

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Custom Ref No. 276 / 2017
(Shambay Vs. The Customs Appellate Tribunal & Others)

Date

Order with signature of Judge

HEARING OF CASE.

- 1) For orders on office objection No. 1, 19 & 26.
- 2) For orders on CMA No. 4261/2022.
- 3) For hearing of main case.

07.05.2024.

Ms. Dil-Khurram Shaheen, Advocate for Applicant.
Mrs. Masooda Siraj, Advocate for Respondent No. 4.

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Judgment dated 15.02.2017 passed by the Customs Appellate Tribunal in Customs Appeal No. G-2192 of 2016 and vide statement dated 17.06.2019 has proposed the following Questions of law:-

- “1. Whether Section 2(s) of the Custom Act 1969 can be invoked against the Appellant where quantity of seized Diesel is 2500 liters and value of the seized goods is less than Rs. 1,50,000/-?”
2. Whether SRO 499(I)/2009 dated 13.06.2009 is applicable on the Appellant where seized goods was not recovered from secret Cavity nor said vehicle was exclusively carrying smuggled goods nor repeatedly used for smuggled goods?
3. Whether Section 2(s) of the Customs Act 1969 can be invoked against the Appellant where sample of seized goods was not drawn nor laboratory test was obtained nor charged in show cause notice issued by the Deputy Collector of Customs Adjudication MCC Quetta at Custom House Gaddani?
4. Whether impugned order in Customs Appeal No. G-2192/2016 dated 15.02.2017 passed by the learned Member Technical Customs Appellate Tribunal Bench-II, Karachi is maintainable in the eye of law in presence of order in Customs Appeal No. K-432/2017 dated passed by the learned Member Judicial Bench-III Karachi in which same issue was decided in length?”

Heard Counsel for the parties and perused the record. Insofar as the proposed questions are concerned, only Question No. 2 appears to be a question of law, whereas, the forums below have recorded a finding of fact against the Applicant that the vehicle in question was being exclusively used for carrying 2500 liters of Irani smuggled diesel. per settled law, such finding cannot be ordinarily interfered with as

the highest authority for factual determination in tax matters is the Tribunal¹. The findings of the Tribunal is relevant in this matter and reads as under:-

“7. I have heard both the contesting parties and also examined the relevant record. During hearing, the learned Counsel of the Appellant prayed to release the vehicle on payment of redemption fine. He also cited a number of Judgments of this Appellate Tribunal whereby vehicles were released on payment of redemption fine. The learned D.R. opposed the prayer on the grounds that the vehicle is a Land Cruiser and not a public carrier. It is practically not possible that the driver of the Appellant (claimant of vehicle) was using the vehicle for transporting smuggled diesel without his knowledge. He strongly emphasized that special cavity was made within the cabin of the Land Cruiser, after removing seats, to fit in the drum large can thereon. Further, roof of the Land Cruiser was also cut for placing / fitting the drum / can from the above.

8. I find tremendous strength in the arguments extended by the learned D.R. The confiscated vehicle in a Land Cruiser, not meant for public use. The argument of the learned Counsel of the Appellant that transportation of smuggled diesel was an individual act of his driver, without seeking his permission, does not appeal to normal senses. The special cavity artistically designed and fitted, in the Land Cruiser was with sole purpose to transport the smuggled diesel. Here, mens rea on the part of the Appellant is as clear as the day light.

9. In view of above, I do not find any reason legal or factual to interfere with the impugned Order. The appeal is hereby dismissed, being without any substance.”

In view of the above, no case for indulgence is made out; nor the Applicant’s Counsel has been able to put forth any argument to justify the stance of the Applicant; hence, Question No. 2 is answered against the Applicant and in favor of the Respondent; whereas, the remaining questions are not required to be answered. As a consequence, thereof, this Reference Application is **dismissed**. Let a copy of this order be issued to the Customs Appellate Tribunal, Bench-II, Karachi, as required under Section 196(5) of the Customs Act, 1969.

J U D G E

J U D G E

Arshad/

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)