

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

S.C.R.A. 1098 & 1099 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection
- 2. For hearing of main case
- 3. For hearing of CMA No.49232/2024

09.10.2025

Mr. Faheem Raza Khuhro, advocate for the applicant  
Sardar Muhammad Ishaque, advocate for respondent

These reference applications assail judgment 07.10.2024 whereby the order-in-original were maintained. Briefly stated, show cause notice dated 02.05.2024 culminated in order-in-original dated 17.05.2024. Operative part hereof is reproduced herein below :-

7. Having heard the arguments of both sides and perused the case record, I have reached to the following conclusions and order as under:

a) Since no one produced any relevant document to show lawful import or possession of the impugned foreign origin smuggled diesel oil before this forum, it is accordingly concluded that charges levelled in the show cause notice that the seized diesel oil had been smuggled into the country without payment of leviable duty and taxes thereon stand established. Therefore, the entire quantity of seized diesel oil as mentioned in the schedule of the seized goods are adjudged to be smuggled one and are outrightly confiscated under Clauses (8)(1) & (89)(i) of Section 156(1) of the Customs Act, 1969 read with Sub-Sections (2) of Section 156(1) of the Customs Act, 1969 further read with Section 3(1) of Imports & Export Control Act, 1950.

b) As regards impugned seized Dongfeng Truck/Trailer bearing Registration No. TMN-461 and bowser/tank along with bowser tank, the seizing agency had seized the same as it was used for transportation of smuggled diesel oil. However, record shows that there were no hidden cavities inside the Dongfeng truck/trailer other than a valve fitted in the bowser tank to throw air in the garb of LPG and another valve at the top of the bowser (tank), and the record does not show that the seized Dongfeng truck/trailer was previously used for transportation of the smuggled goods. The Honorable Lahore High Court in Customs Reference No. 52 of 2015 in case of Nazir Ahmed vs Chairman Customs Appellate Tribunal has interpreted the word 'wholly or exclusively' synonymously to repeated use of any vehicle for transportation of smuggled goods. It was also held in the same case that 'the object of confiscation under the Customs Act, 1969 is mainly to penalize perpetrators of the offence of smuggling, impliedly it is not the purpose of legislator to penalize the owner of vehicle unless any connivance proved. The fact of the matter is that vehicle was apprehended during transportation at Customs smuggled goods for the first time and is entitled for relief as provided in the provisions of Section 157 of the Customs Act, 1969. In the current case, the connivance of the owner or the seized Dongfeng truck/trailer has not been substantiated, as according to the owner of the vehicle, the impugned truck/trailer was rented by a renter only to transport imported LC Custom from Iran border and that the owner of the seized Dongfeng truck/trailer has no concern with the seized diesel oil which had been loaded by the driver/renter without his knowledge and consent. This contention was not controverted by the seizing agency. In view of aforementioned discussion on facts and circumstances of the case and by getting strength from legal proposition given by the Honorable Lahore Court in above-mentioned cited case, I have reached to the conclusion that charge of carriage of smuggled goods in the seized Dongfeng truck/trailer and bowser tank is established, and accordingly, the seized Dongfeng truck/trailer is confiscated under Section 157(2) of the Customs Act, 1969. However, keeping in view the submissions of the

owner of the seized Dongfeng truck/trailer and considering the fact that this vehicle is a lawfully registered cargo vehicle having no hidden or false cavities, not used previously for transportation of smuggled goods, and not covered under clause (b) of preamble SRO 499(I)/2009, dated 13.06.2009, an option is given to owner of the impugned truck/trailer along with bowser tank under Section 181 of the Customs Act, 1969 read with Clause (f) of Serial Number I of Table of SRO 449(1)/2009, dated 13.06.2009, to redeem the Dongfeng truck/trailer and bowser tank in lieu of confiscation on payment of redemption fine equal to 20% of the customs value of the vehicle to be re-assessed and re-ascertained fairly by the appropriate officer. A penalty of Rs. 250,000 (Two hundred & fifty thousand rupees only) is also imposed on owner of the seized Dongfeng truck/trailer/bowser under Clause (89) (i) of Section 156(1) of the Customs Act, 1969 for his negligence to monitor nefarious activities of the renter/driver who not only carried smuggled items in the impugned truck/bowser but also unlawfully changed registration plate of the vehicle to hoodwink the law enforcement agencies. The owner of Dongfeng truck/trailer/bowser tank is strongly cautioned that in case the impugned vehicle/bowser is found carrying smuggled/contraband goods again, it will be outrightly confiscated without fail.

