

IN THE HIGH COURT OF SINDH AT KARACHI

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

SCRA 217 of 2020 : Collector, Model Customs Collectorate
Custom House, Karachi vs. Manzoor
Hussain and Another

CP D 5447 of 2020 : Manzoor Hussain vs. The Federation of
Pakistan and Another

For the Applicant : Mr. Muhammad Khalil Dogar, Advocate

For the Petitioner : Mr. Aqeel Ahmed, Advocate

Date of hearing : 26.04.2021

Date of announcement : 26.04.2021

JUDGMENT

Agha Faisal, J. A dumper truck (“Truck”) was intercepted, post a chase on the highway, and a search thereof led to the discovery of a specially designed concealed cavity, containing foreign origin smuggled diesel (“Diesel”). Pursuant to a show-cause notice¹, an order in original² was rendered, whereby the Diesel and the Truck were outright confiscated. The order in original was maintained in the order is appeal³. However, vide judgment dated 07.02.2020 (“Impugned Judgment”) the learned Appellate Tribunal, in ostensible reliance upon SRO 499(I)/2009 dated 13.06.2009 (“SRO”), allowed the release of the Truck on payment of redemption fine. The present reference application has assailed the Impugned Judgment; whereas, the present petition seeks implementation of the same. Since the two matters are interconnected, 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 relevant findings of the order in original, order in appeal and the Impugned Judgment herein below:

Order in Original

“16. I have gone through the record of the case. No one appeared before the undersigned for the seized High Speed Diesel Oil (Iran), Quantity 15000/- Liters. This fact clearly establishes that the same is

¹ Dated 25.06.2019.

² Dated 14.11.2019.

³ Dated 30.01.2020.

smuggled one. Therefore, the seizing agency has proved its contention beyond any shadow of doubt that the same is smuggled and has been brought into the country by evading legitimate duty and taxes. Therefore the entire seized diesel is confiscated outright under clause (8) & (89) of Section 156 (1) for violation of Section 2(s) & 16 of Customs Act, 1969 read with SRO 566(1)/2005 dated 06.06.2005, further read with SRO 499(I) 2009 dated 13.06.2009.

17. As for the conveyance, 12 Wheeler Hino Dumper Truck with concealed Tank bearing Registration No.TAC-496, Chassis number JMEFY2PUKM-0011111, Engine Capacity HP-395 CC and Model-2000 has been seized carrying a huge quantity of foreign origin smuggled goods. It has been found being used exclusively and wholly for smuggling of goods mentioned above. Therefore the seized vehicle along with the packages, if any, is also Confiscated Outright u/s 157(1) and (2) of the Customs Act 1969 read with clause (b) of the preamble of SRO 499 (I)/2009 dated 13.06.2009.”

Order in Appeal

“5. I have examined the case record. The appellant has pleaded that their client has no involvement in smuggling of Diesel and he is a simple transporter and his vehicle was hired by someone and transported smuggled Diesel. Hence, the vehicle may be released on payment of redemption fine. On asking that have vehicle owner provided the name and other particulars of the person who have hired the vehicle, to department for his arrest, the appellant show ignorance of particulars of the smugglers. This showed that the vehicle owner is either himself a smuggler or hand in glove with the smuggler and vehicle is intentionally being used in Diesel smuggling. The appeal is therefore merits no consideration and is dismissed.”

Impugned Judgment

“5. Perusal of record reveals that a Truck bearing Registration No.TAC-496 has been intercepted by the Customs Authorities on 17.05.2019. The vehicles in question is public carrier and the owners has not been served with a show cause notice. It was the driver of the vehicle who was transporting the smuggled Iranian diesel in the vehicle as he was not aware of the facts that the owner of goods transporting illegal goods in the vehicles. The whole file does not suggest any evidence in respect of intention, mean rea and malafide of the owners of the vehicle in the commission of offence. The seized Iranian diesel was not found concealed in any specially designed cavities. Therefore, I accept the appeal in respect of vehicle No.TAC-496 and direct the respondents to release the vehicle on 20% redemption fine of the ascertained value of the vehicle. ”

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 Diesel, being carried in a concealed specially designed tank in the Truck, was smuggled; hence, the confiscation thereof has not been impugned. The only issue that remains is whether the Truck could be ordered to be released per the SRO. In view hereof, the question re-framed for determination is “*Whether in the present facts and circumstances the Truck could be released per the SRO*”.

5. Petitioner’s counsel has articulated no cavil to the factum that the Diesel being carried in the Truck was smuggled. It was also admitted before us that the Truck, being a dumper truck, had a tank, concealed under stone crush, specially designed to ferry the contraband.

6. It is in this factual context that we proceed to consider the remit of the SRO. The said instrument expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein⁴. In view of the admitted factum that the Truck was found carrying smuggled diesel in false / concealed cavities, no case has been made out before us to justify the extension of the benefit of the SRO in the said facts.

7. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*⁵, 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 Court⁶. This Division bench has also consistently followed the aforementioned enunciation of law in the *Niaz Muhammad case*⁷, *Nasir ul Haq case*⁸ and the *Faiz Muhammad case*⁹.

8. 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 appeal are in correct appreciation of the law, for the time being in force.

9. 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 department 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

⁴ ... 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...

⁵ *Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020)*; judgment dated 23.07.2020.

⁶ Per Maqbool Baqar J in *Civil Petitions 730-K to 760-K of 2020*; Order dated 11.02.2021.

⁷ *Niaz Muhammad vs. Federation of Pakistan & Others (CP D 1753 of 2020)*.

⁸ *Nasir ul Haq vs. Federation of Pakistan & Others (CP D 4524 of 2020)*.

⁹ *Faiz Muhammad vs. Federation of Pakistan & Others (CP D 296 of 2020)*.