

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. 123 of 2019.

Date	Order with signature of Judge
	<i>Present: Mr. Justice Muhammad Junaid Ghaffar Mr. Justice Agha Faisal</i>
Applicant(s):	Collector of Customs Through Mr. Khalid Rajper Advocate.
Respondents:	Haji Abdul Sattar koshka and others through Dr. Shahnawaz Memon
Date of hearing:	16.03.2021.
Date of Order:	16.03.2021.

ORDER

Muhammad Junaid Ghaffar, J.- Through this Reference Application, the Applicant Department has impugned order dated 24.11.2018, passed by the Customs Appellate Tribunal Bench-III, Karachi and has proposed the following questions of law:-

1. Whether the learned Appellate Tribunal, while ordering release of US\$ 10,000/- to each of the respondents, had not erred in ignoring the fact that the respondents had made a willful attempt to smuggle huge amount of foreign currency out of Pakistan and that too by way of concealment.
2. Whether the learned Appellate Tribunal had not erred in considering the fact that the confiscated amount of foreign currencies that were recovered from the possession of Respondents constituted "**offering goods**" which could not be refunded/returned to the **offenders**?
3. Whether the learned Appellate Tribunal had not erred in ignoring the *mensrea* that was apparent from the fact that the respondents willfully passed the Customs Channel without voluntarily declaring the possession/carrying of prohibited amounts of foreign currencies out of Pakistan?
4. Whether on the facts and the circumstances of the case the learned Appellate Tribunal did not err in law to ignore that Respondents had to prove the legality of the amount of confiscated foreign currency which they attempted to smuggle out of Pakistan in violation of Section 2(s) of the Customs Act, 1969?
5. Whether on the facts and the circumstances of the case, the learned Appellate Tribunal did not err in appreciating that prohibited amounts of foreign currencies were seized legally by Customs Authorities within the territorial and functional jurisdiction of the Applicant under sub section (s) of Section 2 read with Section 3 of the Customs Act, 1969?
6. Whether on the facts and the circumstances of the case, the learned Appellate Tribunal had not decided the case on misreading and non-reading of law and facts?

7. Whether the learned Appellate Tribunal had not ignored that pivotal fact that the respondents had grossly and intentionally violated the provisions of regulations concerning export of foreign currency by passengers travelling abroad?
8. Any other points which are put forth before the Court during its hearing.

2. Learned Counsel for the Applicant has read out the order and submits that Tribunal was not justified in allowing release/return of US \$ 10,000/- to the respondents as they have admitted their guilt and pleaded guilty before the Special Judge Customs and Taxation, whereas, admittedly the respondents had made an attempt to take out currency beyond the permissible limits, and therefore, they are not entitled for return of US Dollar 10,000/= as ordered by the Tribunal; hence, the questions be answered in favour of the Applicant and the impugned order be set-aside.

3. On the other hand, learned counsel for respondents has supported the impugned order and seeks dismissal of the Reference Application.

4. We have heard both the learned Counsel and perused the record.

5. Insofar as, the controversy as raised before us is concerned, it appears that in identical terms earlier Special Customs Reference Application No.54 of 2010 was decided by this Court and the learned Tribunal has only followed the earlier judgment of this Court. The relevant finding of the Tribunal reads as follows:-

“6. Arguments heard and record carefully perused. We also gone through the contents of notification/circular No.F.E.2/98-SB dated 21.07.2998 issued by the State Bank of Pakistan and supplied copies of judgments of Honourable High Court of Sindh, this Tribunal and lower forums on subject issue. All the above forums have allowed release of US \$ 10,000/- or equivalent amount in other foreign currencies or in Pakistani currency to the appellants, therefore, We feel no hesitation in allowing the release of US \$ 10000/- to the each appellant No.1&2 being permissible limit in accordance with the aforementioned notification/circular issued by the State Bank of Pakistan and also order that the currencies in excess be treated as confiscated. The respondent is directed to return US \$ 10,000/- to the each appellant No.1 & 2 in Pakistani currency at the rate which will be prevailing on the day when respondent returns the above mentioned amount to the each appellant. The rest of the amount is outrightly confiscated. The order-in-original is amended to the extent of release of US \$ 10,000/- to each appellant No.1 & 2 as per baggage rules read with State Bank of Pakistan circular.

