

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 1470 of 2023

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant : **Director, Directorate General, I & I (Customs) Karachi** Through Mr. Khalid Mehmood Rajpar, Advocate

Respondent : **Muhammad Imran Khan,** Through M/s. Shafiq Ahmed and Pir Darwesh Khan Kheshgi, Advocates.

Date of hearing : **29.10.2024.**

Date of Judgment : **29.10.2024.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Special Customs Reference Application, the Applicant has impugned judgment dated 11.04.2023 passed by the Customs Appellate Tribunal Bench-III, at Karachi in Customs Appeal No. K-1298/2018 proposing the following questions of law:-

- i. Whether on consideration of the facts and circumstances of the case, the Appellate Tribunal has not mis-read Forensic Division's chemical examination report and has arrived at an erroneous conclusion vide the impugned judgment?
- ii. Whether on the basis of registration book burden of proof of lawful possession as envisaged under clause (89) of sub-Section (1) of Section 156 of the Customs Act, 1969 can be discharged in respect of non-duty paid/ smuggled vehicle?
- iii. Whether on consideration of the facts and circumstances of the case the impugned vehicle is not liable to outright confiscation under clause (8) and (89) of sub-section (1) of Section 156 of the Customs At, 1969 for violation of the provisions of Section 2(s) and 16 of the Act, *ibid*?

2. Heard learned Counsel for the Applicant as well as Respondent and perused the record. It is the case of the Applicant that the Vehicle in question was smuggled, whereas, the forensic report had confirmed that the chassis number was tampered. Such assertion of the Applicant has been overturned by the Tribunal in the following terms:-

“13. We have perused the case record, heard both parties and given due deliberation to the facts of the case. The main issue revolves around the following question: -

- i. Whether the Appellant had discharged the burden of proof under Section 187 of the Customs Act, 1969?
- ii. Whether the adjudicating authority has rightly held that the subject vehicle is smuggled one and had been brought into the country through an unauthorized route without payment of leviable duty and taxes?
- iii. Whether the adjudicating authority had rightly ordered for outright confiscation of the subject vehicle despite the fact that all the documents produced by the Appellant were duly verified and confirmed?

14. A critical perusal of the case record shows that at the time of the interception of vehicle, photocopies of the following documents had been produced by the Appellant: -

- i. “Photocopy of Registration Book No. B0025845, showing Registration of Toyota Land Cruiser Jeep bearing Registration No. DB-8860 (Karachi) Chassis No. HDJ101-009154, Engine No. IHD-FTE-0163158, Model 1998 issued by MRA Karachi in the name of Muhammad Imran Khan S/o Abdul Mateen Khan R/o Flat No.209, Plot No.FT-12, Mehmoodabad House, Bath Island, Clifton, Karachi (Registered Owner).
- ii. Certificate under rule 72 Lot No. Q48/Nov/05 issued by the Principal Appraiser (Auction), Port Muhammad Bin Qasim, Karachi.
- iii. Copy of letter No. Q-48-Nov-2005-/Auction/PQ dated 31-01-2008, issued by the Principal Appraiser, Auction, MCC, Port Muhammad Bin Qasim, Karachi.
- iv. Delivery Order No. 3509 dated 13-06-2006, IGM No. 772/05, Index 13, Lot No. Q48/Nov/06 auction date 27-05-2006, showing therein Sale through auction and delivery of Used Toyota Land Cruiser Jeep, Chassis No.HDJ101-009154, Engine No. 1HD-FTE-0163158, Model 1998, to the Purchaser S.M Usman R/o Karachi.
- v. Photocopy of Payment Vouchers Nos. 411, 466 & 467 of the National Bank of Pakistan, Port Qasim Branch, Karachi.”

15. All the above documents had duly been verified by the concerned department i.e. Collector of Customs (Auction), Port Muhammad Bin Qasim, Karachi, as well as Motor Registration Authority, Karachi. So as regards the authenticity of the documents is concerned, we do not find any discrepancy therein. In this case, the Appellant had claimed to be the owner of the vehicle and had produced the aforesaid documents to the Customs authorities to discharge the initial burden of proof regarding lawful possession of the subject vehicle in terms of Section 187 of the Customs Act, 1969.

16. Accordingly, answer to Question (i) is given in the affirmative in favour of the Appellant and against the Respondent department.

