

IN THE HIGH COURT OF SINDH, KARACHI

SCRA Nos.125 & 126 of 2022
CP Nos.D-1366 & 1367 of 2022

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

*BEFORE: Irfan Saadat Khan,
Mehmood Ahmed Khan, JJ*

SCRA Nos.125 & 126 of 2022

The Collector of Customs
(Enforcement) Customs House,
Karachi, Applicant
in SCRA Nos.125 & 126 of 2022 : through Mr. Shahid Ali Qureshi,
Advocate.

Vs.

M/s. Hassan Trading Company,
Respondent No.1 in SCRA
No.125/2022. : through Mr. Muhammad Nadeem
Qureshi, Advocate

M/s. Ali Oil Trading Co.
Respondent No.1 in SCRA
No.126/2022. : through Mr. Muhammad Nadeem
Qureshi, Advocate

The Customs Appellate
Tribunal, Respondent No.2
in SCRA Nos.125 & 126 of 2022 : None present.

CP Nos.D-1366 & 1367 of 2022

M/s. Ali Oil Trading Co.
Petitioner No.1 in C.P.
No.D-1366/2022. : through Mr. Muhammad Nadeem
Qureshi, Advocate

M/s. Hassan Trading Company,
Petitioner No.1 in C.P.
No.D-1367/2022. : through Mr. Muhammad Nadeem
Qureshi, Advocate

Versus

The Federation of Pakistan
& others : through Mr. Shahid Ali Qureshi,
Advocate.

Date of hearing : 28.04.2022

Date of decision : 28.04.2022

JUDGEMENT

Irfan Saadat Khan, J. The instant Special Customs Reference Applications (SCRAs) were filed impugning the order of the Customs Appellate Tribunal (CAT), in Customs Appeal No.K-7548/2021 dated 21.12.2021, by raising the following questions of law;

1. *Whether the Customs Appellate Tribunal has erred in law by holding that the statement made by the master of the vessel against the importer was ‘**an inadmissible confession**’ when it was rather ‘**admissible admission**’ under the Article 31 of the Qanoon-e-Shahdat Order 1984 since the adjudication proceedings were civil and not criminal in nature?”*

2. *If the answer to the above question is in the affirmative then whether the Customs Tribunal was justified in allowing the release of confiscated ‘**white spirit**’ to the importer which was admitted to be of Iranian Origin by the master of the vessel, but was mis-declared as ‘Iraqi Origin’ by the importer?*

3. *Whether the learned Customs Appellate Tribunal erred in law to allow the release the impugned goods to someone other than the original owners?*

That on 14.4.2022 only the Question No.1 was admitted for regular hearing, whereas Questions No.2 & 3 were not pressed by the learned counsel appearing for the Department. The two petitions bearing C.P. Nos.D-1366 & 1367 of 2022 were filed on behalf of the Respondents in the SCRA, who is the petitioners in the above referred petitions, on the ground that since the Department is not implementing the order of the CAT therefore, they may be directed to do the needful in accordance with law. As the point raised in the two SCRAs and the petitions are same hence these are being heard together and disposed of by this common judgment.

2. Briefly stated the facts of the case are that the Applicant imported White Spirit via vessel MT MORIOKA. When the said vessel arrived at Karachi port the agent furnished its manifest to the Customs Authorities declaring that the cargo was loaded from a port of Iraq. However, when the Customs Authorities inquired they found out that the goods were not White Spirit but Xylene and the same were loaded from Iran. It is the case of the department that when the Captain of the vessel was confronted with the same he admitted that there was a mis-declaration and the cargo was loaded from Iran and not Iraq. Thereafter, proceedings were initiated by the Department under Section 43, 45, 72A and 75, 156(1), (39A) and (42) of the Customs Act, 1969 (the Act) read with sub-clause (e), (f), (g), (h) and (k) of Rule 665 of Customs Rules, 2001. Necessary proceedings were then carried out by the Customs Authorities and thereafter order-in-original (O-N-O) bearing No.02/2021-22 dated 13.09.2021 was passed, whereby the goods were ordered to be confiscated and penalty of Rs.2,00,000/- was imposed under the provisions of Section 156 of the Customs Act. A penalty of Rs.50,000/- was also imposed on the agent. Being aggrieved with the said orders, appeals were preferred before the CAT, who vide its order dated 21.12.2021, allowed the appeals and set aside the O-N-O with regard to confiscation of the goods and directed unconditional release of the same, upon payment of leviable duties and taxes and also directed waiver of the demurrage. It is against this order of the CAT that the present SCRA's were filed.

3. Mr. Shahid Ali Qureshi, has appeared on behalf of the Department and stated that there was clear disparity in the

documents furnished by the respondents and the documents recovered from the vessel by the Customs Authorities. He stated that though the Respondents have claimed that they have imported white spirit from Iraq but in fact the goods were found to be Xylene and that of Irani Origin. He stated that Captain of the vessel conceded and admitted that he has loaded the cargo from Iran and not from Iraq. He stated that in view of this established fact CAT was not justified in directing release of the consignment. He stated that several opportunities were given to the respondents to prove their case with cogent material but the same was not done. He stated that a categorical confessional statement/admission of the Captain of the ship was duly recorded that the goods were of Irani Origin but no heed to this aspect was paid by the CAT. He stated that the Respondents were in full knowledge with regard to origin of the goods, therefore, it could not be said by the Respondents that there was no violation of the law. He stated that all these facts were available with the CAT, which has ignored them and has passed the order, which is not in accordance with law. Hence according to him the answer to the question may be given in affirmative i.e. in favour of the Department and against the Respondents and the two petitions being not maintainable may, therefore, be dismissed.