6. From perusal of the above findings it reflects that the Tribunal has allowed release of US \$ 10,000/- or equivalent amount in Pakistani currency on the prevailing rate on the basis of Circular issued by State Bank of Pakistan and the judgment passed by this Court.

7. We have confronted the learned Counsel for the Applicant and he is unable to satisfy us as to any illegality in the said order. Subsequently, we had summoned the file of said S.C.R.A No.54 of 2010 and it reflects that the issue already stands decided against the Applicant department. In that case also it was alleged that the passenger was taking out currency beyond the permissible limit of US Dollar 10,000/- or its equivalent as notified by the State Bank of Pakistan, whereas, he had also pleaded guilty before the Special Judge Customs and Taxation. These facts are recorded in the order of Tribunal in that case. When the matter came before a bench of this Court, the Special Customs Reference Application was allowed vide order dated 29.10.2010 in the following terms:-

“This Reference Application has been filed against the order of Tribunal dated 6.1.2010, whereby the appellant was declared to be involved in the act of smuggling of foreign currency from Pakistan and learned member (Judicial)-I directed the Government to refund 3000/- Singaporean Dollars which were declared and confiscated the remaining currency. The following question said to have arisen from the impugned order has been proposed for the opinion of this Court:-

“The impugned order is unable to appreciate the legal point that according to clause (1) of Notification No.F.E.2/98 SB dated 21.7.1998 notified by the State Bank of Pakistan FE-2/98-SB dated 21.7.1998 in terms of Section 8(2) of the Foreign Exchange Regulations Act 1947 “Any person to take out of Pakistan US 10,000/- or equivalent thereof in other foreign currency”.

However the question has not been framed in a proper manner and therefore with consent of both the learned counsel we reframe the question, which reads as under:-

“Whether the confiscation of the foreign currency is to be made over and above the permissible limit of US \$ 10,000/-?”.

We have gone through the impugned order and relevant law. Smuggling has been defined under Clause S of Section (2) of the Customs Act, which reads as under:-

“(S) “Smuggle” means to bring into or to take out of Pakistan, in breach of any Prohibition or restriction or the time being in force, or evading payment of customs duties or taxes leviable thereon:-“.

Currency has been included in Sub-clause (i) of this clause. From the perusal of the definition of `smuggle` it means to bring into or to take out to Pakistan goods in breach of any prohibition or restriction. In accordance with the foreign currency circular of State Bank of Pakistan, citizens of Pakistan are permitted to take out a maximum amount of US\$ 10,000/- on a foreign trip, therefore, we are clear in our mind that the smuggled currency will not include currency upto US \$ 10,000/-.

We, therefore, answer the referred question in affirmative and modify the judgment of the Tribunal to the extent that the currency in excess of US \$ 10,000/- be confiscated and the respondents should return US \$ 10,000/- to the Applicant in Pakistani currency at the rate which will be prevailing on the day when respondent returns the above amount to the Applicant.

This reference application is disposed off in the above manner.

8. From perusal of the above order it reflects that the question of law already stands answered against the Applicant department inasmuch as it has been held that in accordance with the circular of State Bank of Pakistan citizens are permitted to take out a maximum amount of US dollar 10,000/= on a foreign trip, and therefore, the smuggled currency will not include currency up to US Dollar 10,000/-. There is only one question which arises out of the impugned order and that is "*Whether the confiscation of the foreign currency is to be made over and above the permissible limit of US \$ 10,000/-?*", and the same is answered in the affirmative; against the Applicant and in favor of the respondents. Accordingly, this reference application is misconceived and is hereby dismissed. The order of the Tribunal is upheld.

Let copy of this Order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

J U D G E

Amjad/PA