The impugned judgment upheld the order-in-original, however, the penalty was reduced. The proposed questions framed for determination were as follows :

Whether on the facts and the circumstances of the case, the learned Customs Appellate Tribunal has escaped to consider that vehicle used for transportation of smuggled High Speed Diesel can be allowed to be released on payment of redemption fine in lieu of confiscation in terms of SRO 499(I)/2009 dated 13.06.2009 as amended vide SRO 1619(I)/2024 dated 03.10.2024?

Whether the Customs Appellate Tribunal has erred in law by not considering that the vehicle used wholly or exclusively in carrying offending goods falls under section 2(s) of the Customs Act, 1969 could not be sanctioned in lieu of payment of fine pursuant to clause (b) of the SRO 499(I)/2009 dated 13.06.2009?

Learned counsel for the department stated that the concurrent judgment leading to the present reference applications have been decided against the applicant department and the same merit interference by this court in reference jurisdiction. Learned counsel for respondent controverts the same and states that the factual aspect has been discussed and deliberated in the order-in-original and no reason arose before the learned Tribunal to interfere with the same. Learned counsel further stated that in earlier Division Bench of this Court was seized with an identical matter as represented vide order dated 29.11.2024 passed in SCRA 757 of 2024. He states that while the same legal counsel was present in that matter the said reference was dismissed in *limine*; the same is reproduce herein below;

“29.11.2024.

*Mr. Faheem Raza Khuhro, Advocate for Applicant*

1. *Granted.*

2. *To be satisfied before the next date.*

3. *Granted subject to all just exceptions.*

4-5. *Through this Reference Application, the Applicant has impugned Order dated 03.06.2024 passed in Customs Appeal No. K-486/2024 by the Customs Appellate Tribunal, Bench-III, at Karachi proposing the following question of law:-*

1. Whether the private cars (Corolla, Mehran, etc.) and double cabin conveyance used wholly and exclusively in the smuggling of contraband goods can be released on redemption fine in violation of the provisions of Section 157(2) of the Customs Act, 1969 and clause (b) to SRO No. 499(I)/2009 dated 13.06.2009?

Heard learned Counsel for the Applicant and perused the record. It reflects that certain goods were seized and thereafter a Show Cause Notice was issued, which stands adjudicated vide Order-in-Original dated 05.03.2024 in the following terms:-

“4. Having heard the arguments of both sides and perused the case record, I order as under:

(i) Since no one appeared to claim ownership of the seized foreign origin 360kgs of Betel Nuts and no documents of legal import of seized goods were produced before this forum, it is concluded that charges levelled in the show cause notice that the seized goods, i.e. (i) 360 Kgs of Betel Nuts had been smuggled into the country without payment of leviable duty and taxes thereon stand established. Therefore, the entire quantity of seized goods as mentioned above is outrightly confiscated under clause (8) of Section 156(1) of the Customs Act, 1969 read with SubSections (2) of Section 156 of the Act *ibid* for violation of Sections 2(s), 16, 17, 156(2), 178 and 187 of the Customs Act, 1969 of the Customs Act, 1969 further read with Section 3(I) of Imports & Export Control Act, 1950.

(ii) As regards the impugned seized vehicle, there is nothing on record which indicates any false cavity or chamber in the vehicle besides connivance of the owner of the seized vehicle has not been substantiated and there is no evidence that the impugned seized vehicle was previously also involved in any act of smuggling. Nevertheless, I have reached to the conclusion that charge of carriage of smuggled Betel Nuts in the seized vehicle is established, and accordingly, I also order confiscation of one unit Suzuki Mehran Car (Reg: No.AAY-034) under Section 157(2) of the Customs Act, 1969 punishable under clause 89(i) of sub section 1 of section 156 *ibid*. However, keeping in view the submissions of the respondent/owner of the seized vehicle, and considering the fact that this vehicle is a lawfully registered showing the ownership of per false cavities, and not covered under clause (b) of preamble SRO 499(I)/2009, dated 13.06.2009, an option is given to owner of the vehicle under Section 181 of the Customs Act, 1969 read with Clause (f) of Serial Number 1 of Table of SRO 499(I)/2009, dated 13.06.2009, to redeem the same in lieu of confiscation on payment of redemption fine equal to 20% of the customs value of the vehicle to be re-assessed and reascertained by the appropriate officer. A personal penalty of Rs. 10,000/- (ten thousand rupees only) is also imposed on owner of the vehicle in terms of clause 89(i) of sub section 1 of section 156 of the Customs Act, 1969. The claimant/owner of vehicle is strongly cautioned that in case the impugned vehicle is found carrying smuggled/contraband goods again, it will be outrightly confiscated without fail. The vehicle, if redeemed, may be handed over to the lawful owner/claimant after the redemption fine and personal penalty have been paid.”

