

IN THE HIGH COURT OF SINDH AT KARACHI

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

SCRA 493 of 2022 : Director, Director General, Intelligence & Investigation (Customs) vs. Ghulam Yaseen and another

For the Applicant : Mr. Pervaiz Ahmed Memon, Advocate

For the Respondent : Mr. M. Jawad Mustafa Rajput, Advocate

Date of hearing : 07.03.2023

Date of announcement : 07.03.2023

ORDER

Agha Faisal, J. At 230 am on 10.08.2021, the Customs department went to a roadside restaurant called *Rabnawaz Hotel* on Indus Highway near Tehsil Manjhand and discovered a vehicle, a white Toyota Corolla bearing registration number BPC-644 (“Car”). Since those present at the restaurant at that hour did not include the owner of the Car, therefore, the same was *unlocked* and 15 bags of Indian Origin Gutka was found therein. The adjudication proceedings culminated in the judgment of the learned Customs Appellate Tribunal Karachi dated 06.06.2022 (“Impugned Judgment”), whereby the outright confiscation of the Car was overruled and it was ordered to be released on payment of redemption fine.

2. The applicant’s counsel insisted that the order for release of the Car was contrary to the prescription of SRO 499(I)/2009 dated 13.06.2009 (“SRO”), hence, ought to be reversed and outright confiscation be reinstated. The respondent’s counsel argued to the contrary.

3. Heard and perused. The confiscation of the contraband is not in dispute before us and this *lis* pertains solely to the fate of the car, wherein the same was purportedly discovered. Therefore, the only question arising, hence, framed for consideration is “*Whether in the present facts and circumstances the Car could be released per the SRO*”.

4. The SRO explicitly precludes the release of a vehicle found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods.

5. At the very onset, the applicant's counsel admitted that there was no evidence of any false cavity in the Car, hence, there was no question of the bar in the SRO coming into effect on such count.

6. Next to consider is whether any case was ever made out to demonstrate whether the Car was *used exclusively or wholly for transportation of offending goods*. We have gone through the entire documentation available on file, including the seizure report, mushirnama, section 171 notice and the Order in original, and observe that nothing is on record to lend any credence to such an assertion. The Impugned Judgment also shows that the respondent had demonstrated title to the car and even the reply filed by the applicants admitted such factum, *inter alia* vide paragraph B thereof.

7. In view hereof, no case is made out to warrant the outright confiscation of the Car, per the SRO. Therefore, in view of the foregoing, we do hereby answer the question framed for determination herein in the affirmative, in favor of the applicant and against the respondent department. This reference application is disposed of accordingly.

8. 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

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