

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No. 2084 of 2023

Date	Order with Signature of Judge
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1. For orders on CMA No.706/2023.
2. For hearing of main case.
3. For orders on CMA No.707/2023.

06.08.2024 :

Mr. Khalid Rajpar, Advocate for the Applicant.
Mr. Kashif Nazeer, Assistant Attorney General.

Through this Reference Application the Applicant / Department has impugned judgment dated 13.09.2023 passed in Custom Appeal No.H-1017/2023 by the Custom Appellate Tribunal at Karachi proposing the following questions of law:

- a) Whether under the law and circumstances of the case, the Customs Appellate Tribunal was justified to uphold the Order-in-Appeal 263-2023 dated 26-05-2023 allowing release of seized vehicle on 20% redemption fine and personal penalty of Rs. 25,000/-, under section 157(2) of the Customs Act, 1969 when the vehicle was involved wholly & exclusively in transportation of offending goods vide clause (b) of the SRO 499 (1)/2009 dated 13.06.2009?
- b) Whether under the law and circumstances of the case the Customs Tribunal was justified in upholding the release of a confiscated vehicle carrying smuggled betel nuts without giving a chance to ascertain the fact that seized betel nuts are safe for human consumption or not?
- c) Whether under the law and circumstances of the case, the claimant of vehicle is bound under section 192 of the Customs Act, 1969 to give information which he failed to give about owner of Betel Nuts which proves mens rea / connivance punishable under section 156(1) (86) read with Section 157(2) of the Customs Act, 1969?

- d) Whether under the law and circumstances of the case the Customs Tribunal did not consider the fact that the claimant of vehicle is a false claimant and not the registered owner of the vehicle as per record of Excise & Motor Registration, Karachi, therefore the confiscated vehicle cannot be released into his custody?

Heard the learned counsel for the Applicant / Department and perused the record. It appears that a show-cause notice dated 03.12.2022 was issued to the Respondents on the alleged involvement in smuggling of betel nuts. None contested the show-cause notice and order-in-original was passed on 09.01.2023, whereby the smuggled betel nuts along with the vehicle in question were confiscated. The present Respondent being aggrieved to the extent of outright confiscation of the vehicle filed an Appeal under Section 193 of the Custom Act, 1969 before the Collector of Custom Appeals which was allowed vide order dated 25.6.2023 and the vehicle in question was ordered to be released upon payment of redemption fine at the rate of 20% as provided in SRO No.499/(I)/2009 dated 13.06.2009. At the same time, the Collector Appeal also imposed penalty of Rs.25,000/- upon the owner of vehicle along with certain other conditions as to verification of the vehicle and a forensic lab test of the chassis number of the vehicle. The Respondent being satisfied did not contested the issue any further and was willing to comply with the order of Collector Appeals, whereas the Department being aggrieved approached the Custom Appellate Tribunal and through impugned judgment the appeal was dismissed.

The only argument raised on behalf of the Applicant is that the vehicle in question was liable for outright confiscation and could not have

been released against redemption fine. On perusal of the record, it appears that neither in the show-cause notice; nor in the order-in-original it has been alleged or decided that the vehicle in question was being used *wholly or exclusively* in carrying the alleged smuggled goods; nor it is the case of the Applicant that there were any *false cavities* in the vehicle for storage of the smuggled betel nuts. Barring these exceptions and there being no conclusive finding that the vehicle was being used in smuggling of betel nuts repeatedly, it could not have been confiscated outrightly. In that case SRO 499 itself provides release of such vehicles upon payment of 20% redemption fine and to that no exception has been drawn on behalf of the Applicant.

Therefore, the order of Collector Appeals as well as of the Tribunal appear to be in accordance with law and no question of law is arising out of the order of the Tribunal to upset the findings of the two forums below. Accordingly, this Reference Application is dismissed **in-limine**. Let copy of this order be issued to the Tribunal as provided under Section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Nasir P.S.