

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

SCR 502 of 2016 : The Collector of Customs vs.  
Power Link Petroleum Services &  
Another

For the Applicant : Mr. Shakeel Ahmed,  
Advocate

For the Respondent : Mr. Aamir Ali,  
Advocate

Date of hearing : 15.03.2021

Date of announcement : 15.03.2021

## JUDGMENT

**Muhammad Junaid Ghaffar, J.** Through this reference application the applicant has impugned the order dated 13.05.2016, passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No.H-815 of 2015, proposing the following questions of law:

- a) "Whether the Hon'ble Customs Appellate Tribunal misconstrued the true spirit of section 2(s) of the Customs Act, 1969, read with section 3(1) of Import and Export Control Act 1950 and the notification SRO 499(I)/2009, whereby, the legislature has clearly ordained the adjudication authority to decide the case under quasi judicial powers by confiscating out rightly the goods mentioned in the notified list of section 2(s) ibid?
- b) Whether Hon'ble Appellate Tribunal erred in law to consider that as per OGRA regulations and petroleum rules 1937 only OMC's are authorized to sell such goods and even OMC's are not allowed to sell such goods except industrial consumer and construction companies?
- c) Whether the present impugned order of learned Customs Appellate Tribunal is against the principle and dictum settled by the apex court in their orders passed in C.A# 1585 of 2006, Deputy Collector of Customs, Sales Tax and Central Excise (Adjudication) Quetta at Hyderabad V/s. Nak Muhammad and others and 2006, SCMR 973, Collector of Customs Peshawar and others Vs. Zarshad and others?
- d) Whether learned Customs Appellate Tribunal Bench-I, Karachi, while passing the impugned order has not erred in law and failed to appreciate that in terms of section 156(1)(89) of the Customs Act, 1969 if any person without lawful excuse, acquires possession of or is in any way concerned in carrying, harboring, keeping or which there may be reasonable suspicion that they are smuggled goods, the proof of such act shall be on the person that he is not involved in such activity?

- e) Whether the impugned order of learned Customs Appellate Tribunal Bench-I, is well speaking and reasoned order or based on clear misinterpretation of section 187, of the Customs Act, 1969, as well as the general principle of evidence, in the light of delivery Challan No. 87 dated 02.12.2014, mentioned in the documents to the party which was non-existent?
- f) Whether the impugned order passed by the learned Customs Appellate Tribunal is well reasoned and speaking or on the face of it is clear misinterpretation of the spirit of section 187 of the Customs Act, 1969, as well as general principle of evidence as envisaged in Article 117, 119 and 121 of Quanoon-e-Shahadat 1984?
- g) Whether the learned Customs Appellate Tribunal Bench-I, Karachi, while passing the impugned order has not erred in law that the concerned OMC company i.e. M/s. Hascol Petroleum Limited has failed to prove that M/s. Power lik were their authorized agent by way of providing any contract / document showing that the said company could legally handle / store / sale or transport HSD?"

2. Learned counsel for the applicant has read out the impugned order and submits that the Appellate Tribunal has not appreciated the facts and has passed the impugned order, which is not sustainable in law.

3. On the other hand, learned counsel for the respondent has supported the impugned order.

4. We have heard the learned counsel and perused the record. It appears that after issuance of show cause notice, the respondents produced relevant documents regarding the purchase of High Speed Diesel in question and also brought on record verification/letter from the Hascol Petroleum Limited whereby it was confirmed that the respondent is their authorized distributor. The adjudicating authority then passed the order in favour of the respondent and vacated the show cause notice. Subsequently, department went into appeal and the order of the adjudicating authority was set aside. The respondents then appealed the order before the Customs Appellate Tribunal and impugned order has been allowed.

5. After perusal of the record, we are of the view that no question of law arises out of order in question inasmuch as the facts stood determined at the adjudication level, when confirmation was sought from Hascol Petroleum Limited and in presence of such confirmation it is not borne uncontroverted. In

view if such position, we do not interfere I the impugned order. This reference application is being misconceived, hence dismissed.

JUDGE

JUDGE

Khuhro/PA