

# IN THE HIGH COURT OF SINDH AT KARACHI

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

SCRA 700 of 2019 : Director, DG I&I (Customs) vs.  
Aurangzaib & Another

CP D 1853 of 2020 : Aurangzaib vs. Pakistan & Another

For the Applicant : Mr. Khalil Dogar, Advocate  
(Respondent in CP D 1853 of 2020)

For the Petitioner : Ms. Dil Khurram Shaheen, Advocate  
(Respondent in SCRA 700 of 2019)

Date of hearing : 24.03.2021

Date of announcement : 24.03.2021

## JUDGMENT

**Agha Faisal, J.** A truck ("Vehicle") was apprehended during routine checking and inside a concealed cavity was found, loaded with Iranian origin HSD oil ("Oil"). Upon inspection, it was discovered that the Vehicle itself had a tampered chassis number and was smuggled / non duty paid. Pursuant to a show cause notice, an order in original was rendered, whereby the Vehicle and the Oil were outright confiscated. In the appeal, ostensibly to the extent of the Vehicle, the learned appellate tribunal placed reliance on SRO 499(I)/2009 dated 13.06.2009 ("SRO") and vide Judgment dated 28.05.2019 ("Impugned Judgment") allowed the release of the Vehicle against payment of fine equal to twenty percent of ascertained customs value. The present reference application has assailed the Impugned Judgment; whereas, the present petition seeks implementation of the same. Since the two matters are interlinked, therefore, they were heard conjunctively and shall be determined vide this common judgment.

2. In order to illustrate the *lis* before us, it is considered expedient to reproduce the show cause notice and the relevant findings of the order in original and the Impugned Judgment herein below:

### Show Cause Notice

"Whereas it has been reported by the Directorate General of Intelligence & Investigation-FBR, Regional Office, Karachi vide Seizure Report enclosed with their letter No.M-2486/DCI/Seiz/2018 dated 30.08.2018 the case as reported by SHO, Surjani Town Police Station West, Karachi, that while performing routine checking/surveillance, within the limits of Surjani Town Police Station West, Karachi, on 19-07-2018 at 20:30 hours, a suspected Nissan Dumper Truck bearing registration Mark/Plate No.TKF-480, was signaled

to stop. The driver although stopped the dumper, however taking advantage of darkness escaped away. Upon cursory checking of the concealed container loaded on the Nissan Dumper Truck, it was found loaded with Iran Origin HSD Oil.

2. And whereas, since, detailed examination / dip of High Speed Diesel found in the concealed container loaded on the Dumper Truck bearing registration Mark/Plate No.TKF-480, was not possible on the spot, therefore, the said smuggled / non duty paid Nissan Dumper Truck was escorted to the Surjani Town Police Station West, Karachi, for examination and recovery of HSD Oil. At the Surjani Town Police Station West, Karachi the examination of Dumper bearing registration Mark/Plate No.TKF-480, in presence of witnesses, resulted in the recovery of 10,000 Liters (Approx) Iran Origin smuggled High Speed Diesel, therefore, the smuggled / non duty paid Nissan Dumper Truck bearing registration Mark/Plate No.TKF-480, loaded with 10,000 liters of smuggled / non duty paid HSD Oil (approx) was taken in to the custody under the relevant provisions of law.

3. And whereas, subsequently intercepted smuggled / non duty paid Nissan Dumper Truck bearing registration Mark/Plate No.TKF-480, loaded with 10,000 liters of smuggled HSD Oil (approx), in the concealed container without import/registration documents of possession holder/claimant owner, was handed over to the staff of this Directorate General on 19-07-2018, by the Surjani Town Police Station West, Karachi, against proper documentation.

4. And whereas, upon receipt of smuggled/ non duty paid Nissan Dumper bearing registration Mark/Plate No.TKF-480, loaded with smuggled / non duty paid Iran Origin HSD Oil 10,000 Liters (approx.), in the concealed container alongwith case papers, the concealed container of the said Dumper was again checked/examined, at the office of Directorate General, Intelligence & Investigation-Customs, Karachi in presence of witnesses, during checking of container it was found filled with F/o High Speed Diesel, the quantity of loaded F/o High Speed Diesel was measured through dipping, in presence of witnesses, which resulted in the recovery of 10,000 Liters (Approx) Iran Origin smuggled High Speed Diesel. The search of the vehicle further revealed that a photocopy of Registration Book No.C0203417 was available, which shows registration of the subject Dumper Truck against Registration Mark/Plate as TAK-476, showing Chassis No.CD45CV-11357, which was also appearing on the dumper.

