confiscated vehicle carrying smuggled goods could not be sanctioned in lieu of payment of a redemption fine, pursuant to clause (b) of the SRO. The said judgment was recently maintained by the honorable Supreme Court³. This Division bench has also consistently followed the aforementioned enunciation of the law in the *Niaz Muhammad case*⁴ and the *Nasir ul Haq case*⁵.

8. It is, thus, our deliberated view that the Impugned Judgment is in dissonance with the law, as enumerated supra, hence, cannot be sustained.

9. In view of the reasoning and rationale herein contained, the question framed for determination supra is answered in the negative; hence, in favor of the applicant department and against the respondent in the reference application. The reference application stands allowed in the above terms. As a consequence hereof, the subject petition, along with pending application/s, is hereby dismissed. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

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² *Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020)*; judgment dated 23.07.2020.

³ Per Maqbool Baqar J in *Civil Petitions 730-K to 760-K of 2020*; Order dated 11.02.2021.

⁴ *Niaz Muhammad vs. Federation of Pakistan & Others (CP D 1753 of 2020)*.

⁵ *Nasir ul Haq vs. Federation of Pakistan & Others (CP D 4524 of 2020)*.