

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.12 of 2020

The Collector, Model Customs Collectorate

Vs.

Shafi Muhammad & another

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Mahmood A. Khan

Date of hearing : 24.05.2022.

For the applicant : Mr. Muhammad Khalil Dogar, Advocate.

For the respondent No.1 : Ms. Dil Khurram Shaheen, Advocate.

JUDGMENT

IRFAN SAADAT KHAN, J. This instant Special Customs Reference Application (SCRA) has been filed by raising the following questions of law:

- 1. Whether in view of the facts and circumstances of the case, the learned Appellate Tribunal has erred in law to understand that production of registration book by the possession holder in respect of the impugned vehicle was not sufficient cause to discharge burden of proof of lawful possession in terms of clause (89) of Sub Section (1) read with Sub Section (2) of Section 156 and 187 of the Customs Act, 1969?*
- 2. Whether under the facts and circumstances of the case, the learned Appellate Tribunal has correctly interpreted the provisions of Section 2(s) and clause (89) of sub Section (1) read with Section (2) of Section 156 of the Customs Act, 1969, in the circumstances when the possession holder/ claimant had produced fake and bogus Goods Declaration to discharge burden of proof of lawful possession?*
- 3. Whether the learned Appellate Tribunal being the last fact finding forum under the hierarchy of customs is vested with*

the jurisdiction to decide an appeal on presumption, assumption and without any document having been examined and adduced in evidence?

2. Briefly stated the facts of the case are, that the department received an information that a non-duty paid Toyota Hiace Van, bearing Registration No.JF-5108, was heading from Nawabshah to Hyderabad. The customs authorities then intercepted the said vehicle and asked from the driver to provide import as well as registration documents. The driver however informed the customs authorities that at present he does not have those. The said vehicle was then taken into custody and thereafter other legal formalities were carried out by the customs authorities. The department then issued a Show Cause Notice bearing C.No.96-Cus/Adj/Coll/ ADC/Hyd/Van/ASO-Hyd/2018-19/606, dated 28.03.2019. Then vide Order-in-Original (ONO) No.125/2019 dated 17.06.2019 the impugned vehicle was confiscated as smuggled and non-duty paid. Being aggrieved with the said ONO an appeal was preferred before the Customs Appellate Tribunal (CAT) bearing Customs Appeal No.H-881/2019. CAT then vide order dated 11.10.2019 allowed the said appeal by observing that the department has miserably failed to prove that either the vehicle was smuggled or was non-duty paid and allowed unconditional release of the same. It was against this order that the instant SCRA was filed.

3. Mr. Muhammad Khalil Dogar Advocate has appeared on behalf of the applicant /department and has reiterated the above facts and stated that ample opportunity was provided to the owner of the said vehicle to prove ownership and to show relevant documents with

regard to payment of duty and taxes and since the same were not produced, therefore, the department was justified in confiscating the said vehicle. He, finally, prayed that the answer to the question No.1 raised in the instant SCRA may be given in “Affirmative”, whereas answer to the questions No.2 & 3 in “Negative” i.e. in favour of the applicant /department and against the respondent.

4. Ms. Dil Khurram Shaheen Advocate has appeared on behalf of the respondent No.1 and stated that no question of law is arising out of the order of the CAT, as the CAT has given its decision on the basis of facts obtaining on the record. She, therefore, stated that the answer to the question No.1 may be given in “Negative and that of questions No.2 & 3 in “Affirmative” i.e. against the department and in favour of the respondent.

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

6. Perusal of the record reveals that though at the time of the interception of the impugned vehicle proper documents were not produced by the driver but while the matter was being adjudicated upon before the Additional Collector (AC), the owner of the vehicle duly appeared on different dates and produced the ownership as well as other documents before the said customs authority. The record also reveals that a written reply was also furnished, annexing the import documents, to substantiate the claim of the ownership. However, it is noted that all these documents and other material produced before the AC were brushed aside by him and without considering those

documents /material the said AC vide ONO had passed the order of outright confiscation of the impugned vehicle.

7. The record also reveals that the CAT while deciding the matter has categorically given a finding of fact that the department has miserably failed to prove, on the basis of the material produced before them, that the confiscated vehicle was smuggled or non-duty paid. The CAT has categorically observed that the respondent No.1 in the instant matter has successfully discharged the burden to prove that the impugned vehicle was neither smuggled nor the documents produced with regard to ownership and other registration documents were fake or forged. Moreover it is again a matter of record that from the information received from Excise Department also it was proved that the details provided by the respondent have matched with the details of the Excise Department and hence in view of these admitted facts, in our view, the CAT was quite justified in vacating the Show Cause Notice as well as the ONO, as in view of these admitted facts and the documents /evidences, which remained un-rebutted, as observed by the CAT, there was no justification available with the department to pass an order with regard to outright confiscation of the impugned vehicle as the respondent No.1, in our view, has discharged its burden with regard to the ownership of the impugned vehicle.

8. We, therefore, in view of the above facts do not find any justification to interfere in the order of the CAT. It is a settled proposition of law that Tribunal is always considered to be the last fact finding authority and in the instant matter the decision of the CAT

appears to be on the basis of facts obtaining in the instant matter. We, therefore, answer the question No.1, as raised in the instant SCRA in “Negative”, whereas answer the questions No.2 & 3 in “Affirmative” i.e. all in favour of the respondent No.1 and against the department.

The upshot of above discussion is that the present SCRA is found to be without any merit; the same therefore stands dismissed alongwith the pending application(s), if any.

Above are the reasons of our short dated 24.05.2022.

JUDGE

JUDGE

Karachi:

Dated: 25.05.2022.