5. And whereas, in order to confirm the legitimate importation of Dumper Truck bearing Regd No.TKF-480, Chassis No.CD45CV-11357, the online data available with the Web Portal of PRAL was accessed, which transpired that no such vehicle is available in the data of imported vehicles and as such was found smuggled/non-duty paid.

6. And whereas, in order to verify the chassis number of the seized Nissan Dumper Truck bearing Dummy Mark/Plate No.TKF-480, the Assistant Inspector General of Police, Forensic Division, Karachi was approached, vide letter C.No.2486/DCI/SEIZ/2018/2953 dated 27.07.2018, for chemical examination. In response, thereof, the Assistant General of Police, Forensic Division Sindh, Karachi, conducted the forensic examination and submitted Report No.AIG/FD/Veh/OR/301/2018 dated 06.08.2018, conveying that the present chassis serial (CD45CV-11357) is tampered after erasing the original digits, which could not be deciphered due to deep grinding. The contents of examination report are reproduced here under for perusal:-

SERIAL NO.FD/Veh-298/2018

01. General:

The vehicle examined at Regional office of Intelligence & Investigation-(Customs) FBR ASO PECHS, Karachi, Details are:

Maker:	Nissan Dumper Truck
Registration No:	TKF-480
Received on:	06-08-2018
Chassis Serial before chemical process	(CD45CV-11357)

02. Opinion: The Chemical Examination of vehicle has led that:

(i) Chassis No. The present chassis serial (CD45CV-11357) is tampered after erasing the original digits, which could not be deciphered due to deep grinding.

7. And whereas, as the transportation of smuggled/non duty paid HSD Oil is restricted, moreover the investigation conducted by the Directorate General, with PRAL and aforementioned forensic examination report of the Assistant Inspector General of Police, Forensic Division, Sindh Karachi, it is established that the subject Dumper Truck, bearing Registration No.TKF-480, Chassis No.CD45CV-11357 was smuggled into the country without payment of duty & taxes, and the Dumper after tampering the original digits bearing chassis serial CD45CV-11357, was used in the transportation of smuggled / non duty paid HSD Oil, therefore, the Dumper Truck bearing Registration No.TKF-480 loaded with 10,000 Liters (approx.) smuggled/non duty paid Iran Origin HSD Oil in the concealed tank, were seized in terms of Section 168 of the Customs Act, 1969, for violation of the provisions of Section 2(s), 16 and 168 of the Customs Act, 1969, punishable under clauses (8), (9), (77) & (89) of sub-Section (I) read with Sub Section (2) of Section 156 of the Customs Act, 1969, under proper documentation. Notice under Section 171 of the Customs, 1969, issued to the unknown offender and pasted on the Notice board of the Directorate General, Regional Office, Karachi. (Value of the seized good Rs.1,137,000/- & Vehicle Rs.6,000,000/- Approx) & Duty and Taxes involved Total Rs.4,801,255/- as determined by the seizing agency in the seizure report).

8. Now therefore, in the light of above reported facts, Anonymous/ Unknown owner of the vehicle (address not mentioned in the Seizure Report) are called upon to show cause as to why the seized good and vehicle "HSD Oil, 10,000 Liters (approx.), Iran Origin, One Unit Nissan Dumper Truck, bearing Dummy Mark/Plate No.TKF-480, Registration NO.TAK-476 (as per photocopy of Registration Book No.C0203417 found as a result of search of cabin of dumper), Chassis No.CD45CV-11357 (Tampered), Model 1997 should not be confiscated and penal action as warranted under the aforementioned provisions of law should not be taken against them. The written reply to the Show Cause Notice accompanied by supporting documents should reach this office within (14) days of the issuance of this notice.

