

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Spl. CrI. Acq. Appeal No.07 of 2020

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Appellant : Director,  
Directorate General of I&I FBR,  
Regional Office, Karachi,  
through Mr. Ashiq Ali Anwar Rana,  
Spl. Prosecutor Customs.

Versus

Respondent No.1 : Shaikh Abdul Wajid  
Respondent No.2 : Muhammad Attayab Shaikeh,  
through Mr. Zain A. Jatoti, Advocate.

Date of hearing : **24.11.2020**

Date of Decision : **24.11.2020**

**JUDGEMENT**

**NAZAR AKBAR, J:-** This Spl. CrI. Acq. Appeal is directed against the judgment dated **28.02.2020** passed by the Special Judge (Customs & Taxation) Karachi in **Case No.40/2014** whereby the trial Court has acquitted Respondents.

2. Brief facts of the prosecution case are that a credible information was received in the Directorate General Regional Office, Karachi to the effect that some unscrupulous persons are involved in the smuggling, dumping of non-duty paid banned Refrigerant Gas, and its subsequent re-filling in renowned brand counterfeit containers/cylinders for further disposal/transportation in the market throughout country aimed at evading duty, taxes leviable thereon and defrauding local buyers. A team of officers of ASO was constituted to keep strict watch on the movement of vehicle transporting such goods. During investigation, it revealed that Muhammad Javed Akhtar, occupant/godown keeper in support of lawful possession/storage of recovered goods, failed to produce any legal import documents, therefore, recovered goods were detained for

submission of import documents, against proper inventory and mushirnama. Subsequently on 14.4.2014 Muhammad Attayab Sheikh and Muhammad Javed Akhtar, claimed the ownership of the recovered/detained goods. However, both the respondents did not produce any import documents and authorization to justify that the recovered goods were legally imported and cleared on payment of duty and taxes leviable thereon. During further investigation they were also confronted with the huge quantity of packing box material, locally handmade screen printing blocks/plates/stencils for counterfeiting the Refrigerant, Gas Cylinders/containers to which they conceded and confessed that they are involved in such kind of illegal activity/business since long and caused loss to the government exchequer. The notices under Section 171 of the Customs Act, 1969 were issued against accused persons. Thus the FIR bearing Crime No.M-1911/DCI/Seiz/2014 for an offence under Section 156(1)(8)(9)(89) of the Customs Act, 1969 was lodged.

3. After usual investigation, charge was framed against accused/respondents to which they pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **28.02.2020** acquitted accused/Respondents by extending him benefit of doubt. Therefore, the appellant/State has filed instant Special Criminal Acquittal Appeal against the said judgment.

4. I have heard learned Spl. Prosecutor Customs and counsel for the Respondents and perused the record.

5. The perusal of impugned judgment shows that this was the case of no evidence against the respondent/accused, therefore, in the impugned judgment, learned trial Court has observed as follows: -

.....“The actual picture visualized is that the accused No.2 is a licensee and the licensor is Ministry of Climate Change, Government of Pakistan. The quota allocated was revised for the import of the same subject HCFC consignment. The wrong which the complainant might had done is a import by the licensee of the consignment in excess of quota allocated to the licensee.”.....

.....“Now the question arises if it is believed as gospel truth the imported quantity is more than the authorized quota allocated to the accused, whether it falls under the definition of “Smuggling”. The answer is “NO”. Section 2(a) of the Act, 1969 defines smuggling as under:-

2. (s) “Smuggle” means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, ***or en-route pilferage of transit goods*** or evading payment of customs-duties or taxes leviable thereon,-

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred thousand rupees in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station.] and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly;

.....“The case of the prosecution is in fact in violation of section 3 of the Import & Export (Control) Act, 1950 which the I.O. has also mentioned in his charge sheet along with the section of possessing smuggled goods. For the purpose of convenience section 3 of the Act, 1950 is reproduced as under:-

3. Power to prohibit or restrict imports and exports;

i. The Federal Government may be order published in the official Gazette and subject to such conditions and exceptions as may be made by or under the order, prohibit, restrict or otherwise control the import or export of goods of any specified description, or regulate generally all practices (including trade practice) and procedure connected with the import or export of such goods, 3 and such order may provide for applications for licences under this Act, the evidence to be attached to such applications, the grant, use, transfer sale or cancellation of such licences, and the form and manner in which and the periods within which appeals and applications for review or revision may be preferred and disposed of, and the

charging of fees in respect of any such matter as may be provided in such order.

(2) No goods of the specified description shall be imported or exported except in accordance with the conditions of a licence to be issued by the chief Controller or any other officer authorized in this behalf by the Federal Government.

(3) All goods to which any order under subsection (I) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1969 (IV of 1969), and all the provisions of the Act shall have effect accordingly.

(4) Notwithstanding anything contained in the aforesaid Act the Federal Government may, by order published in the official Gazette, prohibit, restrict or impose conditions on the clearance whether for home consumption or were housing or shipment abroad of any imported goods or class of goods.

.....“The violation of section 3 of the Act, 1950 does not amount to smuggling and not triable by this Court”.....

.....“So far as another allegation of selling the subject goods with the brand name of other companie’s Copyright, registered name falls under clause (9) of Section 156(1) of the Customs Act, 1969 which is not triable by this Court. It is also not out of place to mention that the goods have been un-conditionally released by the Appellate Tribunal in Custom Appeal No.K-127/2015 on 16.12.2015.”.....

6. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Spl. CrI. Acq. Appeal is dismissed.

JUDGE