

# **IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application  
No. **506/2020** alongwith  
SCRA Nos. 507 & 508 of 2020

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Present: ***Mr. Justice Muhammad Junaid Ghaffar***  
***Mr. Justice Agha Faisal***

**Applicants:** **The Collector of Customs**  
**Through Mr. Muhammad Khalil Dogar,**  
**Advocate.**

**Respondents:** **M/s. Fazal Subhan & Company**  
**in (SCRA No.506/2020)**

**M/s. Adnan Impex**  
**in (SCRA Nos.507 & 508 of 2020)**  
**Through Muhammad Nadeem Qureshi,**  
**Advocate.**

**Date of hearing:** **13.01.2021**

**Date of Order:** **13.01.2021**

## **ORDER**

**Muhammad Junaid Ghaffar J.-** These Reference Applications have been filed by the Applicant-Department against Order dated 30.05.2020 passed by the Customs Appellate Tribunal in Customs Appeals Nos.K-78 to 80/2020 proposing the following questions of law:-

- i. Whether the learned Appellate Tribunal has considered the provisions of Section 79 read with Section 32(1)(c) of the Customs Act, 1969, while allow release the importer's goods i.e. Face cut (HTV) with Dash Board and Steering column known as Front Half cut which is excluded in the purview of section 2(e) of SRO 499(I)/2009 dated 13.06.2009?
- ii. Whether on the fact and circumstances of the case the learned Appellate Tribunal erred in law to appreciate that the respondents / importer has tried to clear the goods which are otherwise not releasable in terms of SRO 499(I)/2009 read with SRO 563(I)/2017 dated 01.07.2017?

iii. Whether on the facts and circumstances of the case the learned Appellate Tribunal erred in law to hold that the adjudicating authority allowed release the goods against fine in terms of SRO 499(I)/2009. However, the item reported to be found as used face cut with dash board known as front half cut banned and cannot be redeemable against redemption fine as per exclusion given in 2(e) of the SRO 499(I)/2009?

2. Learned Counsel for the applicant-department has read out the order and submits that the forums below including Collector of Customs (Appeals) as well as the Appellate Tribunal have failed to appreciate that after amendment in SRO 499(I)/2009 dated 13.06.2009 (**SRO-499**) through SRO 563(I)/2017 dated 01.07.2017, Auto Parts in used and secondhand condition i.e. "Front Cabin/half Cut HTV/LTV/Cars, with or without chasis number" cannot be redeemed on payment of fine in lieu of confiscation, and therefore, the questions proposed by the applicant-department be answered accordingly.

3. On the other hand, learned Counsel for respondents has argued that the issue raised by the applicant-department is dependent on facts and no question law arises out of the order of the Tribunal, and therefore, the Reference Applications are liable to be dismissed. In support he has relied upon the cases reported as **2013 PTD 392 (Collector of Customs through Additional Collector of Customs, Karachi vs. Messrs Qasim International Container Terminal (Pak) Ltd.)**, **2012 PTD 377 (Messrs Gold Trade Impex through partner and another vs. Appellate Tribunal of Customs, Excise and Sales Tax through Collector of Custom, and 2 others)**, and **PTCL 2014 CL. 686 (M/s. F.M.Y Industries vs. Deputy Commissioner Income Tax and another)**.

4. We have heard both learned Counsel and perused the record. It reflects that the respondents imported old and used auto parts, which were examined by the Customs Department, and thereafter show cause notice was issued on the ground that these used auto parts are not importable and resultantly, an Order-in-Original was passed by the Collector of Customs (Adjudication) in the following terms:-

