

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui, J.
Agha Faisal, J.

SCRA 486 of 2017 : Imran vs.
Customs Appellate Tribunal & Others

SCRA 488 of 2017 : Ashfaq Ahmed Memon vs.
Customs Appellate Tribunal & Others

For the Applicants : Mr. Amer Raza Naqvi, Advocate

For the Respondents : Mr. Muhammad Khalil Dogar, Advocate

Date of hearing : 23.09.2021

Date of announcement : 23.09.2021

The present Special Customs Reference Applications assail respective orders dated 18.04.2017, rendered by the learned Customs Appellate Tribunal, whereby the vehicles in question were confiscated. In the prior application, the vehicle of foreign origin was confiscated on account of the applicant having failed to demonstrate any documentation of import in such regard. Whereas, in the latter application the vehicle of foreign origin was confiscated on account of underlying documentation relied upon having been proven fake / forged. Per request of the learned counsel, these reference applications were heard conjunctively today and shall be determined vide this common order.

2. Applicants' entire case was rested on the argument that the respondents / department was precluded from seeking any documentation of import / title in respect of vehicles over five years old¹. It was further articulated that the department itself ought to have conducted an inquiry to obtain the import / title documentation from where so ever possible and such an onus could not be rested on the applicants.

3. Respondent's learned counsel demonstrated from the record that in the prior application no documentation of import / registration book were ever produced and in the latter application the import documents submitted were adjudged to be fake / forged.

4. We have heard the respective submissions and considered the applicable law.

5. Section 26² of the Customs Act 1969 ("Act") empowers a designated officer to require any person concerned with any imported items to furnish

¹ Reliance was placed upon judgment dated 09.07.2020 in SCRA 110 of 2014 & connected matters ("*Imran case*").

² 26. Power to require information to be furnished.- An appropriate officer may, by a requisition in writing, require any person concerned with the importation, exportation, purchase, sale, transport, storage or handling of any goods which are being or have been imported or exported to furnish such information relating to the goods as may be necessary for determining the legality or illegality of the importation or exportation of such goods, the value of such goods, the nature, amount and source of the funds or assets with which the goods were acquired and the customs duty chargeable thereon, or for deciding anything incidental thereto and to produce, and allow the officer to inspect and take extracts from or make copies of any invoice, bill of lading, book of account or other book or document of whatever nature relating to the goods.

such information relating thereto as may be necessary for determining the legality or illegality of the importation thereof. The law³ places the initial burden upon the person to show that the items in possession are in accordance with lawful authority; however, only upon prima facie discharge of this evidential burden the onus may shift⁴.

6. Upon discovery of the vehicles the department sought documentation pertinent thereto. In the prior case, admittedly none was submitted and in the latter case the relevant documentation was adjudicated to be fake / forged. It is imperative to note that the applicants counsel has articulated no cavil to the findings of fact arrived at by the learned tribunal. In such regard it is prima facie apparent that the applicants failed to discharge their primary burden and were unable to justify their possession of the vehicles.

7. The applicants' reliance upon the *Imran case* is unmerited herein as the pronouncement is clearly distinguishable in the facts and circumstances before us. The pronouncement dealt *inter alia* with *duly registered* vehicles; whereas, in the present matters, *admittedly*, no registration could be demonstrated in respect of one vehicle whereas the documents in respect of the latter vehicle were found to be fake / forged. The judgment has itself observed that if the documentation is *proved* to be bogus then consequences will lie accordingly. It is settled law, as maintained by a Division Bench of this Court in the *Umer Zahid Malik*⁵ case, that credence to mere alleged registration documents, in disregard of the chronic absence of any documents of entitlement, could not be approved.

8. In summary, the vehicles, subject matter of the present applications, have been duly found to be sans any documentation of import / title / entitlement and no cavil has been articulated in respect of such findings by the applicants' counsel. It remained the applicants' primary duty to justify their possession / entitlement to the vehicles and they have failed in such regard before the statutory fora. The applicants' counsel has remained unable to identify any infirmity with the orders impugned, hence, no case for interference is made out before us.

9. Various questions had been proposed on behalf of the applicant, *prima facie* being argumentative / raising factual controversies⁶, however, the learned counsel sought time and filed new proposed questions of law via a statement today. We are, respectfully, constrained to observe that the reformulated questions are also extraneous and dissonant to the impugned orders. The only question for determination before us, arising out of the impugned orders, would be "*Whether in the facts and circumstances of the case the respondents were entitled to seek / verify documentation of entitlement in respect of the seized vehicles and place reliance upon the result of such an endeavor*". Therefore, respectfully, we hereby reformulate⁷ the question to be answered herein, in terms of the verbiage supra.

³ 187. Burden of proof as to lawful authority etc. When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, licence or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, licence or other document shall lie on him.

⁴ Per *Muhammad Junaid Ghaffar J* in *Abdul Razzak vs. DG I&I & Others* reported as 2016 PTD 1861; *Muhammad Gul vs. Member Judicial Customs Appellate Tribunal & Others* reported as 2013 PTD 765; *Kamran Industries vs. Collector Customs & Others* reported as PLD 1996 Karachi 68.

⁵ *Umer Zahid Malik vs. Federation of Pakistan & Others* (CP D 4514 of 2020).

⁶ Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as 2011 PTD 2577 – Findings of fact cannot be challenged in reference jurisdiction.

⁷ *A. P. Moller Maersk & Others vs. Commissioner Inland Revenue & Others* reported as 2020 PTD 1614; *Commissioner (Legal) Inland Revenue vs. E.N.I. Pakistan (M) Limited, Karachi* reported as 2011 PTD 476; *Commissioner Inland Revenue, Zone-II, Karachi vs. Kassim Textile Mills (Private) Limited, Karachi* reported as 2013 PTD 1420.

10. In view of the foregoing and in pursuance of the binding ratio of the judgments cited supra, we are of the considered view that question framed for determination be answered in the positive, in favour of the respondent department and against the applicant. Therefore, these reference applications are hereby dismissed.

11. 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

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