4. Mr. Nadeem Qureshi, Advocate has appeared on behalf of the Respondents in SCRAs and on behalf of the Petitioners in the two petitions. He stated that no confessional statement impleading the Respondents has been given by the Captain of the vessel, moreover his statement was only with regard to the fact that he may be pardoned and this statement by no stretch of imagination

could be considered to be against the Respondent. He next stated that department has erred in treating White Spirit, belonging to the Respondents, as Xylene, which was an incorrect finding of fact. He next stated that in the vessel MT MORIOKA there were some other goods also pertaining to other importers. He stated that the department has admitted that the vessel contained cargo of other importers also and has incorrectly termed the cargo of other importers being the Xylene, to be that of the Respondent. He stated that it is manifestly clear that the goods were that of Iraqi Origin and were loaded from Iraq. He stated that the Customs Authorities have only issued notice to the agent but no notice was issued to the owner, hence the proceedings were ab initio void against the owner of the goods / or cargo.

5. In the alternative, he stated that without prejudice to his above submissions even for the sake of arguments, if it is admitted that the petitioner has imported Xylene, the said product is an importable item hence no adverse inference in this regard could be taken by the department. He stated that in his view since the department has miserably failed to make out a case of violation of any provision of the law, the CAT quite rightly allowed the appeals and direct the release of the confiscated goods hence the answer to the question in the SCRA may be given in negative i.e. in favour of the Respondents and against the Department and the two petitions may be allowed.

6. We have heard both the learned counsel at considerable length and have also perused the record.

7. Perusal of the record reveals that MT MORIOKA was loaded with White spirit as well as Xylene. It is also a matter of record that

the Respondents have claimed ownership of White Spirit only whereas Xylene belongs to some other importers. In our view the customs authorities, at the very outset, have erroneously observed that on the said vessel Xylene as well as White Spirit belonged to the Respondents whereas the facts of the case reveals from the documents appended in the petition as well as in the SCRA that the Respondents have claimed ownership in respect of the White Spirit only, hence the assertion of the department that the Respondents were owner of the White Spirit as well as Xylene was erroneous finding and was rightly dispelled by the CAT. It may further be noted that the Captain of the ship has categorically stated that he has loaded White Spirit from Iraq whereas it was the Xylene which was loaded from Iran and hence, the assertion of the department insisting upon the fact that both White Spirit and Xylene were loaded from Iran was factually incorrect as rightly observed by the CAT, which is apparent from the appended documents.

8. It may further be noted that much emphasis has been laid on the alleged confessional statement recorded by the department of the Captain of the ship which in our view does not in any way could be consider as a confessional statement rather from the wordings of the alleged confessional statement, which has been reproduced at page 139 of the petition bearing CP No.D-1366/2022, that he has requested to leave Pakistan after payment of the penalty and that he will be careful in future. It is beyond comprehension that how this statement of the Captain of the vessel has been deemed by the department to be a confessional statement involving the connivance of the Respondent in any illegal

activity when it was established that the White Spirit imported by the Respondents was from Iraq and not from Iran. It may also be noted that from the manifest, bill of lading and the GPS location of the vessel it was duly established that the White Spirit was loaded from Iraq and was of Iraqi origin. In our view the department has simply failed to create a link between the Respondents and Xylene found on the ship. Needless to state that the Respondents have never denied ownership of the White Spirit loaded from Iraq through various documents furnished to the customs authorities. Mr. Nadeem Qureshi, counsel for the petitioner while arguing the case has stated that even for the argument sake it is admitted that the Respondents have imported Xylene the same is an importable item, which was neither controverted nor denied by the counsel appearing for the Department.

9. The record also reveals that the Respondents are regular importer of the White Spirit and it is an admitted fact that no allegation of either smuggling or mis-declaration was ever found or detected against the respondents or on the part of the agent in the past.

10. The record further reveals that the customs authorities, before confiscation of the goods, did not give any show cause notice, as required under Section 180 of the Act, to the importer and only issued the show cause notice to the agent. In our opinion since the goods belong to the respondents, the department was under legal obligation to issue show cause notice to the importer which admittedly has not been done by the department and an order with regard to outright confiscation of the goods was passed by them.

11. Hence, in view of the above referred uncontroverted facts, we have find the action of the department to be not in accordance with law. We therefore, answer the question raised in the instant SCRA's in negative i.e. against the department and in favour of the Respondents. The customs authorities are directed to comply with the judgment of the Tribunal in letter and spirit. Instant petitions also stands disposed of.

Above are the reasons for our short order dated 28.04.2022 by which instant SCRA's and petitions were disposed of alongwith the listed and pending applications.

JUDGE

JUDGE

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