*“I have examined the case record and the arguments of both the sides and have given careful consideration to the facts of the case. The appellant has provided several Order-in-Original’s where “nose cut” parts have also been released on payment of redemption fine. The department representative has also verified the same, but insisted that these Order-in-Original, pertained to release of nose cut parts of the vehicles, but the instant parts are not nose cut but full body cut, which is not releasable. The perusal of images attached with examination report, however, led to the option that these are not half cut vehicles, but having cut piece of vehicle comprising only “Dash board with Steering” which is termed as nose cut. Hence the adjudication officer may have allowed redeeming the same on payment of fine. I therefore allow appeal and giving option to the importer to redeem the confiscated parts i.e. “face cut with dash board and steering” on payment of fine equivalent to 20% of its ascertained value in addition to payment of duty & taxes leviable thereon, in terms of section 181 of Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009. The Collectorate has to assess the goods at prevalent values for ascertaining the correct amount of redemption fine. The importer has to pay the amount of personal penalty imposed vide impugned Order-in-Original”.*

5. The Adjudicating Authority released the entire consignment except goods at Serial No.9 i.e. “Front Face Cut with Dash Board and Steering Column980.00720.00115790” and being aggrieved an Appeal was prepared before the Collector of Customs (Appeals), which was allowed by giving option to the respondents to redeem such confiscated goods upon payment of fine equivalent to 20% of the value. The applicant-department being still aggrieved preferred Appeal before the Tribunal, which now stands dismissed and the relevant findings of the Tribunal is as under:-

“8. I have gone through record of the case. During hearing it was admitted by the DR that identical cases have been decided by the Adjudication Collectorate in favour of the importers and the operative part of the impugned Order-in-Appeal confirms this position whereby the appeals bearing Nos.CUS-3368/2019, CUS-3669/2019 and CUS-3688/2019 were decided. The DR has also accepted that he is not sure whether the department has filed any appeal against the Order-in-Originals, referred as an evidence, during the proceedings before the learned Collector (Appeals) in terms of Section 193 of the Act. However, despite the legal position, the learned D.R, appeared for the appellant Collectorate, forcibly contended that the respondent importers have wrongly cleared the goods, i.e. Nose-Cut, as used auto-part, by availing the benefit of Entry No.2(e) of the Table to SRO 499(I)/2009 dated 13.06.2009. Admittedly, the subject appeals are based on same identical

facts to the cases disposed of by the Adjudication Authorities of Section 179 of the Act vide their earlier order-in-Originals and resultantly hundreds of identical consignments were released by the Collectorates from July, 2017 onwards. The instant case revolves around the factual controversy that the respondent importers' goods i.e. Nose Cut with Dash Board / Steering can be termed as "Front Cabin/half Cut HTV/LTV/Cars, with or without chasis number". During the course of hearing the counsel for the respondent importers has submitted photographs of the consignments, cleared as "Half-Cut body", prior to the issuance of amending SRO 563(I)/2017 dated 01.07.2017 and "Nose Cut", cleared after the promulgation of SRO 563(I)/2017, amending the SRO 499(I)/2009, which clearly shows marked difference and cannot be equated at par.

9. It has also been observed that the appellant department's whole case is, prima facie, based on the personal vendetta and mis-interpretation of law, as defined in Entry No.2(e) of Table-2 of SRO 499(I)/2009 dated 13.06.2009, which reads as under:-

*"Auto-parts imported in used or second-hand condition excluding front Cabin ? Half Cut HTV/LTV/ Cars, with or without chasis number."*

