

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No. D- 4453 of 2020

And

SCRA No. 490 of 2020

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

Priority.

1. For hearing of CMA No. 18818/2020

2. For Hearing of main case.

14.12.2020.

Mr. Abdul Latif Chandio, Advocate for the petitioner.

Mr. Muhammad Bilal Bhatti, Advocate for applicant
in SCRA No. 490/2020

Mr. Muhammad Ahmar, Assistant Attorney General.

>>>>> <<<<<<

Mr. Abdul Latif Chandio, Advocate files power on behalf
of respondent in Spl. Custom Reference Application, which is
taken on the record.

Through listed Special Custom Reference Application, the
applicant has impugned order dated 02.06.2020 passed by
Customs Appellate Tribunal, Bench-III, Karachi in Customs
Appeal No. H-252/2020 and has proposed the following
questions of law:-

1. Whether in view of the facts and circumstances of the case, the learned Appellate Tribunal has erred in law to understand that production of registration book by the possession holder in respect of the impugned vehicle was not sufficient cause to discharge burden of proof of lawful possession in terms of clause (89) of the Customs Act, 1969?
2. Whether under the facts and circumstances of the case, the learned Appellate Tribunal has correctly interpreted the provisions of Section 2(s) and clause (89) of sub Section (1) read with sub Section (2) of Section 156 of the Customs Act, 1969, in the circumstances when the possession holder/ claimant had produced fake and bogus auction documents to discharge burden of proof of lawful possession?
3. Whether the learned Appellate Tribunal being the last fact finding forum under the hierarchy of customs is vested with the jurisdiction to decide an appeal on presumption, assumption and without any document having been examined and adduced in evidence?

4. Whether, the impugned judgment passed by the learned Appellate Tribunal, is not based on mis-reading and non-reading of evidence?

Learned counsel for the applicant department has read out the impugned order and submits that the vehicle in question is a smuggled vehicle and no verification of the import documents was ever done in this matter. He has prayed for setting aside the impugned order.

On the other hand, counsel for respondent in Spl. Custom Reference Application and for petitioner in C.P.No.D-4453/2020 has supported the impugned order.

We have heard both the learned counsel and perused the record.

The relevant finding of the Appellate Tribunal as to the verification of the documents and the genuineness of the status of the vehicle is contained in para 9 and reads as under:

“9. Arguments heard and record perused. It is observed that main allegation raised or attributed against the appellants in the show cause notices issued under section 2(s), 16 and 178 of the Customs Act, 1969 punishable under causes (8), (77) and (89) of sub Section (1) and (2) of Section 156 of the Customs Act, 1969 read with SRO 566(I)/2009 dated 13.06.200-9. While passing the impugned Order-in-Original, the basic allegation was relied upon and observed that subject vehicle was smuggled/non-duty paid and have been unlawfully registered with Motor Registration Authority. In order to confirm the legitimacy and genuineness of the relevant documents the department / seizing agency initiated the proceedings and detail of which is mentioned in the relevant paras of the impugned show cause notice as well as in the impugned order-in-original. It is noticeable from the record of the appeal the Excise and Taxation Motor Registration Authorities in response to the verification of registration book verified the same and the Directorate of Intelligence and Investigation verified the auction and payment of duty and taxes vide letter C,No.42-Auction/DCI/QA/Ch/2016/680 dated 17.05.2017 addressed to Assistant Excise and Taxation Officer/ Incharge, Civic Centre Karachi, therefore, the vehicle was registered the registration book and annual tax payments receipts and auction documents are available in case against the name of appellant. Under the aforesaid circumstances when the subject vehicle was registered by the competent authority under the due process of law and statutory provisions envisaged under section 25 of Motor Vehicle Ordinance, 1965 (West Pakistan Ordinance XIX of 1965) and after fulfillment of prevailing legal formalities including verification of documents the vehicle was accordingly registered. Legitimate registration process never been challenged by the seizing agency before any

of the competent court of law and no action has been initiated till todate against the Motor Registration Authorities or against their incumbents who connived with for the preparation of so called documents without payment of duty and taxes. Even otherwise, it is duty of the seizing agency to comply with the proper provisions of law and proceedings envisaged under Section 26 of the Customs Act, 1969. Admittedly, no notice under Section 26 of the Customs Act, 1969 has been issued to the appellant as well as to the relevant concerned quarters including the Motor Registration Authorities.”

Perusal of the aforesaid finding of the learned Appellate Tribunal reflects that the vehicle in question was registered by Excise and Taxation Department pursuant to verification of the auction proceedings conducted by the department vide letter dated 17.05.2017. Such letter is available on the record at page 29 of the connected petition and while confronted, counsel for the applicant department could not satisfactorily respond. Once the vehicle was registered pursuant to some verification by the department, we are afraid no further question of law arises out of the order of the Tribunal whereas, whether the verification letter was genuine or not would be a factual exercise, which we cannot carry out under our reference jurisdiction in terms of section 196 of the Customs Act 1969. The tribunal has given a finding of fact and even otherwise there is no material on the record to dispute such verification of documents in respect of auction of the vehicle by the Customs authorities before its registration.

In the circumstances no question of law arises out of order of tribunal and accordingly the Reference Application is dismissed. As a consequence, thereof, the connected petition which has been filed for release of the Vehicle is allowed which shall be released to the petitioner/respondent forthwith. Office to place copy of this order in the file of connected petition.

Office is further directed to send copy of this order to the Tribunal in terms of section 196(5) of the Customs Act, 1969.

J U D G E

J U D G E

Aamir, PS