Hearing, in this case, has been fixed for 20.09.2018 at 11.30 a.m., when the respondents may appear in person or through their authorized representative in the office of the Collector of Customs (Adjudication-I), 11<sup>th</sup> Floor, Customs House, Karachi to defend the above charges. If no reply to the Show Cause Notice is received or no one appears on the aforesaid date and time, it shall be presumed that the respondents do not want to defend the charges and the case shall be decided on merit on the basis of the available record."

## Order in Original

"Record of the case has been examined and contentions of all the sides perused. It is observed that the seizure of Iran Origin Oil and Nissan Dumper Truck was made as the same was found smuggled and brought into the country without payment of leviable duty and taxes. Claimant/owner of the seized Iran Origin HSD Oil neither attended the proceedings of adjudication nor provided any reply to refute the charges leveled against him in the Show Cause Notice. This leads me to conclude that the respondent claimant/owner of the seized Iran Origin HSD Oil has nothing in his defence to refute the charges leveled against him. As far as the seized Nissan Dumper Truck bearing Dummy Mark/Plat No.TKF-480 is concerned, the chassis number of the same has been found tampered as a result of chemical examination by Assistant Inspector General of Police, Forensic Division Sindh Karachi in their report as quoted above. Arguments of the advocate of the claimant of seized Nissan Dumper Truck for release of the same have no force of law in view of these circumstances.

Keeping in view of the above stated legal and factual position, I am of the firm view that 10,000 Liters Iran Origin HSD Oil loaded in a concealed portion of the seized Nissan Dumper Truck was smuggled into the country through un-authorized route. Further chassis number of the impugned seized Nissan Dumper Truck was also found tampered as stated above. In view of this charges leveled in the Show Cause Notice No.Coll.Adj-I/73/2018-19 (M-2486/DCI/Seiz/2018) dated 06.09.2018 are established beyond any shadow of doubt. The seized Iran Origin HSD Oil (10,000 Liters) and seized Nissan Dumper Truck bearing Dummy Mark/Plat No.TKF-480, Chassis No.CD45CV-11357 (Tempered) is confiscated outright for violation of the provisions of Customs Act, 1969 as mentioned in the Show Cause Notice."

## Impugned Judgment

"11. Arguments heard and record perused. After explanation of the actual facts and circumstances by the parties on the issue of tampering and also apparent from chemical examination, no changed number was found only deep grinding was reported nor the respondent had brought another chassis number on record against the contention of appellant which proves the malafide of seizing agency. By making false charges against any innocent person subsequently became difficult for the respondents to make the same true or prove it with proper evidences. As per facts and record, the impugned vehicle has not been used earlier for carriage of offending goods in terms of Board's letter C.No.10(17)L&P/05 dated 26.06.2006 as well as in similar circumstances, the respondents have given option to the owners / claimants of vehicles under section 181 of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13.06.2009 to redeem the same against payment of fine equal to 20% of the ascertained customs value. From the above discussion, I came to conclusion to allow the appeal of appellant and set aside the impugned order passed by the Collector of Customs, (Adjudication-I), Karachi subject to payment of 20% redemption fine by the owner/claimant as per customs value of the impugned vehicle. The respondent is also directed to release Nissan Dumper Truck bearing Reg. Mark/Plate No.TAK-476 to its lawful owner."

3. Learned counsel for the applicant assailed the Impugned Judgment, by raising various questions of law, and submitted that the same was in *prima facie* dissonance with the law. On the other hand, the petitioner's learned counsel submitted that the Impugned Judgment ought to be maintained in the interests of justice.

4. We have heard the respective learned counsel and have also perused the documentation to which our surveillance was solicited. It appears to be admitted that the Oil, being carried in a concealed cavity in the Vehicle, was smuggled; hence, the confiscation thereof has not been impugned. The only issue that remains is whether the Vehicle could be ordered to be released against mere payment of fine equal to twenty percent of ascertained customs value. In view hereof, the question re-framed for determination is "*Whether in the present facts and circumstances the Vehicle could be released against mere payment of fine equal to twenty percent of ascertained customs value*".

5. The forensic report in respect of the Vehicle clearly demonstrates that the chassis number has been tampered. The order in original shows that the relevant report could not be controverted during the adjudication proceedings.

The learned tribunal appears to have been dealt with the issue of tampering in a rather perfunctory manner, which cannot be appreciated. Mere reliance on registration of a vehicle, unsubstantiated by the record, cannot absolve a subsequent purchaser from liability.

