

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.64 of 2019

Director, Directorate General, Intelligence & Investigation (Customs)

Vs.

1. M/s. Digicom Trading (Pvt.) Ltd. and 2. The customs Appellate Tribunal

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Mahmood A. Khan

Date of hearing : 28.04.2022.

For the applicant : Dr. Shahnawaz Memon, Advocate
along with Ms. Fauzia M. Murad,
Advocate.

For the respondent No.1 : Mr. M. Umar Akhund, Advocate
along with Mr. Uzair Qadir Shoro,
Advocate.

JUDGMENT

IRFAN SAADAT KHAN, J. This instant Special Customs Reference Application (SCRA) has been filed impugning the judgment of the Customs Appellate Tribunal (CAT) dated 25.09.2018 in Customs Appeal No.K-352/2018.

Vide order dated 24.03.2022 the following questions of law were admitted for regular hearing:

- 1. Whether the learned Appellate Tribunal being the last fact finding forum in relation to civil proceedings under the hierarchy of Customs Act 1969, is vested with the jurisdiction to give its finding on the criminal side of the case and pass an order prejudicing the prosecution's interest in the criminal trial? Whether on such count the impugned order is warranted and suitable under the law?*

2. *Whether as per the learned Appellate Tribunal's findings, a case for "smuggling" could only be made out when the goods are brought through an unspecified route or at the place otherwise than a customs station? Whether in arriving at such a conclusion the learned Appellate Tribunal has not indulged in non-reading and non-appreciation of the comprehensive provisions of Section 2(s) and has thus ignored other actions/ eventualities as a defined in the referred provision to constitute the offence of "smuggling"?*
3. *Whether the burden of "lawful excuse" as to possession in terms of clause (89) of Section 156(1) could be deemed to have been discharged upon production of necessary documentation issued subsequent to the dates of seizure and Show Cause Notice?*
4. *Without prejudice to any of the preceding questions, whether the learned Appellate Tribunal can hold the respondent to have not committed an offence when the respondent itself had voluntarily applied for "compounding" of offence under Section 32-B of the Customs act, 1969?*
5. *Whether having held there to be no commission of offence on the respondent part, the appellate tribunal could direct the applicant among others to consider the respondents request for compounding of offence under Section 32-B of Customs Act, 1969?*

2. Briefly stated, the facts of the case are that the department has received information that huge quantity of mobile phones were being cleared under the garb of LED lights /bulbs. A team thereafter was constituted to conduct a search /raid over the designated place and thereafter huge quantity of Q-Mobile phones were recovered. Inventory of the goods recovered by them was prepared on the spot by the Customs officials and thereafter civil proceedings by way of Show Cause Notice (SCN) and criminal proceedings by way lodging of FIR against the Directors of the Company were initiated. The SCN dated 14.12.2017 was served upon the respondent No.1 (**the respondent**). A reply thereof was furnished and thereafter Order in Original bearing No. 679/2017-18 dated 27.02.2018 was passed, whereby the

respondent was found to have violated the various provisions of the law, however the benefit as provided under SRO 499(1)/2009, dated 13.06.2009, was given to the respondent. Being aggrieved with the said order an appeal was filed before the CAT, who after hearing the matter, through a detailed and elaborate order, allowed the appeal by modifying the Order in Original and directing the department to comply with the statutory provisions of Section 32(B) of the Customs Act, 1969. The CAT also observed that the amount of fine / penalty does not correspond to the gravity of the offence and remit the same imposed on the goods. It is against these findings of the CAT that the present SCRA has been filed.

3. Dr. Shahnawaz Memon Advocate has appeared on behalf of the applicant and stated that the order passed by the CAT is not in accordance with law as, according to him, all the violations observed in the SCN were duly established. He next stated that the respondent has even paid the fine and penalty, which proves their guilt. He further stated that since the respondent was involved in the smuggling of the mobile phones under the garb of LED lights, therefore, they were not entitled for any relief which was incorrectly granted by the CAT. He, therefore, stated that the answer to the questions may be given in favour of the department and against the respondent.

4. Mr. M. Umar Akhund Advocate has appeared on behalf of the respondent and stated that the order of the CAT is based on sound reasonings as the CAT, after thrashing out the matter in detail, has decided the mater in favour of the respondent. He next stated that

since the High Court while deciding the matters of the petitioner in C.P. No.D-8836/2018, C.P. No.D-8772/2018, SCRA's No.07 and 08 of 2019 has already granted substantial relief to the respondent hence this SCRA has become infructuous and may therefore be disposed of accordingly.

5. We have heard both the learned counsel at some length and have also perused the record.

6. At the very outset, we have asked a question from both the learned counsel about the criminal proceedings being initiated against the respondent, to which they candidly conceded that these are pending. We again asked a question from Mr. M. Umar Akhund that how the CAT while deciding the matter can discuss the criminal aspect of the matter as it is a settled proposition of law that civil matter and criminal matters, though parametria to each other, but the findings in one matter are neither conclusive nor binding upon the other. He agreed that the CAT while passing the order was not justified in dilating upon the matter concerning criminal aspects of the matter, as the same could influence, prejudice and hamper the proceedings which are pending.

7. We are of the view that though the CAT is the last fact finding authority in respect of the factual aspects but in the instant matter while deciding the appeal of the respondent has dilated upon the criminal aspects of the case which was not justified as, in our view, the said observations made by the CAT could influence or prejudice the matter pending before the criminal Court. We, therefore, under the

circumstances hold that the findings given by the CAT in the instant matter on criminal aspects could only be treated as academic in nature and would neither influence nor prejudice the trial Court dealing with the prosecution matter of the respondent, as the said Court would pass an independent order based on the facts placed before, it strictly in accordance with law.

These are the reasons of our short order dated 28.04.2022, which for ready reference is reproduced below:

After hearing both the learned counsel at some considerable length we reframe the proposed question No.1 with their assistance as under:

Whether the trial Court while proceeding on criminal side against the respondent could be influenced and prejudiced with the findings of the Tribunal given in the instant matter?

For reasons to follow separately, we answer the above reframed question in negative i.e. in favour of the department and against the respondents. So far as rest of the questions are concerned, it is an admitted position that these questions stand covered by the decision given by this Court dated 03.06.2019 in C.P. No.D-8836 of 2018, C.P. No.D-8772 of 2018, SCRA Nos.07 and 08 of 2019. This Special Custom Reference Application stands disposed of accordingly.

JUDGE

JUDGE

Karachi:

Dated: .04.2022.