

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Reference Jurisdiction)

Special C.R.A. No. 152 of 2018

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Mahmood A. Khan.

Fresh Case

1. For orders on Mic. No. 1520/2018.
2. For hearing of Main Case.
3. For orders on Misc. No. 1521/2018.

23.01.2020:

Mr. Muhammad Khalil Dogar, advocate for applicant.

ORDER

Learned counsel for the applicant has referred to the amended questions of law filed through Statement dated 31.20.2019 and submits that he will press **Question “b”** only, which according to learned counsel, is the relevant question of law arising from the impugned judgment dated 31.01.2018 passed by the Customs Appellate Tribunal, Bench–I, Karachi, in Customs Appeal No. H-668 of 2017. The question reads as follows:-

“Whether the amnesty scheme announced by the Government vide SRO 172(I)/2013 dated 05.03.2013 has covered the motor vehicles having tempered Engine or Chassis numbers?”

2. After having read out the above question and the impugned judgment passed by the Customs Appellate Tribunal, learned counsel for the applicant submitted that since proper verification could not be obtained by the departmental authorities during course of hearing of appeal before the Customs Appellate Tribunal, therefore, Customs Appellate Tribunal was not justified to decide the

appeal in favour of the appellant, whereas, according to learned counsel, respondent was not entitled to seek the amnesty in terms of SRO 172(I)/2013 dated 05.03.2013 for the reason that there was an allegation against the vehicle by the adjudicating authorities that its chassis number is tempered.

3. We have heard the learned counsel for the applicant, perused the record and also gone through the impugned judgment passed by the Customs Appellate Tribunal with his assistance. Perusal of impugned judgment passed by the Customs Appellate Tribunal reflects that it is based on finding of facts, whereas, the Appellate Tribunal has also examined the legal aspect as well, including applicability of the provisions of SRO No.172(1)/2013 dated 05.03.2013 in the instant case, and has also dealt with the allegation of smuggling against the respondents in Para: 6 to 9 of the impugned judgment, which being self-explanatory, are reproduced as under:-

“06. The case of the appellant is that he is not the importer of the seized vehicle but subsequent purchaser. As per appellant the vehicle was cleared under SRO 172(I)/2013 dated 05-03-2013 in Amnesty Scheme after payment of assessed duty/taxes and thereafter, the vehicle was registered with the concerned Motor Vehicle Registration Authority. In this respect, copy of seizure report dated 30-03-2013 issued by Inspector/seizing officer, Model Customs Collectorate, Custom House, Quetta, report bearing No.58 dated 29-03-2013 to file No.4987/2013 signed by the examination officer wherein the name, model, chassis code, chassis number, engine number, engine capacity has properly been mentioned. Also the detailed report of seizing officer, undertaking required under SRO 172(I)/2013 and treasury challan of payment of customs duty, sales tax, withholding tax and other taxes total amounting to Rs.557523/- was relied upon. There is verification letter bearing C.No.4981-Veh/NLC/SRO172(I)/2013/1592 dated 19-07-2014, whereby it was verified that the vehicle Toyota Surf

chassis No.VZN185-0013864, Engine No.5EZ-FE, Model 1996 Engine Capacity 3378cc, Name of owner Mr. Jamil Ahmed and CNIC No.54400-0117135-9 has been cleared vide file No.4981-Veh/NLC/SRO172(I)/2013.

07. During the course of hearing this Tribunal on 25.09.2017 made direction to the learned D/R, to immediately approach the Model Customs Collectorate, Quetta for verification of clearance of vehicle in amnesty scheme of 2013, which was already being confirmed by the Deputy Superintendent, Car Verification Cell vide C.No.4981-Veh/NLC/SRO 172(I)/2013/8704 dated 28.10.2016 alongwith other supporting record. This was not the first time that direction was issued to the prosecution to verify the abovementioned confirmation letter dated 19-07-2014 but the learned adjudicating officer during adjudicating proceedings also through letter dated 19.12.2016 required the concerned Deputy Collector to verify the genuineness of verification letter issued on 19.07.2014, but they failed to reply the same till 05.04.2017, when the impugned order was passed. The respondent despite availing the opportunities failed to verify the authenticity of verification letter dated 19.07.2014 till 09.01.2018, which shows that they have no answer to submit before this forum.

08. Once the learned adjudicating authority made a definite observation that FLS report is vague and inconclusive and in presence of verification report dated 19.07.2014 issued by Deputy Superintendent, Car Verification Cell, Model Customs Collectorate, Quetta, he was, under law, bound to honour the documents submitted by the appellant with regard to genuineness of the vehicle cleared under amnesty scheme after payment of duty/taxes. The genuineness of the documents were also verified by the concerned Motor Vehicle Registration Authority before registration of the vehicle. The appellant remained successful by proving the genuineness of the vehicle and in rebuttal there is nothing on record with the department, which could reflect that the vehicle is smuggled one or brought into the country without payment of duty/taxes and or the possession of the appellant is without lawful authority.

09. In view of what has been observed above, this appeal is allowed, order passed by the learned Additional Collector (Adjudication) Quetta is set aside.”

4. From perusal of hereinabove findings as recorded by the Customs Appellate Tribunal, it transpired that the adjudicating authority did not bother to seek verification of the documents furnished by the respondents, who was a subsequent purchaser of the subject vehicle, and also placed on record the relevant ownership documents, including the documents relating to clearance of the vehicle in terms of amnesty scheme as per SRO 172(I)/2013 dated 05.03.2013. Moreover, the subject vehicle has been duly registered with the Registration Authority and there has been no allegation by the adjudicating authority to the effect that documents of the vehicle or its Registration is forged or based on fake documents. Respondent being the subsequent purchaser produced the relevant documents relating to subject vehicle and claim of amnesty, which included Undertaking required as per SRO 172(I)/2013 dated 05.03.2013, Treasury Challan of payments of customs duty, sales tax, withholding tax and other taxes amounting to Rs.5,57,523/-, Verification Letter bearing C.No.4981-Veh/NLC/SRO172(I)/2013/1592 dated 19.07.2014, whereby, it was verified that the subject vehicle i.e. Toyota Surf Chassis No. VZN 185-0013864, Engine No.5EZ-FE, Model 1996 Engine Capacity 3378cc has been cleared vide File No.4981-Veh/NLC/SRRO 172(1)/2013. It appears that during course of hearing, the Customs Appellate Tribunal provided another opportunity to the respondent department to make further verification of the aforesaid documents from the relevant quarters, however, respondent did not undertake any such further inquiry or further verification, therefore, the Customs Appellate Tribunal under the facts and circumstances of the case

was justified to hold that the applicant department has no plausible explanation or relevant documents to support the allegation of smuggling against the subject vehicle, particularly, once the respondent discharged his onus to prove the lawful ownership of the subject vehicle by producing the above documents.

5. Accordingly, we do not find any substance in the instant Reference Application, which is devoid of any merits, therefore, dismissed in limine alongwith listed applications. Resultantly, Question “b” proposed hereinabove is answered in “**AFFIRMATIVE**” against the applicant and in favour of respondent.

JUDGE

JUDGE

Nadeem/A.S.