ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.278 of 2020

Date	Order with signature of Judge(s)

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

Applicant	:	Collector of Customs JIAP Karachi Through Mr. Khalid Rajpar, advocate.
Respondent	:	Murtaza & Another Through Mr. Aqeel Ahmed, advocate.
Date of hearing	:	31.01.2023
Date of Order	:	31.01.2023

O R D E R

Muhammad Junaid Ghaffar, J.: Through this Reference Application the Applicant department has impugned order dated 11.02.2020 passed by the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-549/2018. On 07.04.2022 this reference application was admitted for regular hearing on questions No.1 and 2 which reads as under:

> *"1. Whether the Honorable Customs Appellate Tribunal has ignored the fact that Currency/Foreign Bills is a notified item in terms of S.R.O.566(I)/2005?*
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> *2. Whether the Honorable Appellate Tribunal erred in law by misconstruing S.R.O.499(I)/2009 dated 13.06.2009 and allowing release of goods falling under clause (s) of Section 2 of the Customs Act, 1969?"*

2. Today learned counsel for the applicant as well as respondent submit that the controversy as raised in this matter already stands decided vide order dated 25.03.2021 [*SCRA No.64 of 2020 – Collector of Customs vs. Samiullah Sheikh & Another*]; hence, instant Reference Application may be decided accordingly.

3. We have heard learned counsel for the parties and perused the record. After going through the record we are of the view that only one question is relevant which arises out of the impugned order of the learned Tribunal; hence, the questions on which this Reference

Application has been admitted for regular hearing is hereby rephrased that *"whether in the facts and circumstances of the case the Tribunal was justified to order release of foreign currency up to US$ 10,000 to the present Respondent being within the permissible limits as notified by the State Bank of Pakistan"*. The issue / question as above has been dealt with by this Court in the case of *Collector of Customs vs. Samiullah Sheikh & Another* as cited by both the learned Counsel in the following terms:

> "5. Insofar as, the controversy as raised before us is concerned, it appears that in identical terms earlier Special Customs Reference Application No.54 of 2010 was decided by this Court and the learned Tribunal has only followed the earlier judgment of this Court. The relevant finding of the Tribunal reads as follows:-
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> > *"6. Arguments heard and record carefully perused. We also gone through the contents of notification/circular No.F.E.2/98-SB dated 21.07.2998 issued by the State Bank of Pakistan and supplied copies of judgments of Honourable High Court of Sindh, this Tribunal and lower forums on subject issue. All the above forums have allowed release of US $ 10,000/- or equivalent amount in other foreign currencies or in Pakistani currency to the appellants, therefore, We feel no hesitation in allowing the release of US $ 10000/- to the each appellant No.1&2 being permissible limit in accordance with the aforementioned notification/circular issued by the State Bank of Pakistan and also order that the currencies in excess be treated as confiscated. The respondent is directed to return US $ 10,000/- to the each appellant No.1 & 2 in Pakistani currency at the rate which will be prevailing on the day when respondent returns the above mentioned amount to the each appellant. The rest of the amount is outrightly confiscated. The order-in-original is amended to the extent of release of US $ 10,000/- to each appellant No.1 & 2 as per baggage rules read with State Bank of Pakistan circular.*
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> 6. From perusal of the above findings it reflects that the Tribunal has allowed release of US $ 10,000/- or equivalent amount in Pakistani currency on the prevailing rate on the basis of Circular issued by State Bank of Pakistan and the judgment passed by this Court.
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> 7. As to the argument of the learned Counsel for the Applicant that facts in this matter are different, we may observe that this is not the case. Rather the facts are almost identical. Subsequently, we had summoned the file of said S.C.R.A No.54 of 2010 and it reflects that the issue already stands decided against the Applicant department, whereas, the facts are also same. In that case also it was alleged that the passenger was taking out currency beyond the permissible limit of US Dollar 10,000/- or its equivalent as notified by the State Bank of Pakistan, whereas, he had also pleaded guilty before the Special Judge Customs and Taxation. The adjudicating authority had out rightly confiscated the entire amount of foreign currency which was modified by this Court. These facts are recorded in the order of Tribunal in that case. When the matter came before a bench of this Court, the Special Customs Reference Application was allowed vide order dated 29.10.2010 in the following terms:-
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> > *"This Reference Application has been filed against the order of Tribunal dated 6.1.2010, whereby the appellant was declared to be involved in the act of smuggling of foreign currency from Pakistan and learned member (Judicial)-I*

directed the Government to refund 3000/- Singaporean Dollars which were declared and confiscated the remaining currency. The following question said to have arisen from the impugned order has been proposed for the opinion of this Court:-

> *"The impugned order is unable to appreciate the legal point that according to clause (1) of Notification No.F.E.2/98 SB dated 21.7.1998 notified by the State Bank of Pakistan FE-2/98-SB dated 21.7.1998 in terms of Section 8(2) of the Foreign Exchange Regulations Act 1947 "Any person to take out of Pakistan US 10,000/- or equivalent thereof in other foreign currency".*

However the question has not been framed in a proper manner and therefore with consent of both the learned counsel we reframe the question, which reads as under:-

> *"Whether the confiscation of the foreign currency is to be made over and above the permissible limit of US $ 10,000/-?".*

We have gone through the impugned order and relevant law. Smuggling has been defined under Clause S of Section (2) of the Customs Act, which reads as under:-

> *"(S) "Smuggle" means to bring into or to take out of Pakistan, in breach of any Prohibition or restriction or the time being in force, or evading payment of customs duties or taxes leviable thereon:-".*

Currency has been included in Sub-clause (i) of this clause. Froma the perusal of the definition of `smuggle` it means to bring into or to take out to Pakistan goods in breach of any prohibition or restriction. In accordance with the foreign currency circular of State Bank of Pakistan, citizens of Pakistan are permitted to take out a maximum amount of US$ 10,000/- on a foreign trip, therefore, we are clear in our mind that the smuggled currency will not include currency upto US $ 10,000/-.

We, therefore, answer the referred question in affirmative and modify the judgment of the Tribunal to the extent that the currency in excess of US $ 10,000/- be confiscated and the respondents should return US $ 10,000/- to the Applicant in Pakistani currency at the rate which will be prevailing on the day when respondent returns the above amount to the Applicant.

This reference application is disposed off in the above manner.

8. Thereafter another Bench of this Court by following the aforesaid order had also allowed SCRA No.153/2012 in the same terms. From perusal of the above order it reflects that the question of law already stands answered against the Applicant department inasmuch as it has been held that in accordance with the circular of State Bank of Pakistan citizens are permitted to take out a maximum amount of US dollar 10,000/= on a foreign trip, and therefore, the smuggled currency will not include currency up to US Dollar 10,000/-. There is only one question which arises out of the impugned order and that is *"Whether the confiscation of the foreign currency is to be made over and above the permissible limit of US $ 10,000/-?"*, and the same is answered in the affirmative; against the Applicant and in favor of the respondents. Accordingly, all listed Reference applications being misconceived are hereby dismissed. The order of the Tribunal is upheld."

4. In view of hereinabove facts and circumstances of the case, since the issue now stands settled as above, the question is answered in the *affirmative*; against the Applicant and in favour of the Respondent. As a consequence, thereof, this Reference Application stands dismissed.

5. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Khuhro/PA