6. The honorable Supreme Court has held in the *Sarfaraz case*<sup>1</sup> that while initial responsibility lies with the person tampering with a vehicle, however, a subsequent purchaser ought to have taken due care towards ensuring compliance with the requirements of law; in the absence whereof he cannot claim to be a bona fide purchaser. It was further illumined that a purchaser's remedy lay in a claim for damages against the person from whom he purchased the vehicle. In a leave refusal order in the *Chaudhry Maqbool case*<sup>2</sup>, the honorable Supreme Court observed that a smuggled vehicle with an apparent tampered chassis frame, as denoted from uncontroverted forensic report/s, merited outright confiscation. In *Noor Muhammad*<sup>3</sup> the august Court maintained that a forensic report was to be given due credence and it was incumbent upon a person aggrieved to challenge / discredit the same in the proceedings concerned.

7. In the present case the forensic report was relied upon in the initial show cause notice issued by the department, and also in the order in original. The contents of the said report appear not to have been dispelled either by the respondent in his pleadings, before the appellate tribunal and / or before this Court, or by the findings contained in the Impugned Judgment. This Division Bench has maintained in the *Umer Zahid Malik*<sup>4</sup> case that disregard of a forensic report upon mere registration documents could not be approved.

8. The next aspect to address is the implication of the SRO. The said instrument expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein<sup>5</sup>. The Impugned Judgment has not given any findings to substantiate that the Vehicle was not smuggled; hence, there is no justification before us as to how the learned tribunal extended the benefit of the SRO in the said facts.

9. Notwithstanding the foregoing, the SRO extends the facility for redemption of qualifying confiscated items against payment of a redemption

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<sup>1</sup> Per *Mushir Alam J* in the judgment dated 28.05.2020 *Government of KPK & Others vs. Sarfaraz Khan & Another (Civil Petition 800-P of 2019)*.

<sup>2</sup> Per *M Javed Buttar J* in *Ch. Maqbool Ahmed vs. Customs, Federal Excise & Sales Tax Appellate Tribunal & Others* reported as 2009 PTD 77.

<sup>3</sup> Per *Ijaz ul Ahsan J* in *Noor Muhammad vs. Customs Appellate Tribunal & Others* reported as 2020 SCMR 246.

<sup>4</sup> *Umer Zahid Malik vs. Federation of Pakistan & Others (CP D 4514 of 2020)*.

<sup>5</sup> ... the Federal Board of Revenue is pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of ... (a) smuggled goods ... (b) lawfully registered conveyance ... found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods...

fine *in addition to the payment of the relevant duties and levies*<sup>6</sup>. In the Impugned Judgment the release of the Vehicle has been ordered against mere payment of the redemption fine and there is no mention of the relevant duties and levies. In the absence of any cogent justification of the Vehicle having been duty / taxes paid, we remain unable to comprehend as to how its release could have been ordered on mere payment of a redemption fine.

10. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*<sup>7</sup>, wherein it was held that release of a confiscated vehicle carrying smuggled goods could not be sanctioned in lieu of payment of a redemption fine, pursuant to clause (b) of the SRO. The said judgment was recently maintained by the honorable Supreme Court<sup>8</sup>.

11. It is, thus, our deliberated view that the Impugned Judgment is in dissonance with the law, as enumerated supra, hence, cannot be sustained. Whereas, the findings contained in the order in original are in correct appreciation of the law, for the time being in force.

12. In view of the reasoning and rationale herein contained, the question framed for determination supra is answered in the negative; hence, in favor of the applicant and against the respondent in the reference application. The reference application stands allowed in the above terms. As a consequence hereof, the subject petition, along with pending application/s, is hereby dismissed. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Amjad/PA

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<sup>6</sup> ... the quantum of fine in lieu of confiscation ... shall be at a rate specified ... and shall be over and above the customs-duties and other taxes and penalties imposed under the relevant law...

<sup>7</sup> *Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020)*; judgment dated 23.07.2020.

<sup>8</sup> Per *Maqbool Baqar J in Civil Petitions 730-K to 760-K of 2020*; Order dated 11.02.2021.