ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.447 of 2017

Collector of Customs
Versus
Fareed Ahmed Shager & another

Date	Order with signature of Judge

1. For orders on office objection No.47.
2. For orders on CMA 2869/17
3. For hearing of main case
4. For orders on CMA 2870/17

__Dated: 29.10.2021__

Mr. Ashiq Ali Anwar Rana for applicant.

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The subject vehicle as involved in this petition at the time of passing impugned order was 24 years old. It is now almost 28 years old since was first registered by the excise department of Motor Registration Wing. Not a single document of the excise department is produced, which could disclose to a prudent buyer that there was any tampering in the chassis number of the vehicle. All presumptions of its genuineness are attached to an official document i.e. registration book when presumably all such documents (import documents) were taken into consideration and in fact photocopies of such documents were sent to customs department when enquired. Since the vehicle was registered in 1993 without any objection from the motor registration wing/ department as to its alleged tampering and which record too (tampering record of the relevant time) has not been produced, it does not lie in the mouth of the applicants' officials to raise objections as of now after almost 24 years of its registration when the vehicle was confiscated. The applicant/department has not placed before us a show-cause if any case of tampering has also been made out, apart from it being smuggled one.

The questions, as proposed, does not arise out of the impugned order of the Tribunal as it only relates to subsection 8 and 89 of Section 156(1) of Customs Act, 1969, which are reproduced as under:-

156. Punishment for offences.- (1) Whoever commits any offence described in column 1 of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the punishment mentioned against that offence in column 2 thereof:-

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| 8. | *(i) where any goods be smuggled into or out of Pakistan,-* | *such goods shall be liable to confiscation and any person concerned in the offence shall be liable to-* *.......* |

....

| 89. | *(i) If any person without lawful excuse, the proof of which shall be on such person, acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing, retailing, or in any manner dealing with smuggled goods or any goods in respect to which there may be reasonable suspicion that they are smuggled goods;* *Provided ......* | *such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and, where the value of such goods exceeds three hundred thousand rupees, he shall further be liable, upon conviction by a Special Judge, to imprisonment for a term not exceeding six years and to a fine not exceeding ten times the value of such goods* |

The initial burden is on the department, which has to be discharged in the light of registration book which carries all presumption to its genuineness and more important when copies of such documents were sent to customs department. In the absence of any record of the excise department at the time when the subject vehicle was transferred in favour of the respondents, no question arises out of the proceedings to cast any doubt over the bona fide transfer of the vehicle and hence no interference is required as far as impugned decision is concerned. The proposed questions, though not arises out of the Tribunal's order,

yet are deliberated upon to avoid any element of they (respondents) being condemned unheard. Proposed questions are thus answered against the applicant and in favour of respondents. Accordingly, Special Customs Reference Application stands dismissed along with listed applications.

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 196(5) of Customs Act, 1969.

Judge

Judge