10. The plain reading of the aforesaid provision of law defines that except "*Front Cabin / Half Cut HTV/LTV/ Cars, with or without chasis number*" all other auto-parts in used condition are releasable on payment of redemption fine, as prescribed under the aforesaid SRO. It is pertinent to mention here that the respondent importer and many other similarly placed importers have cleared hundreds of consignments of assorted used auto parts, including "Nose Cut with Dash Board and Steering" by adopting the same procedure. Keeping in view the fact that the amending SRO 563(I)/2017 was issue don 01.07.2017, in pursuance of the Senate's Standing Committee's report, has not authorized the Customs authorities to stop the clearance of the "*Nose Cut with Dash Board / Steering*" without Engine, Gear Box, etc., or the respondent importer's consignment can be treated as "Half Body of the vehicles" or "Face Cut (HTV), which were prima facie, included full Engine, Gear box, Half Cut Chasis, Dash Board, Bonnet and other parts of the vehicle in the bonnet. The examination report and Sr.No.9 the "Contravened Goods", at page-2 of the Order-in-Original clearly mentions that the impugned goods were/are "Nose Cut with Dash Board / Steering" only and not the Half Cut Body of the car /vehicles. Thus, it is a case of adamant attitude, discrimination, beside keeping in view the past practice of last two (02) years, it is nothing but an absurd mis-interpretation of the Entry No.2(e) of SRO 499(I)/2009, as amended vide 563(I)/2017 dated 01.07.2017, on part of the appellant Collectorate. It is a settled law that the interpretation of law i.e. Customs Act, SROs etc. cannot be made by the administrative / execution authority and that is too after more than two (02) years, when hundreds of consignments have been allowed released even after the issuance of SRO 563(I)/2017 dated 01.07.2017, which made the amendments in SRO 499(I)/2009 dated 13.06.2009. Keeping in view the merits, record and past practice the learned Collector (Appeals) has rightly set-aside the Order-in-Original and allowed the respondent importer's appeal with the following findings/observations:-

*"I have examined the case record and the arguments of both the sides and have given careful consideration to the facts of the case. The appellant has provided several Order-in-Original's*

*where “nose cut” parts have also been released on payment of redemption fine. The department representative has also verified the same, but insisted that these Order-in-Original, pertained to release of nose cut parts of the vehicles, but the instant parts are not nose cut but full body cut, which is not releasable. The perusal of images attached with examination report, however, led to the option that these are not half cut vehicles, but having cut piece of vehicle comprising only “Dash board with Steering” which is termed as nose cut. Hence the adjudication officer may have allowed redeeming the same on payment of fine. I therefore allow appeal and giving option to the importer to redeem the confiscated parts i.e. “face cut with dash board and steering” on payment of fine equivalent to 20% of its ascertained value in addition to payment of duty & taxes leviable thereon, in terms of section 181 of Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009. The Collectorate has to assess the goods at prevalent values for ascertaining the correct amount of redemption fine. The importer has to pay the amount of personal penalty imposed vide impugned Order-in-Original”.*

11. In view of the above, I do not find anything wrong in learned Collector (Appeal)’s aforesaid order and I am also of the firm view that in the presence of established practice of the appellant Collectorate and other Collectorate the appellants have no case and I do not find anything to deviate from the findings of the learned Collectorate (Appeals), hence, the subject appeals have no lawful substance and have no legal consequences, as such same are hereby rejected.”

6. Perusal of the aforesaid finding as well as the record placed before us, it appears that the questions of law, so proposed on behalf of the applicant-department, in fact do not arise out of the order of the Tribunal and rather are questions of facts that whether the imported and confiscated items in question were liable for outright confiscation or not. It would be advantageous to refer to the relevant provisions of SRO 499, which reads as under:-

*“Auto-parts imported in used or second-hand condition excluding front Cabin ? Half Cut HTV/LTV/ Cars, with or without chasis number.”*

7. It appears that “Auto-parts imported in used or second-hand condition after confiscation can be released upon payment of 20% fine; however, this is excluded front Cabin /Half Cut HTV/LTV/ Cars, with or without chasis number, whereas, the goods in question, as reported in the examination report are “Front Face Cut with Dash Board and Steering Column980.00720.00115790”, and therefore, it is pure question

of facts that as to what goods were imported by the respondents. As per record and the examination conducted by the applicant-department, it is an admitted position that the goods in question do not fall in the exclusion provided in Entry No.2(e) of Table-2 of SRO 499, and therefore, no question of law arises out of the order of Tribunal.

8. In view of hereinabove facts and circumstances of this case from the record and the order of the Tribunal no question of law is arising; hence these Reference Applications being misconceived are hereby dismissed. Let copy of this Order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Judge

Judge