

**IN THE HIGH COURT OF SINDH, KARACHI**  
SCRA No.493 of 2016

-----  
DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
-----

*BEFORE: Irfan Saadat Khan,  
Mehmood Ahmed Khan, JJ*

The Collector of Customs,  
Applicant : through Mr. Shahid Ali Qureshi,  
Advocate.

Versus

Abdul Sattar  
Respondent No.1 : through Dr. Muhammad Khalid Hayat,  
Advocate.

The Customs Appellate Tribunal,  
Respondent No.2.

Date of hearing : 27.04.2022

Date of decision : 10.05.2022

JUDGEMENT

**Irfan Saadat Khan, J.** This Special Customs Reference Application (SCRA) has been filed impugning the order passed by the Customs Appellate Tribunal (CAT) in Customs Appeal No.H-06 of 2016 dated 21.3.2016. Vide order dated 13.09.2019 the following question of law was admitted for regular hearing.

1. "Whether the learned Customs Appellate Tribunal Bench-I has misinterpreted the spirit of Section 2(s) of the Customs Act, 1969 and subordinate legislation made thereunder, whereby the vehicle used for transportation and carrying of smuggled notified goods falling under clause (s) of Section 2 is liable to outright confiscation under Section 157(2) of the Act *ibid*?"

2. Briefly stated the facts of the case are that the Department received some information that High Speed Diesel (HSD) was being transported from Balochistan via National Highway to Sindh. On 26.5.2015 the Customs staff intercepted an oil tanker bearing

registration number TLQ-554 (hereinafter referred to as O.T) near Benazirabad and found out the said O.T was loaded with HSD. The customs staff then brought the said O.T to Customs House Hyderabad. Necessary proceedings, with regard to preparing mushirnama etc., was then carried out. Upon examination of the O.T from Chamber No.1 1538 mm & Chamber No.2 1530 mm diesel was found, which came to 54,0000 liters. Since no proper documents of the said HSD and the O.T were found therefore, the HSD as well as the O.T were impounded and thereafter action under Section 171, 215(b), 156(1) and 157(2) of the Customs Act 1969 (the Act) were carried out. A show cause notice was then issued to the owner / claimant of the goods and the O.T and thereafter order-in-original No.33 of 2015 dated 3.12.2015 was passed. Against the said order an appeal was filed by the registered owner of the O.T and the CAT after detailed discussion set aside the impugned order with the directions to release the subject O.T to its lawful owner against the payment of 20% fine of the present value of the O.T appraised by the MCC Hyderabad. This order is now impugned through the present SCRA.

3. Mr. Shahid Ali Qureshi, Advocate has appeared on behalf of the Applicant/Department and stated that the CAT has ordered the release of the O.T vide SRO NO.499(1)/2009 dated 13.6.2009, which is not in accordance with law. He submitted that since the O.T was filled with smuggled HSD therefore, there was no occasion to release the O.T by the CAT. According to him the O.T was very much part and parcel of the illegality and the violation made by the Respondent. He next stated that CAT while passing the order has not considered the provisions of Section 25 of the Act, read with

SRO 566 dated 06.6.2005. He stated that while passing the order the CAT since has not considered material legal aspects, hence the order of the CAT may be set aside and the answer to the question raised, and admitted, may be given in affirmative i.e. in favour of the Department and against the Respondent. In support of his contention the learned counsel has placed reliance on the decision given in SCRA No.217/2020 dated 26.04.2021.

4. Dr. Muhamamd Khalid Hayat, Advocate has appeared on behalf of the Respondent and had vehemently refuted the arguments advanced by the learned counsel for the applicant. He stated that the decision of the CAT is based on sound reasonings, therefore, the answer to the question may be given in negative i.e. in favour of the Respondent and against the applicant/department. He stated that the O.T was plying on the highway in routine manner. The Respondent neither had any link nor connection with the confiscated HSD. He stated that in the past also there was no involvement of the Respondent in any kind of violation of customs law. He stated that the Customs Authorities did not give proper opportunity of being heard to the respondent, as provided under Section 181 of the Act. He next stated that the SROs referred by the counsel for the applicant in fact supports his case. He stated that complete documents with regard to the ownership of the O.T were in possession of the Respondent. He also invited our attention to the order passed in CP No.D-1243/2017 whereby a Division Bench of this Court allowed temporary release of the O.T, subject to the final outcome of the present SCRA.

