

IN THE HIGH COURT OF SINDH, KARACHI

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

SCRA Nos.	Name of the Applicant
248/2017	Zahid Khan Vs. The Custom Appellate Tribunal & others
249/2017	Darvesh Khan Vs. The Custom Appellate Tribunal & others
250/2017	M/s. Rabani Khan Vs. The Custom Appellate Tribunal & others
251/2017	M/s Muhammad Irshad Vs. The Custom Appellate Tribunal & others
252/2017	Mst. Bakht Zaman Vs. The Custom Appellate Tribunal & others
253/2017	Sher Yar Khan Vs. The Custom Appellate Tribunal & others
254/2017	M/s. Zafeerullah Vs. The Custom Appellate Tribunal & others

Applicants: Through Ms. Dil Khurram Shaheen,
Advocate.

Respondents: The Customs Appellate Tribunal & others

Date of hearing: 11.03.2021.

Date of Order: 11.03.2021.

ORDER

Muhammad Junaid Ghaffar, J.- These Reference Applications have been filed by the Applicants impugning the Order dated 25.01.2017, passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-1381/2015 & other connected matters. Initially, various questions were proposed; however, on 29.05.2018, Counsel was confronted as apparently the questions, so proposed, are not legal questions and today, learned Counsel for the Applicants has filed Statements alongwith rephrased questions of law, which reads as under:-

- i. Whether impugned Order In Customs Appeal passed by the teamed Member Technical Customs Appellate Tribunal Bench-II Karachi is maintainable in the eye of Law in presence of Order in Appeal No 251-261/2016 dated 21/12/2016 passed by the Honorable Collector of Customs Appeals Lahore 'n which same kind of offences Vehicle was released on duty taxes and 20% redemption fine and Department complied on said Orders
- ii. Whether impugned Order In Customs Appeal passed by the learned Member Technical Customs Appellate Tribunal Bench-II Karachi is maintainable in the eye of Law which was barred by time under section 194-B of the Customs Act 1969 whereas Appeal was filed in 2015 and Order passed in 2017 ?

iii. Whether Section 32, 32-A and 79 of the Customs Act 1969 can be invoked against the Appellant where Appellant sought clearance under section 79(1) of the Customs Act 1969 at original stage and submitted/handed over Original Registration book issued by the Export Country (Government of Hong Kong) and was not challenged nor found Forged?

iv. Whether the impugned order in customs appeal passed by the learned Member Technical, purely on the question of law is hit with the bar of jurisdiction to determine question of law in terms of proviso to sub Section (3) of Section 194-C, of the Customs Act, 1969 and in presence of SCRA Nos. 63, 64, 86, 87 131 to 133, 116 to 118/2008, 403, 404, and 406/2007 dated 25.11.2008.

v. Whether Member Technical sitting singly have the jurisdiction to pass an Impugned Order in Customs Appeal on a matter involving a question of law and where and have the Jurisdiction of Member Judicial and in present case they passed jointly impugned Order in Customs Appeal without discussing facts of present Appeal?

vi. Whether respondent No 4 can enhance value of Vehicle himself without challenging sale certificate issued by the dealer in favor of the Appellant and same was not proved as fake documents nor challenged?

vii. Whether Deputy Collector of Customs Adjudication-1, MCC Custom House Karachi) is competent to adjudicate the case in the light of section 179 c the Customs Act, 1969 of the Customs Act 1969 without any authorization from competent authority?

2. Learned Counsel for the Applicants has read out the order and submits that as per the registration of the vehicles, the same were manufactured in the year 2010, whereas, the forums below have not appreciated the same. She submits that matter be remanded with direction to release the vehicles upon payment of fine and penalty.

3. We have heard the learned Counsel and perused the record. It appears that the Applicants imported vehicles, which were intercepted and detained at port on the ground that they were not importable under the then Import Policy Order as they were more than five years old and accordingly show cause notices were issued and Orders-in-Original were passed, whereby, the vehicles were confiscated out rightly. First Appeal before Collector failed and so also the Appeal before the Tribunal. The relevant findings of the Tribunal reads as under:-

“7. I have heard arguments of the learned Counsel of the Appellants as well as the learned Departmental Representative besides examining the relevant record. During the course of hearing, the learned counsel stated that the Registration Book issued by the Government of Hong Kong, Special Administrative Region dated 07.10.2010 indicates manufacturing year of the vehicle as 2010. The learned D.R, however, emphasized that as per website of Toyota Company (ToyoDiy.com Vehicle Collection), the vehicle bearing

Chassis Frame No.JTGEC538205000244 was manufactured in April, 2008, as such, not importable in 2014 being older than 5 years as per IPO, 2013. The learned DR added that the seat belt of the vehicle showing manufacturing year as 2010 amounts to fabrication keeping in view clear picture of manufacturing year as per website of the manufacturing company. The UR emphasized that it was a well-thought-out plan to deprive the Government of its legitimate revenue, hence section 32 is fully applicable in this case. The learned counsel of the Appellant, however, emphasized that not only the belt indicates manufacturing year as 2010, the registration certificate issued by the concerned authorities of Hong Kong also confirms the manufacturing year as 2010. I am not inclined, to subscribe to defence plea taken by the learned Counsel of the Appellant because the website of the manufacturing company indicates manufacturing year of each vehicle by referring to its chassis frame number. The said website is unambiguously indicating manufacturing year of the confiscated vehicle as 2008. It is, therefore, established beyond any shadow of doubt that the supplier company fabricated seat belt in order to show manufacturing year as 2010 just to raise its market value. The para 3(1) of the Appendix-E to Import Policy Order, 2013 clearly says that “vehicles more than five years old shall not be allowed to be imported under gift, personal baggage and transfer of residence scheme”. It appears that with a view to avoid age restriction (5 years) stipulated in Import Policy Order, 2013, the Appellant colluded with the supplier of vehicles and managed fabrication of seat belt which indicates age of the vehicles less than five years. Therefore, the respondent department has lawfully and justifiably invoked section 32 of the Customs Act, 1969 as it is a clear case of misdeclaration.

8. In view of above, I do not find any reason, legal or factual to interfere with the impugned Orders and uphold them being lawful Orders. I dismiss the Appeal being devoid of merit.”

4. We have, at the very outset, confronted Counsel for the Applicants as to the finding of the fact, inasmuch as according to the respondents, the vehicles as per details available on the manufacturer’s website were of April, 2008 and not of 2010, as claimed by the Applicants. In support she has referred to the Vehicle Registration document; however, on perusal of the same, it appears that it is not from the country of manufacture; nor in support any other document from the manufacturer were placed on record to rebut such stance of the Respondents. Be that as it may, even otherwise, it is purely a question of fact as to year of manufacture; therefore, we cannot exercise our jurisdiction in this Reference Application to determine such fact. Accordingly, no question of law arises out of the order of the Tribunal in question; hence, these Reference Applications are hereby dismissed in limine.

Let copy of this Order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in connected Reference applications as above.

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