

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.731 of 2016

Date	Order with signature of the Judge
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1. For order on office objection No.16
2. For order on CMA No.227/2017 (Exemption)
3. For hearing of main case
4. For order on CMA No.228/2017 (Stay)

01.11.2021

Mr. Muhammad Khalil Dogar, advocate for the applicant

This reference has been filed by the department / Collector of Customs in respect of the order dated 31.8.2016 passed by the Customs Appellate Tribunal, Bench-III.

A show cause notice was followed by an Order-in-Original and then by an Order-in-Appeal, which was then assailed before tribunal. An oil tanker bearing No.TTC-891 was intercepted on suspicion and on demand of concerned staff of the seizing agency, a delivery advice dated 08.12.2014 of the Byco Petroleum Limited was produced. The record also disclosed a letter of 09.12.2014 addressed to Collector of Customs MCC Hyderabad duly signed by the Manager / Refinery Sales and General Manager / Refinery Sales along with delivery advice and sales tax invoice. These crucial documents were not verified from the office of the Byco Petroleum Limited by the seizing agency. A sample was retrieved by the seizing agency; however, nothing is available on record if the samples as drawn were tested in any laboratory of international repute. Nothing should have turned on the delivery advice of the Rohri Filling Station.

What is more important is whether the goods allegedly retrieved by the seizing agency were smuggled or belongs to Byco Petroleum Limited. Byco Petroleum Limited itself has come forward when they filed an appeal against the Order-in-Original dated 26.5.2015. The Order-in-Appeal was passed on 15.4.2015 on an appeal preferred by Byco Petroleum Limited followed by an appeal before tribunal when ultimately the Petroleum Company succeeded in establishing their point of view. The subject documents if were doubted should have been verified through the Management of the Petroleum Company and more particularly, the samples drawn should have been tested through any forensic lab having expertise in this regard, which has not been done.

The seizing agency has failed to discharge the burden that was on them, hence on presumption that the goods were smuggled cannot be confiscated.

The only question arises out of this reference is whether the goods allegedly confiscated were smuggled and/or that the seizing agency were able to prove their contention? This is answered in negative in favour of the respondent and against the applicant. Consequently, reference is dismissed.

Copy of this order be sent to the appellate tribunal in terms of Section 196(5) of the Act.

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