5. The learned counsel next stated that at the time of confiscation of the O.T nobody was present in it, hence no question

of producing documents at the spot was possible hence the show cause notice issued, as well as the order-in-original passed, were in due haste without providing proper opportunity of hearing to the Respondent. He stated that since the department has failed to fulfill its legal obligation therefore the CAT was quite justified in ordering the release of the O.T. He next contended that the CAT has rightly interpreted the term "liable for confiscation" which does not mean that confiscation has to be made mandatorily. He next stated that the order of the CAT is unexceptional as it has, after thrashing out the facts of the case in detailed manner, has passed the order since there was no element of smuggling involved in the instant matter via the O.T owned by the respondent, therefore, this SCRA may be dismissed by answering the question in negative i.e. in favour of the Respondent and against the department.

6. We have heard both the learned counsel at some length, and have also perused the decisions relied upon by them.

7. The record reveals that when the O.T was taken into custody there was nobody in it. Thereafter it was taken to the Customs House at Hyderabad. It is evident from the record that when a show cause notice was issued, in response to which, the owner of the O.T appeared and submitted before the customs authorities that he has nothing to do with the HSD and stated that his O.T was plying on the hire which may be released. It is also apparent from the record that the O.T was subsequently released, after payment of 20% fine. It is also a matter of record that the owner of the O.T has never claimed ownership of the HSD. In our view the customs authorities rightly impounded the HSD as no person claiming its ownership came forward clearly depicting that it was

smuggled hence in our view seizing of the O.T was not justified when complete ownership documents of it were duly furnished.

8. It is interesting to note that at the time of raid the subject vehicle was found abandoned but it also said to have been registered with the Motor Vehicle Authority. The customs authorities, however, failed to acquire details and issue show cause notice to the owner. Though ownership documents of the O.T were furnished however, no effort was made by the customs authorities to verify the same from the Excise Department. It is also noted that prior to the incident, which took place on 26.05.2015 with regard to confiscation of the HSD in the O.T, the department was not in possession of any material or evidence against the owner of the O.T to be involved in any objectionable activity. It is also noted that it was only when the customs authorities failed to release the O.T, the Respondent approached this Court and this Court vide order dated 16.01.2019 directed the release of the O.T, subject to furnishing ownership documents to the Nazir and obtaining an undertaking from the owner that till such time the present SCRA is pending he will not sale out the said O.T. It is also noted that the CAT while allowing the appeals has categorically observed that after seizing the O.T, necessary legal requirements with regard to issuing proper show cause notice to the owner and confronting him on other aspects was not carried out by the department, which is in violation of mandatory provision of Section 171 of the Act.

9. Perusal of the record further reveals that the customs authorities made no effort to create a link between the HSD and the O.T, which establishes that the confiscation of HSD and the O.T, were two different aspects requiring different treatments.

However, it is observed that a somewhat similar treatment was accorded by the department to the HSD as well as to the O.T. The record also reveals that nobody came forward to claim ownership of the HSD whereas owner of the O.T, under question, was claimed through some documents but the HSD and the O.T were incorrectly treated alike by the customs authorities. Hence, we are of the view, that the department has simply failed to make out a case of smuggling / confiscation of the O.T as mentioned under Section 2(s) of the Act and no misinterpretation on the part of the CAT has either been found or established by the department. The decision relied upon by the learned counsel for the department is quite distinguishable from the facts obtaining in the instant matter. Therefore, in our view confiscation of the O.T was unwarranted and cannot be approved. We therefore, under the circumstances confirm the release of the vehicle and answer the question raised in the instant matter in negative i.e. against the department and in favour of the Respondent No.1.

10. The present SCRA therefore stands dismissed in the above terms, alongwith the listed applications.

JUDGE

JUDGE

*Karachi*  
*Dated:10.05.2022*

*SM*