Insofar as the goods in question are concerned, they were confiscated outrightly as per para-4(i) above; however, the vehicle was ordered to be released on payment of fine in terms of SRO No. 499(I)/2009 dated 13.06.2009. The department being aggrieved preferred appeal before the Tribunal and the appeal has been dismissed through impugned order. On perusal of the finding of the Adjudicating Authority, it clearly reflects that the vehicle in question had no false cavity or chamber nor there is any finding of fact to the effect that it was exclusively and wholly used in the offence of smuggling; therefore, exercising powers under 181 of the Customs Act, 1969 read with SRO No. 499 (*ibid*), the same has been ordered to be released on payment of 20% fine in lieu of confiscation.

*Perusal of the Seizure Memo also reflects that there is no allegation as to the vehicle having any false cavity or chamber nor any allegation that it has been exclusively or wholly used in the offence of smuggling.*

*In view of above, no exception can be drawn to the orders passed by the forums below; hence the question proposed is answered against the Applicant and in favour of the Respondent. As a consequence thereof, instant Reference Application is dismissed in Limine with pending application(s).*

*Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of Section 196(5) of Customs Act, 1969”*

Learned counsel also relies upon order of the Supreme Court passed on 25.01.2023 in Civil Petition No.4580/2021.

Qazi Faez Isa, J. Notice was issued to the respondents on 21 October 2022. The learned counsel for the petitioner submits that that an old bus, registered with the motor registration authority of Quetta, Government of the Balochistan having registration No. BSA-232 ('the vehicle'), was stopped when it was travelling from Quetta to Jampur and certain goods, stated to be smuggled, were recovered from the passengers of the vehicle. The vehicle too was detained. The seized goods were confiscated but the vehicle was ordered to be released by the Customs Appellate Tribunal Bench-III, Karachi ('the Tribunal') vide its judgment dated 10 October 2019 on payment of 20 percent redemption fine. However, since the order of the Tribunal was not complied with, the petitioner filed a constitutional petition in the High Court. And, the respondents filed a custom reference assailing the Tribunal's judgment. Both cases were heard and decided together through the impugned judgment.

2. The petitioner states that throughout he has maintained that he runs a bus service and is not responsible for what passengers bring on board the vehicle.

3. The learned counsel for the respondents relies on B.R.O. No.499(1)/2009 dated 13 June, 2009 ('the SRO') and states that the vehicle could not have been released on payment of fine because it was prohibited by clause (b) of the SRO, which is reproduced hereunder:

(b) lawfully registered conveyance including packages and containers found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969);

4. Section 181 of the Customs Act permits the release of the vehicle on payment of fine. However, the respondent contends that the vehicle could not be released on payment of fine as it had false cavities, and attracts the prohibition in clause (b) of the SRO. The inspector/seizing officer of the customs check post at Jacobabad had mentioned that the vehicle contained 'cavities specially designed to camouflage but had not provided any particulars of the stated cavities; evidence in this regard was not produced; the vehicle was not examined; the order-in-original and the order-in-appeal also did not attend to this important lacunae in the respondent's case,

5. It could not be assumed that the vehicle had false cavities merely because the inspector/seizing officer had said no, and did so without providing any particulars, diagrams or photographs of the same. Therefore, the Tribunal's judgment should not have been set aside, particularly when there was no evidence to bring the case of the respondent within the exception stated in clause (b) of the SRO. Accordingly, the petition is converted into an appeal and allowed by setting aside the impugned judgment of the High Court and restoring the judgment of the Tribunal.

The question of whether the vehicle had any concealed cavity and/or used exclusively to ferry smuggled goods has been addressed by the original adjudicating authority. The relevant extract has already been

reproduced supra. As such question of fact could not be reagitated in reference jurisdiction and even otherwise nothing was articulated before us on a legal plane to merit any interference therein.

We have also noted the order passed by the earlier Division Bench in such regard, therefore, in mutatis mutandis application of the binding law the questions are answered against the applicant department and in favour of the respondent. As a consequence the concurrent judgments are maintained and the reference applications are disposed of.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Office is instructed to place copy of this order in connected matter.

Judge

Judge