

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
S.C.R.A No.424 of 2018

Collector of Customs
 Versus
 Syed Javed Ahmed and another

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Fresh Case

1. For order on CMA No.3750/2018 (Exemption)
2. For hearing of Main Case.
3. For order on CMA No.3751/2018 (Stay).

27.09.2021

Mr. Pervez Ahmed Memon, Advocate for the applicant.

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Against the judgment of the Customs Appellate Tribunal, this Special Customs Reference Application has been filed on the proposed questions, such as; whether the appellate tribunal had not erred in applying Section 139 and 142 of the Customs Act, 1969 by allowing the re-export of Jewelry which was brought in violation of the Customs Act, 1969; and that whether the goods were declared under Section 139 of the Customs Act, 1969 and thirdly, whether the release of the impugned jewelry under Section 142 of the Customs Act, 1969, in view of oral declaration by passenger under Section 139 of the Customs Act, was justified.

We have heard learned counsel for the applicant and perused the material available on the record on the proposed questions.

The respondent arrived at Jinnah International Airport, Karachi through a passenger flight from Istanbul, Turkey vide flight No.TK-708. He was asked to declare, if he was carrying any goods to be declared. According to the judgment of the Tribunal in terms of para-11, as he arrived in the arrival hall, Customs staff asked, if he had something to declare, on which he told he had jewelry. He was

then taken to scanning machine where silver chains were discovered/ found. The Tribunal on consideration of the facts and circumstances has allowed the appeal of the respondent that the jewelry was not liable to be confiscated out rightly under Section 8 and 89 of the Customs Act, 1969.

According to the definition of Section 2(s), “*smuggling means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or en-route of goods or evading payment of customs-duties or taxes leviable thereon*”. The only question that was attempted by the Customs officials was that the appellant did not declare items to Customs officials.

In terms of Section 139 of the Customs Act, “*the owner of any baggage whether a passenger or a member of crew shall, for the purpose of clearing it, make a verbal or written declaration of its contents in such manner as may be prescribed by rules to the appropriate officer.....*”.

Thus there is no cavil that declaration of goods could also be verbal in terms of Section 139 of the Customs Act. The facts reveal that the verbal declaration was accepted as the passenger was in the arrival hall when he was asked to declare.

He opted for authorized route to bring into the jurisdiction, such goods. Thus prima-facie there is no element of smuggling on two counts that the passenger opted a regular route of his arrival and that there was an oral declaration of the goods.

Similarly clause 89 of Section 156 of the Customs Act is of no avail as the prosecution failed to establish that the accused was making an attempt to smuggle the goods into or out of Pakistan and the consequences of clause 8 would not be attracted. There is neither

any concrete evidence that the goods were attempted to be smuggled nor even a case of reasonable suspicion that the goods were being smuggled in view of oral declaration and regular route. Denial to such oral declaration cannot be subjected to a test in reference jurisdiction as only a question of law could be looked into.

The applicant has not been able to place on record any prohibition or restriction insofar as the goods are concerned. The Tribunal has also laid reliance on Rule 17 of the Baggage Rules, 2006 which provides that the goods brought in commercial quantity shall be allowed release only on payment of duty and taxes at the statutory rates and redemption fine equal to thirty per cent of the value of the goods in terms of the Notification No.SRO 547(1)/2005 dated 06th June, 2005 wherein fine was subsequently reduced by a following SRO in 2009. Thus in view of the definition of Section 2(s) of the Customs Act, 1969 the commercial quantity of silver jewelry does not fall in any prohibition or restriction clause unless proved otherwise. The SRO 499(1)/2009 also allow commercial quantity baggage to be released on taxes or redemption fine. The applicant has not placed any Notification/SRO which had prohibited or restricted the silver jewelry in commercial quantity. The entire case revolves around whether oral declaration by the passenger was made or not, or if it was made, whether it was lawful.

In view of Section 139 of the Customs Act, 1969 we are of the view that the passenger was at liberty to declare such contents of his baggage orally which he did as disclosed in the impugned order and such facts cannot be re-appreciated while hearing reference. Thus the proposed questions are answered as under:-

1. negative, 2. affirmative, and 3. Affirmative, in favour of respondent and against the applicant and consequently Reference Application is dismissed alongwith pending applications.

Copy of this order be sent to the Appellate Tribunal in terms of Section 196(5) of Act.

JUDGE

JUDGE

Ayaz Gul