

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Special Customs Reference Application ("SCRA") No. 125 / 2009

Date	Order with signature of Judge
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HEARING / PRIORITY

- 1) For hearing of main case.
- 2) For hearing of CMA No. 1353/2009.

22.02.2023.

Mr. Khalid Rajpar, Advocate for Applicant.
Ms. Shumaila Sagheer, Advocate for Respondent.

Through this Reference Application, the Applicant Department has impugned order dated 02.06.2009 passed in Customs Appeal No. K-86 of 2006 by the then Customs, Excise & Sales Tax Appellate Bench-II, Karachi proposing the following Questions of Law:-

- “1. Whether the Respondent No. 2 at the time of interception of the vehicle has discharged burden of proof of lawful possession in terms of sub-Section (2) of Section 156 of the Customs Act 1969?
2. Whether Notification/SRO 118(1)/83 dated 12.02.1983, issued under Section 177 of the Customs Act 1969, has any nexus with the smuggling of goods under Section 2(s) of the Act?
3. Whether smuggled Toyota Land Cruiser Jeep Bearing Registration No. BC-5524, registered with: Motor Registration Authority, Civic Centre, Karachi, on the basis of forged and bogus documents is liable to out-right confiscation in terms of clauses (8), (77) (89) and (90) of sub-Section (1) of Section 156 of the Customs Act, 1969?
4. Whether registration of smuggled vehicle with Motor Registration Authority Civic Centre, Karachi on the basis of forged and bogus documents can regularize the smuggled vehicle and absolve it from payment of duty and taxes and warranted penal action under the Customs Act, 1969?
5. Whether the conclusion arrived upon by the learned Member (Judicial) Bench-II, Karachi, vide impugned Order-in-Appeal No. 86 of 2005, dated 02-06-09, is based on misreading of evidence and is sustainable under the law?
6. Whether the conclusion arrived upon by the learned Member (Judicial) Bench-II, Karachi is hit by the Judgment of the Honourable Lahore High Court, Lahore reported as "Muhammad Ashraf V/S Deputy Superintendent Anti-smuggling squad P.L.D 1977 LAH 300" whereby it was declared that a car purchased even through open court auction held under the orders of Assistant Commissioner Toba Tek Singh was subsequently rightly seized by the Customs, on the ground that the petitioner had failed to "produce Customs duty payment documents"?"

Learned Counsel for the Applicant submits that the Tribunal was not justified in setting aside the order-in-original as the vehicle in question was a smuggled vehicle, whereas, the matter falls within the jurisdiction of Directorate of Intelligence and therefore, vehicle was lawfully intercepted by the Applicant. He further submits that the Respondent had failed to discharge the burden under Section 187 of the Customs Act 1969; hence, the questions proposed be answered in favour of the Applicant by setting aside the order of the Tribunal. On the other hand, Respondent's Counsel has supported the impugned order and has prayed for dismissal of this Reference Application.

We have heard both the learned Counsel and perused the record. It appears that the case of the Applicant in its Show Cause Notice was that when the vehicle in question was intercepted, the driver of the vehicle was unable to provide any valid documents as to the lawful import, and therefore, the vehicle was liable for confiscation. The adjudicating authority after hearing the parties, passed an order against the Respondent and confiscated the vehicle, whereas, in Appeal the Respondent has been successful.

From perusal of the impugned order of the Tribunal, it appears that there are certain facts pertaining to the present case which stands admitted by the Applicant Department and apparently, in our considered view, based on such admissions, we need not answer any question so proposed including interpretation of any provision of law. Para 9 of the impugned order reads as under:-

- "9. The department was directed to reply to the two objections raised by the counsel for the Appellant with reference to the Annexure D, G & E appended to the comments dated 18.12.2008 submitted by Directorate of Intelligence and Investigation Karachi with documentary evidence on the next date of hearing. Even the concerned Appraiser of Collectorate of Customs (Appraisalment) was directed to attend the hearing on the next date with relevant file from which NOC for the Mercedes Car belonging to Qatar Consulate was issued. A letter was also written to Collector of Customs (Appraisalment) Custom House, Karachi dated 22.4.2009 by the Assistant Registrar-Bench- II Karachi to comply with the orders of the Honourable Tribunal. On 5.5.2009 the representative Appraising Officer of the Appraisalment Collectorate provided registration documents of Mercedes Benz Model 1983 which was registered against the IGM & Index Nos. supplied by the Appellant. These documents have been placed on record. The investigation officer of the Directorate of Intelligence and Investigation (Customs & Excise) Karachi admits that the Registration Book issued by the Motor Vehicle Registration Authority is a valid document. He also admits that the supporting documents furnished by the Appellant pertaining to the sale of the vehicle to Mr. Bashir Jan Mohammad and subsequent buyers have till to date been verified by the office of the Directorate of Intelligence and Investigation (Customs & Excise)."

From perusal of the above, it clearly reflects that the investigation officer of the Applicant admitted before the Tribunal that the registration book issued by the Motor Vehicle Registration Authority in favour of the Respondents (which is a Leasing Company) is a valid document. He has further admitted that all supporting documents furnished by the Respondent pertaining to the sale of the vehicle to different persons including subsequent buyers till date have not been verified by the Applicant Department. We have confronted the Applicant's Counsel as to how in view of such admitted facts, this Court under its Reference Jurisdiction can come to a different conclusion as to the determination of such facts, and then answer any legal question, and he has not been able to satisfactorily respond. In our considered view, since the Applicant Department by itself had admitted the genuineness of the documents so produced by the Respondent, including the registration of the vehicle, which in turn amounts to discharge of burden as contemplated under Section 187 of the Customs Act; hence, no exception can be drawn to the findings of the Tribunal which are primarily based on such facts.

Accordingly, we do not see any reason to entertain this Reference Application and answer the proposed questions, as facts noted above are against the very stance of the Applicant on the basis of which such proposed legal questions could be answered. We may observe that at best, it could have been a case seeking rectification of the order of the Tribunal, if such facts were to be disputed, but not by way of a Reference Application on such proposed legal questions and therefore, we refuse to answer the proposed questions and as a consequence thereof, this Reference Application being misconceived is hereby dismissed.

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