

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application (“SCRA”) No. 771 of 2019

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Applicant:

Director, Directorate General, Karachi,
Intelligence & Investigation (Customs),
Karachi.
Through Mr. Ghulam Murtaza, Advocate.

Respondents:

Yameen Ali S/O Yaseen Ali,
House No. 54/4, Muhallah New Karachi
Sector 5-G, Karachi.
Through Ms. Dil-Khurram Shaheen,
Advocate.

Date of hearing:

01.02.2021.

Date of Order:

01.02.2021.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Order dated 18.07.2019 passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No.K-1492/2018, proposing the following questions of law:-

- “1. Whether in terms of sub-section (3) of section 194-C of the Customs Act, 1969, the learned Appellate Tribunal while sitting singly has the jurisdiction to decide appeal involving duty, taxes, penalty or fine exceeding 5 million rupees?
2. Whether possession holder / registered owner on the basis of fake and bogus auction / import documents can discharge burden of proof of lawful possession in terms of clause (89) of sub-section (1) read with sub-section (2) of section 156 of the Customs Act, 1969?
3. Whether section 2(s), 156(1) clause (89) and section 187 of the Customs Act, 1969 have been correctly interpreted by the Appellate Tribunal when Respondent No. 1 / possession holder of the smuggled vehicle had failed to discharge the burden of proof of lawful possession of the vehicle?
4. Whether by producing registration book in respect of smuggled vehicle burden of proof of lawful possession (lawful excuse) can be

discharged as envisaged under clause (89) of sub-section (1) of section 156 of the Customs Act, 1969?

5. Whether the learned Appellate Tribunal's finding that are not supported by documentary evidence are to be deemed erroneous and without the force of law, which cannot withstand judicial scrutiny by this Hon'ble High Court?"

2. Learned Counsel for the Applicant has read out the order and submits that the documents furnished by the Respondent at the time of seizure of the vehicle were found to be forged and fabricated, whereas, the Tribunal has set aside the order of the Adjudicating Authority without adverting to such facts and has passed the order on irrelevant issues.

3. On the other hand, learned Counsel for the Respondent has supported the impugned order and submits that the vehicle was duly registered and the burden was discharged under Section 187 of the Customs Act, 1969; however, while confronted as to the findings of the Adjudicating Authority that the documents were fake and fabricated she submits that in these type of cases all documents are fabricated and fake; but on legal ground the Appeal is liable to be dismissed.

4. We have heard both the learned Counsel and perused the record. It appears that the Respondent at the time of seizure of the vehicle in question had furnished various documents including Delivery Order No. 6176 dated 05.12.2014, some Auction Certificate, photo copy of the Bank Voucher and photo copy of Gate Pass. These documents when forwarded for verification, were found to be fake and bogus. It is also a matter of record that the Respondent never contested the matter before the Adjudicating Authority which passed the following order:-

"11. I have examined the case record and show cause notice. The owner / possession holder of the seized vehicle could not provide any legal import documents or evidence to provide lawful import of the seized vehicle. As per verification conducted by the detecting agency with PRAL database, no record has been found with respect to the import of the seized vehicle. The auction documents of the vehicle were also declared as fake by Deputy Collector MCC-Appraisalment (East) Karachi vide his Letter No. C.No.379/DET/ASO/2018/2969 dated 27.07.2018. Therefore it is established that the seized vehicle is smuggled one and has been brought into the country without payment of Customs Act, 1969 as levelled in the Show Cause Notice stand established. I, therefore, order **outright confiscation** of the seized

vehicle “Mercedes Benz Car (S550 Series bearing Registration NO. CZ-672 (Islamabad), Chassis NO. WDD221712A142065, Engine No. Not Visible, Model 2007, Horse Power 5500CC” for violation of provisions of Customs Act, 1969 as mentioned in the instant show cause notice.”

5. The Respondent then preferred Appeal before the Appellate Tribunal and from perusal of the impugned order we have not been able to understand and convince ourselves as to how the above findings regarding fake and fabricated documents produced by the Respondent has been overturned by deciding the Appeal in his favour. Not only this, it is a matter of record that this vehicle has no Engine Number as the same is not visible. Moreover, while confronted, the learned Counsel for the Respondent has conceded that these documents are normally fake; but has made an attempt to argue the case on some legal settled principles of law. We may observe that there cannot be any cavil to any such settled principle of law; however, they will only come into force; and to the rescue of a person against whom there is an allegation of possessing a smuggled Vehicle, when he comes forward with documents to discharge the initial burden. In this matter, when it is admitted and has gone unrebutted that these documents are fake and fabricated, no case is made out by the Respondent and the Tribunal has seriously erred in allowing the Appeal.

6. In view of hereinabove facts and circumstances, Question Nos. 2 & 3 are answered in negative, in favour of the Applicant and against the Respondent, whereas, Questions No. 1, 4 & 5 need not be answered. This Reference Application is allowed. The impugned order of the Appellate Tribunal stands set aside. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

J U D G E

Arshad