

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.173 of 2019
(*The Collector of Customs Vs. Syed Saddaruddin & another*)

And

Constitutional Petition No.1000 of 2020
(*Syed Saddruddin Vs. The Federation of Pakistan and another*)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Mahmood A. Khan

Date of hearing : 14.04.2022.

For the applicant (*in Special Customs Reference Application*) and respondents (*in Constitutional Petition*) : Mr. Khalid Rajpar, Advocate.

For the respondent No.1 (*in Special Customs Reference Application*) and the petitioner (*in Constitutional Petition*) : Ms. Dil Khurram Shaheen, Advocate

JUDGMENT

IRFAN SAADAT KHAN, J. Since facts obtaining in the Special Customs Reference Application (**SCRA**) and the Constitutional Petition (**CP**) are common, hence the same were heard and decided by this judgment.

2. The following questions of law were admitted for regular hearing, vide order dated 17.03.2022, whereas the rest of the questions, being repetition, were ignored as these were not considered to be questions of law:

I. *Whether the Customs Appellate Tribunal has erred in law by releasing the smuggled goods against a document*

/goods declaration which do not correspond with the seized goods?

II. Whether the respondent have fully discharged the burden of proof in terms of section 156(1)(89) and 156(2) of the Customs Act, 1969, that the goods being transported are legally imported?

3. Briefly stated the facts of the case are that the Model Collectorate of Customs (Preventive), Customs House, Karachi, received information that in the intervening night of 27 /28th of September, 2017 in a vehicle bearing registration No.TLA-178 some unpaid duty items were being transported. The said trawler was intercepted at RCD Highway Road, Karachi and the container was found to be loaded with cloth /fabric, being transported from Quetta to Karachi. The driver of the vehicle was asked to produce the documents with regard to lawful possession /import etc. In response to which he produced GD No.HC-2362 dated 13.01.2017. However, the department came to the conclusion that the goods mentioned in the GD were different from the goods found in the consignment and thereafter the vehicle was taken into custody and was shifted to Warehouse, Karachi, for investigation purposes. Then thorough investigation was carried out and when the department came to the conclusion that the items in the trawler were different from the GD thereafter they not only seized the goods in that vehicle, by exercising their powers under Sections 168(2)(S), 156(2), 157(2), 156(1), 156(8) and 156(89) of the Customs Act, 1969 (**the Act**) read with Section 3(1) of the Import and Export Control Act 1950 but also impounded the vehicle. Thereafter legal formalities were carried out which included issuance of Show Cause Notice (**SCN**), dated 23.10.2017, to

the petitioner (hereinafter referred to as “**the respondent**”). In response to which the respondent filed his reply. Order-in-Original bearing No.491/2017-18, dated 03.01.2018, was then passed by the Collector of Customs (Adjudication-I) [**CoC(Adjudication)**], who after hearing the respondent (petitioner in CP) came to the conclusion that the Customs Authorities have failed to prove the charges leveled in the SCN, hence vacated the same with the directions to release the seized goods along with the container /vehicle. Being aggrieved with the said order an Appeal bearing No.K-285/2018 was preferred by the department before the Customs Appellate Tribunal (**CAT**), who also vide order dated 22.10.2018 affirmed the order of the CoC (Adjudication) and dismissed the appeal filed by the department. It was then that the present SCRA was filed by the department whereas CP was filed by the petitioner (respondent in the SCRA) with the prayer that when the CAT has passed the order in his favour the department may be directed to release the goods in accordance with law.

4. Mr. Khalid Rajpar Advocate has appeared on behalf of the department and stated that non-duty paid fabrics were recovered from the trawler and after completing the legal and codal formalities, as provided under the Act, the vehicle as well as the goods were impounded. He further stated that the GD produced by the driver of the respondent (petitioner in CP) showed variation in the goods description and therefore the department was quite justified in impounding the consignment. He next stated that not only quantity showed in the GD was different from the recovered items but the

