

IN THE HIGH COURT OF SINDH AT KARACHI

Special Custom Reference Application No.21 of 2022

Date	Order with signature of Judge
	<i>Mr. Justice Muhammad Junaid Ghaffar Mr. Justice Adnan-ul-Karim Memon</i>
Applicant:	The Collector of Customs, (Enforcement), Customs House, Karachi, Through Mr. Khalid Mehmood Rajpar Advocate.
Respondent No.1:	Ghulam Ali S/o Nawaz Ali Through Mr. Dhani Bux Otho, Advocate.
Date of hearing:	18.1.2024
Date of order:	18.1.2024

O R D E R

Muhammad Junaid Ghaffar, J. – Through this Reference Application, the Applicant-department has impugned Judgment dated 12.10.2021 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No.K-496/2020 and has proposed the following questions of law: -

- i. Whether on the facts and the circumstances of the case, the learned Customs Appellate Tribunal has failed to consider that the impugned vehicle is of foreign origin the import of which cannot be legitimated in accordance with law by producing local invoice No. A1-0101712 issued by a locally assembling company i.e. M/s Pak Suzuki Motor Company Bin Qasim Karachi?*
- ii. Whether the registration book issued by the Motor Registration Authority again the locally assembled vehicle can be considered as customs document as expressly mentioned in section 2(kka) of the Customs Act, 1969, and is a material evidence of legal import of foreign origin vehicle in absence of import documents with regard to payment of custom-duty and taxes leviable on the impugned vehicle?*
- iii. Whether the learned Member Judicial-III of Customs Appellate Tribunal, Karachi has erred in law by considering that the respondent No. 1 had completely discharged the burden of proof by providing the only registration book pertaining to locally assembled vehicle i.e. Suzuki Potohar in terms of section 187 read with section 156(2) of the Customs Act, 1969?*

2. Heard learned counsel for the parties and perused the record. From perusal of the record it reflects that upon seizure of the vehicle in question a show cause notice was issued on 17.12.2019 wherein it was alleged that the vehicle is a smuggled vehicle, whereas, the chassis is also tampered with as per some report of the forensic laboratory. Accordingly, the Adjudicating Authority passed the Order in Original, whereby the vehicle was confiscated outrightly without any option to redeem the same on payment of any fine or penalty. However, in appeal the Appellate Tribunal has been pleased to hold that the respondents herein have produced sufficient documentary evidence to discharge the initial burden in terms of Section 187 of the Customs Act. The Tribunal has recorded a definite finding of fact 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. It would be advantageous to refer to the observation of the Customs Appellate Tribunal in this case, which reads as under:-

6. It is pertinent to note that, I have carefully examined all relevant documents pertaining to the impugned vehicle that has been confiscated by Respondent after 23 years of its registration with Motor Registration Authority due to non-production of its import documents, it would have been evident, that the vehicle was registered by Motor Registration Authority under valid documents required for registration of the vehicle. The vehicle is locally manufactured by the Pak Suzuki Company Limited Bin Qasim, Karachi, purchased by its first purchaser CIBA-GEIGY (Pakistan) Limited, 15 West Wharf Road, Karachi on 25.04.1996 against payment of Rs.510,000/- as per Invoice No. AI-0101712 so also the vehicle is registered by the Motor Registration Authority. The Pak Suzuki Company issued a certificate dated 16.05.1996, according to Sale Certificate Form F the vehicle is 1996 Model, Chassis No.323183, Engine No.J702735 and further mentioned therein that *"The vehicle has been assembled by us and all Government dues such as Customs Duty, Sales Tax etc. have already been paid on the above vehicle"*. The appellant has paid Custom Duty and Taxes at the time of purchasing the vehicle, the chains of the documents from the first purchaser to last purchaser i.e appellant are available on record filed by the appellant. The respondent/department did not challenge genuineness of the registration book and other relevant documents produced by the appellant, even though, respondent has not been verified by the relevant authorities.

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)

However, the Forensic Test Report No.AIG/FD/Veh/OR/420/2019, Karachi dated 02.09.2019 received from the AIG Police, Forensic Division, Sindh, Karachi confirmed that *"The present chassis serial (323183) was fake / not original digit"*. The respondent / department did not produce the said report alongwith its cross objection before this Tribunal. Needless to say, that the appellant has the vehicle under the valid registration book issued by the Motor Registration Authority under the law. The appellant who was the sixth purchaser of the vehicle has been produced a valid Registration book and other relevant documents. The appellant discharged the burden cast upon him by Section 187 of the Customs Act, 1969. As a matter of facts that the Section 157(2) of the Customs Act, 1969, that the phrase "shall also be liable to confiscation" does not mean liable to confiscation automatically. The discretion given to the authority to confiscate the goods or vehicle must be exercised on sound judicial principles. If the words "liable to confiscation" gives a discretion to the confiscating authority to deprive a person of his property, then it follows that this discretion must be exercised upon the principles of natural justice that is to say, the person sought to be deprived of the property must be given notice to show cause and they must be provided adequate opportunity of putting forward their point of view and the same must receive due consideration. However, according to one of principles now well accepted, no person should be deprived of his property by way of penalty unless it is clear that he is in some measure responsible for assisting or furthering the commission of the offence committed and no innocent person should be unjustly punished or deprived of his property. Indeed, there was no indication that the owner of the vehicle was also involved in the act of smuggling. If that be so, it is difficult to appreciate on what basis reasonable suspicion could arise as to the complicity of the appellant. There is nothing on record which shows any collusion between the owner of the vehicle and the owner of the smuggled goods, it is not in accordance with law to hold such vehicle is part of the act which is prohibited by the law. Therefore, it is established that the said vehicle is not deliberately part of the act which is forbidden by law. It is imperative to place on record that equity is the soul of the law in dispensation of justice, the Hon'ble Supreme Court of Pakistan in a hallmark judgment namely *Imtiaz vs Ghulam Ali* reported as PLD 1963 SC 382 laid down the rule that the proper place of procedure in any system of administration of justice is to help and not to thwart right of the people.

7. Given above mentioned perspective and foregoing the facts and reasons, it is held that the appellant has reasonably discharged the burden of proof in terms of Section 187 of the Customs Act, 1969 for the lawful possession of impugned vehicle. Accordingly, the instant appeal is allowed and the impugned order is set aside. Department is directed to release the Impugned vehicle Reg. No.BD-3420 to its lawful claimant / owner."

3. Perusal of the above finding reflects that the Vehicle in question is a locally purchased vehicle, whereas, the same is 23 years old; and finally the present Respondents are its sixth owners. All these findings are based on factual determination arrived at after a threadbare examination of the documents produced before the Appellate Tribunal. At best, the Applicant ought to have approached the local manufacturer for further confirmation but admittedly this was never done. Moreover, it

has not been disputed that the sole document i.e. the forensic report on which the entire case of the Applicant rests, was never produced before the Tribunal. In view of the above, since the Tribunal has come to the conclusion that the Respondents herein have discharged the initial burden, we do not find any reason to interfere with the finding of fact recorded by it. The proposed questions are not questions of law; rather questions of fact, and are not required to be answered. Accordingly, this Reference Application is 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.

JUDGE

JUDGE