17. The Respondent department on the basis of a Forensic Test Report has alleged that due to the fact that the last digit of Chassis No. HDJ101-009154 had, prima facie, been tampered, therefore, it is established that the vehicle is smuggled one and had been bought into the country through an authorized route without payment of duty and taxes. It has not been established by the Respondent department that the documents produced by the Appellant were forged or bogus, and the subject vehicle was otherwise smuggled one merely on the unlawful presumption that the same is tampered and smuggled. Indeed, there is no material that this vehicle has been smuggled one. In the absence of any material evidence on record, the assumption of the Respondent Department cannot be endorsed at all.

18. Further, there has been no specific FSL Report to show as to whether Chassis No. of the vehicle was erased for the purpose of theft or for any other purpose. Mere allegation of tampering of Chassis No. and such sketchy stereotype FSL Report, cannot be considered as a conclusive proof to establish a charge of smuggling, particularly, when the make, model, engine number and other particulars of the vehicle in question is found to be the same as mentioned in the documents, including Customs Auction and bidding documents, paid bank challans and the original Registration Books issued by the Motor Vehicle Registration Authority.

19. Counsel also produced original images of the chassis of the vehicle in which the number shown is HDJ101-009154. All other supporting documents also confirm that the last digit of the chassis number of the impugned vehicle is (4). All the evidences produced and available on case file when put in juxtaposition creates serious doubts regarding the authenticity of FSL report so the issue of tampering became meaningless. The concerned departments have verified genuineness of vehicle and auction documents produced by the appellant. Furthermore, the respondent has miserably failed to produce any other vehicle having same chassis number registered before MRA nor respondents were able to confront the plea of appellant. Hence, in view of the foregoing reasons, answer to Question (ii) is given in the negative in favour of the Appellant and against the Respondent department.

20. The Hon'ble Supreme Court in the case of Federation of Pakistan through Director-General of Intelligence and Investigation FBR, Karachi v. Muhammad Jamal Rizvi and others (2012 PTD 90), while examining the fate of similar allegation regarding tampered chassis number and the FSL Reports has been pleased to hold as under: -

"5. Perusal of the impugned judgment reflects that the FSL Report was not found specific and various queries made by the Investigating Agency remained un-answered. In this behalf learned Division Bench of the High Court observed that, "The FSL report shows that the chassis numbers on the vehicle were tampered. The FSL report is not specific and creates doubts as to whether the chassis numbers of the vehicle were erased for the purpose of theft and or for any other purpose. This issue is not answered in the FSL

report though the Directorate of Customs, Intelligence and Investigation had sought report through a letter calling upon FSL to specifically mention the status of chassis numbers. The FSL report is silent on queries made by the investigating agency, except that chassis numbers were tampered. The report of the FSL was insufficient to authorize the Directorate of Customs, Intelligence and Investigation, to detain and or seize the vehicle, inter alia, on the ground that it was smuggled vehicle."

21. Clearly, the above judgment of the Hon'ble apex court squarely applies to the case before us where the make, model, Engine number and other material about the vehicle in question were same as had been in the documents noted hereinabove whereas the Forensic Report does not divulge on what account the alleged tampering was made. The Respondent department has failed to provide any document or clue that TE lead us to conclude that the subject vehicle was smuggled one within the context of Section 2(s) of the Customs Act, 1969.

22. As the allegation of smuggling remains unestablished, answer to Question (iii) is in the negative in favour of the Appellant and against the Respondent department.

23. In view of the foregoing deliberations, the orders for outright confiscation of the subject vehicle are declared to be unlawful. Accordingly, we allow this appeal and set aside the Impugned Order as well as the Show-Cause Notice."

3. From perusal of the aforesaid finding it reflects that the Tribunal has come to a final conclusion that the documents so produced by the Respondent have been verified and are found to be genuine and to this effect a finding of fact has been recorded with further observation that the Respondent has discharged the initial burden as laid down under Section 187 of the Customs Act, 1969. We have confronted the Applicant's Counsel as to whether on this finding of fact and genuineness of documents, any application for rectification was moved and he has replied in negative. Since a finding of fact has been recorded which is primarily based upon documentary evidence submitted by the Respondent, to which there is no denial, whereas such finding cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority for factual determination in tax matters is the Tribunal¹.

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226);

4. In view of the above, we do not see as to any question of law being arising out of order of the Tribunal. Accordingly, the Reference Application being misconceived is hereby dismissed. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

J U D G E

Ayaz /PS

J U D G E