

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
S.C.R.A. No. 111 of 2014

Date	Order with Signature(s) of Judge(s)
BEFORE: Justice Irfan Saadat Khan, Justice Zulfiqar Ahmad Khan, JJ	

Hearing case (Priority)

1. For order on office objection/reply at "A".
2. For hearing of main case.
3. For hearing of C.M.A. No. 578/14 (Stay Application).

19.09.2022

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Mr. Ghulam Murtaza, Advocate for applicant.  
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**Irfan Saadat Khan, J.** Through this Special Custom Reference

Application (SCRA) following questions of law have been raised:-

*1. Although adjudication and criminal proceedings under the Customs Act 1969, are totally independent from each other, whether the learned Tribunal could completely exonerate the respondent of all liability in spite of his "pleading guilty" before the learned Special Judge (Customs & Taxation), Karachi, as to commission of offence?*

*2. Weather the impugned Order-in-Appeal, which is merely based upon respective parties' contentions without showing any assessment of evidence on record, can be deemed a safe legal decision maintainable under the law?*

*3. Weather goods seized from territorial waters can be released by the learned Tribunal relying upon the superior court's decision wherein it is affirmed that it is only the border areas at which the commission of smuggling could be alleged in respect of goods available ordinarily in the markets?*

Briefly stated the facts of the case are that the department received an information that an Iranian vessel was in Pakistani borders and was carrying Iranian oil. Thereafter the officials of Pakistan Maritime Agency intercepted the same in the night of 6/7<sup>th</sup> March, 2013 and recovered HSD Oil from the said vessel. Necessary proceedings were thereafter completed and a Show Cause Notice dated 2<sup>nd</sup> May, 2013 was issued to the present

respondent (Nakhuda) of the launch. A reply thereafter was filed by him; however, being dissatisfied with the reply Order-in-Original bearing No. 445/2012-13 dated 19.06.2013 was passed by the Deputy Collector of Customs (Adjudication) Custom House, Karachi. An appeal was thereafter filed by the respondent, which was disposed by the Collector, Collectorate of Customs (Appeals) Karachi vide Order-in-Appeal bearing No. 7575/2013 dated 15.07.2013, which failed. An Appeal bearing No. K-860/2013 was then preferred by the respondent before the Customs Appellate Tribunal, Karachi, who allowed the same vide order dated 08.10.2013. The Tribunal while examining the case found out that the vessel was a fishing vessel, which by mistake entered in the sea territories of Pakistan and that no objectionable goods were recovered from it. It is against the order of the Tribunal that the present SCRA has been filed by raising the above referred questions of law.

Mr. Ghulam Murtaza Advocate has appeared on behalf of the applicant and stated that the launch was intercepted by the Pakistan Maritime Agency on two grounds, firstly it has crossed the sea borders of Pakistan and secondly it was carrying Iranian oil. He has further stated that the Tribunal was not justified in allowing the appeal on both these grounds and therefore the questions of law raised in the instant SCRA may be decided in favour of the department and against the respondent.

Service was effected upon the respondent by way of publication; however, he is called absent; therefore, the matter is being proceeded *ex parte* against him.

Perusal of the record clearly reveals that the Tribunal while passing the impugned order has categorically observed that the vessel was of Iranian origin and by mistake it crossed the sea borders of Pakistan. The Tribunal has further observed that no objectionable goods were recovered from the said vessel. The Tribunal has further observed that the recovered oil was for the running of the vessel and not for any other purpose. We are of the view that the observations of the Tribunal are based upon finding of facts. Moreover, the questions of law raised in the instant SCRA do not seem to be arising out of the order of the Tribunal. It is evident from the order of the Tribunal that it has passed the order after hearing the departmental representative and the counsel appearing before it thereafter gave a finding that the launch was of Iranian origin and it by mistake entered the sea borders of Pakistani coastal area and that no objectionable goods were recovered from it, which findings, in our view, are nothing but findings of facts and no interference in this regard is warranted. We; therefore, under these circumstances do not find any merit in this SCRA, which stands dismissed accordingly.

JUDGE

JUDGE

Athar Zai