

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Special Customs Reference Application ("SCRA") Nos. 255 / 2017

Date Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

Applicant: **Mukarram Zehri S/O Muhammad Khan**
Through Ms. Dil-Khurram Shaheen,
Advocate.

Respondents: **The Customs Appellate Tribunal and**
Others

Date of hearing: **03.03.2021**

Date of Order: **03.03.2021**

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application the Applicant has impugned Judgment dated 28.01.2017 passed by the Customs Appellate Tribunal Bench-I at Karachi in Customs Appeal No. K-1748 of 2014. Though various Questions of Law have been proposed; however, Counsel has only pressed Questions No. 5 & 6 which reads as under:-

- "5. Whether Section 2(s) of the Customs Act, 1969 can be invoked against the Appellant where Registered Vehicle was seized from possession of Appellant's driver and same is registered accordingly before Motor Registration Authority and his registration was not proved as fake till date?
6. Whether Section 2(s) of the Customs Act, 1969 can be invoked against the Appellant where Appellant shift burden of prove under section 187 of the Customs Act, 1969 at original stage and submitted / handed over original registration book of the vehicle to the seizing agency?"

Learned Counsel for the Applicant has read out the order and submits that admittedly, this is not a case of any tempered vehicle, whereas, the same was registered with the relevant motor registration authority; hence, the forums below have not appreciated such fact and therefore, the orders be set aside.

We have heard the learned Counsel for the Applicant and perused the record. It appears that when this vehicle was seized the Applicant approached the Department but failed to discharge the onus to the extent of lawful import and payment of duties and taxes on the said vehicle. The Order-in-Original at Para 5 is relevant which reads as under:-

- "5. I have examined the case record and considered written / verbal arguments of the representative of the department. It is observed that

respondents not only failed to appear for hearing but also remained unable to provide any import documents or evidence / linkage to substantiate lawful possession of the seized vehicle. The request of the respondent Mr. Mukarram Zehri made to the seizing agency during stage of initial investigations, through his application dated 10.06.2012 (submitted before the Deputy Collector of Customs, MCC Preventive) accepting the fact that he was unaware as to whether Customs duty / taxes were paid on the subject vehicle or not, strengthens the department's case. A number of opportunities have also been provided by this forum but as observed earlier the respondents failed to appear for hearing and hence, any claim of ownership is not acceptable without providing material / verifiable import documents in support of legal import of the sized vehicle. No record has been found with respect to the import of seized vehicle, as confirmed by Principal Appraiser (Car Group) MCC Appraisal Customs House, Karachi. The result emanating from the foregoing discussion is that the seized vehicle is indeed a smuggled one and has been brought into the country without payment of duty and taxes in violation of the Import Policy Order in vogue. The charges for violation of section 2(s), 26 & 156(2) of the Customs Act, 1969 as levelled in the Show Cause Notice, thus, stand established. I, therefore, order outright confiscation of the sized vehicle 'Mitsubishi Pajero Petrol Jeep bearing Registration No. WAA-422, Chassis No. JMYLYV-75W-IJ000136, Engine No. T-0215242, Capacity 4100 CC, Model 2000' under clause (89) and (90) of Section 156(1) of the Customs Act, 1969 read with clause (c) to the preamble of SRO 499(I)/2009 dated 13.06.2009.

Thereafter, the Applicant preferred Appeal and the learned Tribunal has held as under:-

"8. Record of the case has been carefully examined and arguments put forth from both sides have been duly considered. It is observed that seizure in this old case made on 04.06.2012 i.e. more than four and a half years ago. Main charge on the appellant is possession of a jeep which was though registered and not tampered but it was never imported upon payment of duty / taxes and within the legal framework. During the long drawn process of seizure, adjudication and this appeal so many years' time was available with the appellant to bring forth - if he had any - evidence to prove bonafides of possession and import of the impugned vehicle. Obviously since there existed no such evidence, hence, explicitly lays down the responsibility of providing such an evidence upon the possessor of goods alleged to have been smuggled. This has not been done. The appeal is found to have failed on this count alone. The impugned order is found proper, hence this appeal is hereby dismissed.

Perusal of the aforesaid orders clearly reflects that the Applicant has not been able to discharge the burden, whereas, even an admission was made that he was unaware as to whether any duties and taxes were paid on the vehicle.

In view of hereinabove facts and circumstances of the case, we are of the view that the orders passed by the forums below are correct in law and facts; whereas, no substantial question of law arises out of the impugned order of the Tribunal for our consideration; hence, the Reference Application being misconceived is hereby dismissed in limine.

J U D G E

J U D G E

Arshad/