

IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") Nos. 1213 & 1214 of 2023

Date	Order with signature of Judge
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Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

Applicant : The Collector of Customs,
Enforcement, Karachi Through
Mr. Pervez A. Memon, Advocate

Respondent : M/S Taj Gasoline Pvt. Ltd. & another
Through Mr. Shoukat Hayat, Advocate

Date of hearing : **16.01.2024.**

Date of Judgment : **16.01.2024.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Special Customs Reference Applications the Applicant department has impugned a common judgment dated 31.03.2023 passed in Customs Appeal Nos. K-497/2023 and K-501/2023. On 20.10.2023 notice was ordered on following proposed questions of law:-

- i. Whether in the facts and the circumstances of the case, the learned Customs Appellate Tribunal Karachi has failed to appreciate that lab report of SGS clearly speaks that the standard specification of seized goods do not match with the lab report of M/s. Taj Gasoline Pvt. Ltd., indicating that the seized goods are not the same whose ownership has been claimed by the respondent and that the seized goods fall under the ambit of section 2(s) of the Customs Act, 1969?*
- ii. Whether in the facts and Circumstances of the case, submission of irrelevant documents to the seizing agency indicates that the burden of proof was completely discharged by the respondent and the said burden was successfully shifted onto the customs authorities in accordance with law?*
- iii. Whether in the facts and the circumstances of the case invocation of inappropriate sections of the Customs Act, 1969 in the memorandum of seizure report vitiates the offence committed by the respondent in violation of the Customs Act, 1969?*

2. Heard learned Counsel for the parties and perused the record. It appears that by way of a seizure report dated 20.12.2022 generated by Pakistan Coast Guards, goods in question i.e. tanker along with petrol was seized and a show cause notice was issued on 06.01.2023, whereby, it was alleged that the petrol is of Iran Origin; hence, smuggled, entailing action under Section 2(s) of the Customs Act, 1969, along with various other provisions of law. Private Respondent contested the allegations and thereafter Order-in-Original was passed on 03.02.2023, whereby the petrol along with the Truck were ordered to be confiscated outrightly and a personal penalty was also imposed upon various persons. Private respondents being aggrieved approached the Customs Appellate Tribunal and by means of the impugned judgment Order-in-Original has been set aside with further directions to release the seized petrol along with vehicle to the lawful owner. It would be advantageous to reproduce the relevant findings of Customs Appellate Tribunal which reads as under:

10. It is pertinent to mention here that the supplier M/s Cnergyico Pk Limited, submitted statement of facts before Respondent No. 2 against acknowledgement dated 01.02.2023. During hearing the representative of the supplier accepted the veracity of facts as narrated in statement of facts. The said statement is attached with memo of appeal. The said statement is attached with memo of appeal. The Affidavit of loading supervisor of Appellant confirming the facts as stated above is attached with memo of appeal. The tracking report issued by M/s Tracking World Private Limited with image confirming the availability / parking of impugned Oil Tanker at Pakistan Coast Guards Check Post Goth Mochko, RCD Highway Karachi in the afternoon of 15.12.2022 is also attached with memo of appeal. The affidavits furnished by the persons acquainted facts of the case further reveals and confirms that the driver of impugned oil tank lorries alongwith its driver remained in the custody of personnel of Pakistan Coast Guards Mochko Check Post till 20.12.2022. In the morning of 20.12.2022 the personnel working under the control and command of respondent No.1 directed the drivers to start the engines of vehicles. Subsequently, the impugned oil tank lorries were brought to Korangi and vehicles were parked at Pakistan Coast Guards office. The drivers of the impugned oil tank lorries were let off in the evening of the same day. However, no legal document with regard to the interception and custody of impugned oil tank lorries was provided to the drivers in spite of their request. At the time of leaving the impugned oil tank lorries the seals affixed on the loading points and otherwise were intact. The

affidavit of the driver of confiscated oil tank lorry confirming the facts stated herein above is available on record.

11. We have considered the facts of the case and have come to the conclusion that the learned Adjudication Officer while passing the impugned order-in-original has lost sight of material facts that comparative analysis report of Taj Gasoline Pvt Ltd and M/s Cnergyico PK limited oil refining business report dated 15.12.2022. The findings of lab/analysis reports are given as under:

	Report of SGS conducted by PCG dated 10.01.2023
	Findings:- Out of Specification
1	Analysis Report M/s Taj Gasoline Pvt limited
2	Findings: - The specifications & the test reports of SGS and M/s Cnynergico Pk limited are almost identical and the reason of some plastic bottles for sampling for SGS

In view of above, a concurrent finding is given in favour of the appellants in analysis report of M/s Cnynergico. It is pertinent to mention here that in the lab report of SGS there is nowhere mentioned that the impugned petrol is of Iranian origin except saying it as out of specification.

13. Notwithstanding the above, the appellants placed an order to M/s Cnergyico Pk limited at Mouza Kund Hub, Balochistan for supply of 50000 litres of petrol, the Tanker Lorry bearing Regd No.TLU-022 after procurement of PMG headed towards its destination under cover of Manual Delivery Note No.DN-FY/1819 006453 dated 15.12.2022, while crossing the Pakistan Coast Guard check post Mochko, the vehicle was halted by staff of Pakistan Coast Guards. The driver being asked, he produce the transportation documents alongwith manually issued Delivery Note. Counsel for appellants has also furnished images of tracking of vehicle which shows date and times w.e.f 13.12.2020 (16:00:00), 15.12.2022 (09:30:00), whereas, the computer generated Delivery Note showing that vehicles laden with petrol (MP) were enroute on 15.12.220 (17.58 hours) this sole fact of difference in timing of reaching the vehicles at Hub Bypass from Mouza Kund, Hub as well as time / date of seizure by Pakistan Coast Guards.

3. From perusal of the aforesaid finding of Tribunal it clearly reflects that a finding of fact has been recorded which is primarily based upon documentary evidence submitted by the private Respondent and the chain of events so narrated including the loading of oil in question from the local refinery, and thereafter, issuance of delivery order in favour of private Respondent by the said refinery. Though an allegation of smuggling under section 2(s) of the Customs Act, 1969 has been alleged in the show cause notice; however, in our considered view, a finding of fact has been arrived at by the Tribunal being based on examination of documentary evidence,

in favour of private Respondent that the petrol in question is not a smuggled item which cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority for factual determination in tax matters is the Tribunal¹. While confronted, learned Counsel for the Applicant has argued that a laboratory test was carried out, which states that the specification of petrol is not of Pakistani standard and therefore the presumption would be that it is smuggled. However, the said argument does not appear to be convincing inasmuch as once the private Respondent had contended that the petrol in question was purchased from a local refinery, then initial burden was discharged and it was upon the applicant department to prove it otherwise. At least a query ought to have been made from the said refinery that as to whether the petrol in question was supplied by them or not. In fact, in the very seizure report, before any test could be carried out it was stated that the petrol in question is of Iran origin. This was recorded without any test; hence, the argument of the Applicants Counsel that laboratory test has proved the oil to of Iran origin, otherwise goes against the very stance of the Applicant.

4. In view of the above, we do not find any reason to interfere with the finding of fact recorded by the Tribunal. The proposed questions are not questions of law; rather questions of fact, and are not required to be answered. Accordingly, both these Reference Applications are hereby dismissed. Office to place copy of this order in the connected Reference Application. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

J U D G E

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

Aamir/PS

J U D G E