

IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.1916 of 2023

Date

Order with signature of Judge

PRESENT:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

HEARING OF CASE (PRIORITY):

1. For order on office objection No.7.
 2. For hearing of main case.
 3. For hearing of CMA No.5486/2023.
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Dated; 16th January 2025

Mr. Khalid Mehmood Rajpar, Advocate for Applicant.

M/s. Sajjad Raza Tunio and Javed Ahmed Ramejo,
Advocates for Respondent.

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ORDER

Through this Reference Application the Applicant department has impugned judgment dated 29.08.2023 passed in Customs Appeal No.K-966/2023 by the Customs Appellate Tribunal Bench-III, Karachi; proposing the following questions of law:-

1. *Whether the facts of tampering of Chassis number (**welded and refitted**) of the subject vehicle does not prove wrong any contention on the part of the alleged owner/ possession-holder of the subject vehicle as to its lawful possession? Whether by ignoring to dilate upon such germane and relevant issue the learned Appellate Tribunal did not arrive at a conclusion, which, not being in line with the guidance laid down by the Honourable superior courts, is erroneous, to say the least?*
2. *Whether the learned Appellate Tribunal was justified in holding the production of the subject vehicle's Registration book as a "lawful excuse", under clause (89) of Section 156(I) of the Customs Act, 1969, especially in view of the subject vehicle's chassis being confirmed to have been tampered without so much as mentioning, much less analyzing, such aspect of the case?*
3. *Whether the learned Appellate Tribunal's findings that are not supported by documentary evidence are to be deemed erroneous and without the force of law, which cannot withstand judicial scrutiny by this Honourable High Court?*
4. *Whether on consideration of the facts and circumstances of the case the impugned vehicle is not liable to outright confiscation under clauses (8) and (89) of sub-section (1) of Section 156 of*

the Customs Act, 1969 for violation of the provisions of Section 2(s) and 16 of the Act, ibid?

2. Heard learned counsel for the parties and perused the record.

3. Record reflects that the vehicle in question was seized by the Applicant and, thereafter, a Show Cause Notice was issued on 29.11.2022 and an Order-in-Original was passed on 27.12.2022, whereby the said vehicle was confiscated outrightly. Respondent being aggrieved preferred first appeal before the Collector of Customs (Appeals), which was dismissed vide order dated 28.04.2023 and being further aggrieved Respondent approached the Customs Appellate Tribunal and through impugned judgment the appeal has been allowed in the following terms: -

“04. The DR is absent despite several notices nor ever filed parawise comments. It appears that the Respondent Department is not interested to prosecute this Appeal. Therefore, the Appeal is decided on the basis of available record. I have gone through it, carefully scrutinized the documents annexed with the Memo of appeal and heard the counsel for the Appellant at length. From the perusal of record it is evident that confiscated vehicle is registered in name of Syed Anees Haider with MRA, Karachi. Later on, the vehicle in question was purchased by the appellant in January 2022 being a subsequent buyer, thus she stood as present owner of the confiscated vehicle.

06. Admittedly, the appellant is not the importer of the confiscated vehicle, therefore, it cannot be presumed that appellant must possess the import document of a vehicle being of Model 2010 i.e. around 13 years old. Apart from the above factual position, I would like to refer to Section 211(2) of the Customs Act, 1969, whereby maintenance of relevant record of imports or exports is mandatory for a period of five (05) years by the respective importers & exporters. The above contentions further lend support from the Judgment dated 24.09.2020 passed by Their Lordships at Lahore High Court Lahore in Customs Appeal No. 41 of 2004. In consideration of above provisions of the Customs Act, 1969 coupled with the referred Judgment, I am of the considered view that demanding the record beyond mandatory period is unjust, and arbitrary which tantamount to defeat the norms of natural justice.

07. Whatever is discussed herein above, leads me to set aside the impugned Order-in-Appeal and to allow the instant appeal with the unconditional release of confiscated Used Toyota Passo Car bearing Reg. No. BBB-576 (Sindh) having Chassis No. KGC30-0046399, Model 2010 with the directions that said vehicle should be handed over to its present owner (appellant) henceforth.

08. *The Appeal stands disposed of in above terms with no order as to cost.*"

4. From perusal of the aforesaid findings of the Tribunal, it reflects that firstly a finding of fact has been recorded by the Tribunal and the documents being relied upon and placed on behalf of the Respondent have been accepted. It has come on record that the Applicant failed to appear before the Tribunal to contest the case and did not file any comments. When confronted, Applicant's Counsel submits that comments were filed, however, its copy placed before this Court does not bear any acknowledgment of the Tribunal to substantiate the Applicant's claim and this compels us to presume that the Tribunal's observation in this regard is correct. Secondly, it is further noticed that Respondent while contesting the case before the adjudicating authority had pleaded that the vehicle in question was released under some Amnesty Scheme and it would be advantageous to refer to such response recorded in Paras 5 and 6 of the Order-in-Original, which reads as under: -

"5. *That the actual first owner of the vehicle presented non duty paid / smuggled vehicle before the Model Collectorate of Customs, Quetta on 27.03.2013 requested to regularize his vehicle through amnesty scheme and as per his application, requested for release the smuggled vehicle under SRO.172(I)/2013 dated 05.03.2013 on payment of leviable duties & taxes along-with redemption fine, therefore, the Deputy Collector of Customs Quetta passed the Order-in-Original No.413/2013 dated 27.03.2013, release the detained vehicle against the payment of duty & taxes in addition to redemption fine in terms of said SRO.*

6. *That after payment of livable duty & taxes in addition to redemption fine in terms of said SRO, by the Model Customs Collectorate, Custom House, Quetta, the first owner applied for registration before MRA, Karachi, the MRA registered the vehicle after verification and allot the registration number BBB-576 and issued the registration book, it is; therefore; the above charge / allegation that the vehicle was smuggled / non duty paid, it is vehemently denied.*"

5. Perusal of the aforesaid submission reflects that it is the case of Respondent that the vehicle in question was released by way of Order-in-Original dated 27.03.2013 upon payment of

duty, taxes and redemption fine vide SRO 172(I)/2013 dated 05.03.2013, whereas subsequently the vehicle in question was registered by the concerned authority on the basis of such documents. Applicant department has miserably failed to rebut this contention of the Respondent, nor any efforts were made to seek confirmation as to the Order-in-Original in question and the grant of Amnesty Scheme. Admittedly, such Amnesty Scheme was issued by FBR, and an Order-in-Original was passed by the relevant authorities and, therefore, it was incumbent upon the Applicant to make some efforts for verification of the same. This was never done and, in that case, the presumption would be that the burden as laid down under Section 187 of the Customs Act, 1969 has been discharged and shifted upon the Applicant.

6. In view of hereinabove facts and circumstances of the case, no exception can be drawn to the order of the Tribunal and, therefore, the proposed questions are answered in favour of the Respondent and against the Applicant. As a consequence thereof, this Reference Application is ***dismissed***. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS
