

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 195 of 2022

Date

Order with signature of Judge

HEARING / PRIORITY CASE:

1. For order on office objection.
2. For hearing of main case.
3. For hearing of CMA No.1326/2022.

Dated: 6th November 2024

Mr. Muhammad Mushtaq Qadri, Advocate for Applicant.

Mr. Sardar Muhammad Azad Khan, Advocate for Respondent No.3.

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Through this Reference Application the Applicant has impugned a judgment dated 09.04.2022 passed in Customs Appeal No.K-1210/2019 by the Customs Appellate Tribunal Bench-II, Karachi; proposing various questions of law, however, the proposed questions do not appear to be properly drafted and on perusal of the record, it reflects that there is only one question of law which is relevant that; *whether in the facts and circumstances of the case the Applicant had discharged initial burden in terms of Section 187 of the Customs Act, 1969 as to lawful possession of the vehicle in question?*

2. Heard learned counsel for the parties and perused the record. It appears that the vehicle in question was intercepted and along with seizure, an FIR was also lodged by the respondent department and, thereafter, a Show Cause Notice was issued, which was adjudicated vide Order-in-Original dated 13.09.2019 against the Applicant and being aggrieved, a further appeal was preferred, which has also been dismissed by the Appellate Tribunal. The findings in the Order-in-Original and the order of the Tribunal read as under: -

Findings of Order-in-Original:

"4. Record of the case has been examined and allegations levelled in the Show Cause Notice considered. As per case making collectorate i.e. MCC-Preventive, Karachi that impugned Toyota Land Cruiser PRADO Jeep bearing Registration No. BC-4932 (Sindh), Chassis # KZJ95-0132409 & Engine # IKZ-0684759 was intercepted on the

information and suspicion that the same is smuggled / non duty paid. The occupant / driver of the vehicle failed to produce any lawful customs documents for import of seized vehicle after payment of duty and taxes. Later the occupant produced delivery order contending that the impugned vehicle was obtained from relevant customs auction. The auction documents were forwarded to Principal Appraiser (Appraisement Bond Auction), MCC- Appraisement, Karachi for verification. In response the Government Auctioneer M/s. Adnan Enterprises, Karachi vide letter No. F-01/Cus-Bond/01/19 dated 10-07-2019 confirmed that the Delivery Order No. 1654 dated 29-08-1990 issued in the name Abdul Hafiz C/o M/s. Asia Enterprises relates to the lot sold as General Cargo goods and the vehicle in question was not included in the lot, and also requested not to entertain any document related to this vehicle as the documents produced by the occupant regarding auction are fabricated / forged. In view of this the impugned vehicle was seized for violation of section 2(s) of Customs Act, 1969, punishable under clauses (89) of Section 156(1) *ibid*. It is observed that despite issuance of show cause notice and repeated opportunities of hearing nobody bothered to attend the proceedings of adjudication neither any reply to refute the charges levelled in the show cause notice was provided. This shows that the respondent claimant / owner of the vehicle has nothing in his defence to negate the allegations and trying to linger on the proceedings. Therefore it is contended that the seized vehicle is smuggled one and has been brought into the country without payment of Customs duty and other taxes. Hence, the charges as levelled in the Show Cause Notice stand established. I, therefore, order **outright confiscation of the seized vehicle "Toyota Land Cruiser PRADO Jeep, bearing Registration No.BC-4932 (Sindh), Chassis # KZJ95-0132409, Engine # IKZ-0684759, Model 2002, 2982 CC, (Used), (Smuggled / Non Duty Paid Vehicle)." for violation of provisions of Customs Act, 1969 as mentioned in the instant Show Cause Notice.**

5. This order consists of (04) pages and each page bears my initials as well as an official seal with full signature on the last page.”

Findings of Appellate Tribunal:

“7. We have heard both the contesting parties at length and also examined relevant case record. The main controversy surrounds seizure of a vehicle alleged to be smuggled by the seizing department. The appellant has averred that the vehicle was procured by means of auction held by customs authorities at Karachi. The appellant produced these auction documents before the seizing agency on the very next day of detention of the vehicle. The seizing agency sent the auction documents for verification. RA

8. M/s. Adnan Enterprises (the auctioneer) confirmed that delivery order No.1654 dated 29.08.1990 was issued in the name of Abdul Hafiz C/o M/s. Asia Enterprises. The lot sold included general cargo goods and the vehicle in question was not part of the lot. Hence the documents are forged / fake.

9. The appellant was unable to satisfy that the vehicle was brought into the Country after payment of duty and taxes. Based on the above findings, the Tribunal is left with no other option but to maintain the impugned order-in-original.

10. *The appeal being devoid of merits is rejected. Consequently, the order passed by the Collector of Customs Adjudication-I against the Appellant in Order-in-Original No.256/2019-20 dated 13.09.2019 is upheld by this Bench.”*

3. From perusal of the aforesaid findings of the two forums below, it transpires that a finding of fact has been recorded against the Applicant to the extent that the auction documents so relied upon in support of the lawful possession of the vehicle in question were found to be fake and forged and were not verified by the Customs Auction Department. It has come on record that though the lot number relied upon by the Applicant is correct, however, the said lot number only be included general cargo and no vehicle was auctioned against the said lot number allotted by the Customs Department. Since a finding of fact has been recorded which is primarily based upon documentary evidence submitted by the Applicant itself, whereas such finding cannot be interfered by us in our Reference Jurisdiction (for the period prior to Finance Act 2024), as per settled law, the highest authority for factual determination in tax matters is the Tribunal¹; hence no case is made out. Accordingly, the above rephrased question of law is answered against the Applicant and in favour of the Respondents department. Consequently, thereof, this Reference Application is **dismissed**. Office is directed to send copy of this order to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS

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)