

**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Customs Reference Application ("SCRA") No. 219 of 2020

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Date Order with signature of Judge

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

**Applicant:** Director,  
Director General,  
Intelligence & Investigation (Customs)  
81-C, Block 6, PECHS, Regional Office,  
Karachi.  
Through Mr. Muhabbat Hussain Awan,  
Advocate.

**Respondent:** Khalid uddin Shah  
R/O Flat No. C-24, Unique Classic,  
Gulistan-e-Jouhar, Block 15, Karachi & 2  
others.  
Through Ms. Dil-Khurram Shaheen  
Advocate.

**Date of hearing:** **24.03.2021.**

**Date of Order:** **24.03.2021.**

**O R D E R**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application, the Applicant Department has impugned Judgment dated 12.12.2091 passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No. K-377/2019, proposing the following questions of law:-

- “1. Whether in view of the facts and circumstances of the case, the Respondent No. 1 has violated the provisions of Section 2(s) & 16 punishable under clause (89) of sub-section (1) read with sub-section (2) of Section 156 of the Customs Act, 1969?
2. Whether on the basis of fake and bogus auction documents burden of proof of lawful possession as envisaged under clause (89) of sub-section (1) of Section 156 read with Section 187 of the Customs Act, 1969 can be discharged?

3. Whether impugned judgment passed by the learned Appellate Tribunal by mis-reading / non-reading of evidence is sustainable under the law?"

2. Learned counsel for the Applicant has read out the order and while confronted as to the findings of fact recorded by the learned Tribunal he submits that another verification was sought from Coast Guard and therefore, the order of the Tribunal cannot be sustained.

3. We have heard the learned Counsel and perused the record.

The findings of the learned Tribunal reads as under:-

"4. Arguments heard. Record perused.

5. In this case a Toyota Premio Car bearing Registration No. BMM-814 (Karachi) was nabbed by the staff of Intelligence & Investigation (Customs) in Karachi. The vehicle was allowed release vide order dated 17.01.2019 passed by the Collector of Customs (Adjudication), Karachi. While passing the order, the learned Collector of Customs (Adjudication) observed that it is admitted by the seizing agency that the subject impugned vehicle was purchased in the auction conducted by Pakistan Coast Guards, Karachi the seizing agency also got verified the documents from the Pakistan Coast Guards wherein the vehicle was confirmed as clearly mentioned in Para 7 of the order of the Collector of Customs (Adjudication), Karachi. The chassis number of the vehicle has not been found tampered as a result of examination report of the Forensic Division Sindh, Karachi No. AIG/FD/Veh/OR/346/2018 dated 19.09.2018, that's why the learned Collector of Customs (Adjudication) allowed the release of the car in question.

6. In view of the above, there is no illegality and infirmity in the order dated 17.01.2019 passed by the Collector of Customs (Adjudication), Karachi, this appeal is dismissed on merits as well as on record."

4. Similarly, the findings of the Collector (Adjudication) which had also decided the matter in favour of the Respondent reads as under:-

"23. Case record examined and charges levelled in the Show Cause Notice consider. Reply to Show Cause Notice and Para wise comments of the seizing agency also taken into consideration. As per charges, case making agency, a Toyota Premio Car, Registration No. BMM-814 (Karachi), Chassis NO. NZT240-5011907, Engine No. INZ-A620439 and Model 2003 was seized from Kamran Chowrangi, Gulistan-e-Jouhar, Karachi on the suspicion that the same was smuggled, therefore, charges under Section 2(s), 16 & 178 of the Customs Act, 1969 punishable under Clauses (8), (77) & (89) of sub-section (1) read with Section (2) of Section 156 ibid were framed in respect of the seized vehicle. It is observed and also admitted by the seizing agency itself that the subject impugned seized vehicle was purchased in the auction

conducted by Pakistan Coast Guards, Karachi. The seizing agency also got the documents verified from Pakistan Coast Guards, Karachi wherein the auction of the vehicle was confirmed as clearly mentioned in Para 7 of this order. Further chassis number of the vehicle was also not found, tempered as a result of Sindh Police, Forensic Division, Karachi vide letter No. AIG/FD/Veh/OR/346/2018 dated 19.09.2018 as mentioned vide Para 6 of this order. However, the seizing agency in its parawise comments has challenged and raised objections regarding auction of the vehicle conducted by the Pakistan Coast Guards, Karachi. In my humble opinion the respondent possession holder of the vehicle should not be made scapegoat for this dispute. When it was confirmed by Pakistan Coast Guards, Karachi that the vehicle has been genuinely auctioned by Pakistan Coast Guards, Karachi the same should have released to the Respondent possession holder.

24. Keeping in view of the above stated position, I am of considered opinion that seizure of the impugned vehicle Toyota Premio Car, Registration No. BMM-814 (Karachi), Chassis No. NZT240-5011907, Engine No. INZ-A620439 and Model 2003 is illegal and therefore, the subject vehicle is released unconditionally to the respondent possession holder.”

5. Perusal of the aforesaid order reflects that there appears to be no Question of Law actually arising out of the order of the Tribunal as it is the findings of the fact in respect of auction of goods by Coast Guard Karachi.

6. In view of such position the Reference Application is misconceived and is hereby dismissed. Let copy of this order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Act.

**J U D G E**

**J U D G E**

Arshad