description of the polyester was also found to be incorrect. He stated that after completing all the codal formalities the SCN was issued by the department to the respondent as, according to him, onus lays exclusively on the respondent to prove that the goods were not smuggled and they were as per the GD possessed by him. He, therefore, stated that the CoC (Adjudication) as well as the CAT erred in ordering for the release of the goods as well as the vehicle which could not be done under the relevant provisions of the law. He, therefore, finally submitted that the answer to the question No.1 may be given in “Affirmative” and the answer to the question No.2 may be given in “Negative” and the petition may be dismissed and the impounded goods may be ordered not to be released by the Customs Authorities. In support of his above contentions, the learned counsel has relied upon the decisions in the cases of *Mst. Nur Jehan Begum through Legal Representatives Vs. Syed Mujtaba Ali Naqvi (1991 SCMR 2300)* and *Abdul Razzaq Vs. Directorate General of Intelligence and Investigation – FBR, Regional Office, Karachi and 2 others (2016 PTD 1861)*.

5. Ms. Dil Khurram Shaheen Advocate, has appeared on behalf of the petitioner in CP and for the respondent in SCRA and stated that concurrent findings are in her favour. She stated that the CoC (Adjudication) as well as the CAT after thrashing out the matter in detail have come to the conclusion that the department has miserably failed to prove the charges of smuggling and violation of the Customs Law and thereafter rightly vacated the SCN issued by the department with regard to seizure of the cloth along with container and the

vehicle. She, therefore, has prayed that answer to the question No.1 may be given in “Negative” and answer to the question No.2 may be given in “Affirmative” and the goods impounded by the Customs Department may be released by allowing the petition.

6. We have heard both the learned counsel at considerable length and have also perused the record and the decisions relied upon by Mr. Rajpar.

7. The record clearly reveals that GD dated 17.09.2017 was duly produced before the department and the same was also produced before the Assessing Officer but the said Officer refused to receive the same and then the GD was produced in the office of the department, which was received by them on 28.09.2017. It is also a matter of record that the department made no effort to verify the GD and also to verify that whether the said goods were smuggled or not, as it has come on record that the goods, which were stated to be smuggled goods by the Customs Department, are easily and readily available in the local market and hence, in our view, could not be considered to be the smuggled goods. It is interesting to note that at one place the department has stated that it has received a manipulated GD but has made no attempt to verify the veracity of the said GD so as to come to the proper facts obtaining in the matter, hence the question of manipulation of the GD had remained unresolved on the part of the Customs Authorities. Moreover, it is also a matter of record that the question with regard to the description of the goods was also not resolved by the department, as no effort was made by them to verify

the brand of the cloth, though the said point was raised in the SCN, but had remained unproved on the part of the department. The Adjudicating Authority has also found a difference in the timings of the incident, which has also put a dent on the case of the department. The CAT while passing the judgment has clearly observed that the SCN has been issued after almost one month of the delivery of the GD, for which no plausible explanation was furnished by the department. Moreover, the CAT has also observed that the respondent is not an importer rather they have made the purchases from the local market, therefore, the department has miserably failed to justify any smuggling in this regard. Furthermore, it is also noted that since the seized goods were recovered from an area which is more than 05 miles away from the border, hence the provision of Section 177 of the Act cannot be applied in the instant matter.

8. In view of the above uncontroverted facts, we are of the view that the department has miserably failed to make out a case of either smuggling or that of furnishing incorrect GD against the respondent. So far as the reliance on the decisions by the learned counsel for the department is concerned, the decision given in the case of *Abdul Razzaq (supra)* is totally different from the present matter as in that matter the petitioner has failed to discharge the initial evidentiary burden of proof in respect of the offence he was charged with. Whereas in the instant matter, as observed above, the respondent has proved its case to the hilt that the goods were neither smuggled nor there was a manipulation /discrepancy in the GD nor there was any violation of the Customs Law. The decision given in the case of *Mst.*

Nur Jehan Begum (supra) is wholly distinguishable, as this case pertains to rent matter.

9. The upshot of the above discussion is that question No.1 raised in the SCRA is answered in “Negative” i.e. against the department and in favour of the respondent, whereas the question No.2 is answered in “Affirmative” i.e. against the department and in favour of the respondent. So far as the CP is concerned, the same stands allowed. The respondent No.2 is directed to release the goods of the petitioner within 15 days’ time from today after fulfilling all the legal and codal formalities, as prescribed under the law. Both these matters stand disposed of in the above manner.

Above are the reasons of our short order dated 14.04.2022.

JUDGE

JUDGE

Karachi:

Dated: .04.2022.