

IN THE HIGH COURT OF SINDH, KARACHI

CP No.D-2489 of 2022

SCRA No.178 of 2022

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

CP No.D-2489 of 2022

1. For hearing of CMA No.11216/2022
2. For hearing of Main Case.

SCRA No.178 of 2022

1. For Order on Office objection No.05 & 08.
2. For order on CMA No.1202/2022 (Exemption)
3. For Hearing of Main Case.
4. For Order on CMA No.1203/2022 (stay)

26.08.2022

Ms. Dil Khurram Shaheen, Advocate for the Petitioner
and for Respondent in SCRA No.178/2022.

Mr. Shahid Ali Qureshi Advocate for the Respondent
and for Applicant in SCRA No.178/2022.

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Irfan Saadat Khan,J. The above referred petition was filed on the ground that though the Tribunal in Customs Appeal No.K-7909/2021 has given the decision in favour of the petitioner, the Department is not releasing the vehicle, which is causing serious prejudice to the petitioner. A reference application was also filed by the Department challenging the order of the Tribunal passed by the learned Single Judge in the above referred Appeal dated 12.01.2022 by referring the following two questions of law.

i. Whether the learned Tribunal has erred in law by releasing the vehicle (AFR-2021) which abetted the main offending vehicle (BSA-462) used in transporting the smuggled goods in violation of subsection (2) of Section 157 of Customs Act 1969?

ii. Whether the vehicle which abetted the main offending vehicle in transporting the smuggled goods was also liable to confiscation in view of subsection (2) of Section 157 of Customs Act 1969?

Ms. Dil Khurram Shaheen, has appeared on behalf of the Petitioner and has waived the notice on behalf of the Respondent No.1 in

SCRA and has stated that she is ready to proceed with the matter; hence the constitution petition as well as SCRA are taken up together.

2. Briefly stated the facts of the case are that the Department received an information that a bus with name and style "Bacha Khan" bearing registration No.BSA-462 was carrying smuggled / non duty paid foreign origin Betel Nuts has arrived in Karachi from Quetta. The Customs Authorities then intercepted the same, however neither any smuggled items nor any secret cavities were detected from the said bus but the same was retained on the ground that the same was obstructing the Customs Official in their duty. Then a show cause notice dated 08.10.2021 was issued to the petitioner (who is Respondent in the SCRA). Thereafter order-in-original bearing No.139/2021-22 dated 03.11.2021 was passed by confiscating the above referred vehicle. Appeal was preferred before the Tribunal which through a detailed judgment came to the conclusion that since neither smuggled goods nor any secret cavities were found from the said vehicle, hence there was no reason for seizer / confiscation of the vehicle as the same was not found to be involved in carrying smuggled goods. It was then the Tribunal allowed the appeal, however, maintained the penalty as imposed under clause 1(i) of the Section 156(1) of the Customs Act, 1969. The Tribunal also directed release of the vehicle to its lawful owner, after proper verification.

3. The petitioner then approached the Department for release of the vehicle but when reluctance was shown by the Department on the ground that they have proposed to file SCRA before the High Court hence the said vehicle was not released. It was then the

petitioner filed the present constitution petition seeking directions from this Court for release of the said vehicle however on the other hand the Department has filed the present SCRA by raising the above referred questions of law with the prayer to set aside the order of the Tribunal and to decide the proposed questions in their favour.

4. Ms. Dil Khurram Shaheen, has appeared on behalf of the Petitioner and has reiterated the above facts and stated that admittedly when neither smuggled goods nor any secret cavities were found from the subject vehicle, there was no justification available with the Department not to release the same. She further stated that after the order of the Tribunal, it was incumbent upon the Department to release the vehicle. She therefore, prayed for release of the vehicle and implementation of the order dated 12.01.2022 passed by the Tribunal.

5. Mr. Shahid Ali Qureshi, has appeared on behalf of the Respondent in the constitution petition and on behalf of the Department in the SCRA. He stated that no doubt neither any smuggled goods were found from the vehicle nor secret cavities were detected but the said vehicle has obstructed the Customs Officials in performing their duties therefore, the said vehicle was confiscated.

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

7. The record of the matter clearly reveals that the information on the basis of which the said vehicle was intercepted and thereafter confiscated, was incorrect. It is also an admitted position that from the confiscated vehicle neither any smuggled goods nor

secret cavities were detected. The Tribunal while passing the order has categorically observed that the only reason for confiscating the vehicle was that of obstructing customs officials, if any.

8. We specifically asked a question from Mr. Shahid Ali Qureshi, that if the said vehicle was obstructed the customs officials, they should have registered a FIR against those persons who had obstructed the customs officials in performing their official duty, to which he candidly conceded that no such FIR has been lodged.

9. We are of the view that the method and the style in which the said vehicle was confiscated was totally illegal and uncalled for. If Customs Authorities did not find any smuggled item in the said vehicle and also did not find any secret cavity in it, they should have released the vehicle to its legal and lawful owner but confiscating / retaining the same on the ground, which on the face of it has not been proved, that the said vehicle had obstructed the customs officials in performing their duty.

10. We therefore, under the circumstances direct the Customs Authorities to release the vehicle within 15 days' time from the date of this order to its lawful owner. Since the learned counsel appearing for the petitioner has not said a single word with regard to imposition of penalty, hence no order in this respect is given

11. The petition thus stands allowed and the two questions referred in the above referred SCRA are decided against the Department and in favour of the Respondent.

12. With these directions Petition and Spl.C.R.A. stands disposed of alongwith the listed applications. Let a copy of order

be sent to the Registrar Tribunal for doing the needful in accordance with law.

JUDGE

JUDGE

SM