THE HIGH COURT OF SINDH, KARACHI

[Special Appellate Court Customs]

Spl. Criminal Appeal No. 13 of 2002

[Muhammad Siddique Pechuho versus State]

Appellant	:	Muhammad Siddique Pechuho son of Ghulam Ali Pechuho through Ms. Zahrah Sehar Vayni, Advocate.
Respondent/State	:	Mr. Shahid Ali Qureshi, Advocate for the Department – Customs, assisted by Syed Asad Sultan and Muhammad Khan, Advocates. Mr. Amir Zeb Khan, Assistant Attorney General for Pakistan.
Dates of hearing	:	21-09-2022, 04-10-2022 & re-hearing on 18-01-2024.
Date of decision	:	30-01-2024.

JUDGMENT

Adnan Iqbal Chaudhry J. - This appeal under section 185-F of the Customs Act, 1969 is from judgment dated 26-08-2002 passed by the Special Judge (Customs & Taxation) Karachi in Case No. 205/1984, finding the Appellant and the co-accused persons guilty of offence under section 32(1) of the Customs Act, 1969, punishable under clause 14(i) of section 156(1) of said Act, and the offence punishable under clause 77(i) *ibid*, but owing to mitigating circumstances awarded a lesser sentence *i.e.* till rising of the Court along with fine of Rs. 500,000/, and in default thereof to undergo simple imprisonment for six months.

2. The accused Exporters were Aftab Yousuf, Mian Inam Elahi and Javed Arshad. The latter was also the clearing and forwarding agent. The accused Customs Examiners were Saifullah Siyal and Mohammad Aurangzeb Khan. The accused Customs Appraiser was Muhammad Siddique Pechuho who is the Appellant herein.

3. The charge against the Appellant and the co-accused Examiners was that in connivance with the co-accused Exporters they had cleared consignments that they knew were mis-declared, the intent being to defraud the Government exchequer out of Rs. 24,91,102/ in the shape of rebate in customs duty and taxes; that they had then mutilated the shipping bills with insertions and additions; and hence guilty of the offence under section 32(1) of the Customs Act, 1969, punishable under clause 14(i) of section 156(1) of said Act, and the offence of fraudulently altering customs documents, punishable under clause 77(i) *ibid*. All accused persons pleaded not guilty.

4. The co-accused Javed Arshad (clearing agent) and the co-accused Inam Elahi (one of the Exporters) passed away during trial. The case against them thus abated. The remaining accused persons including the Appellant underwent trial. They did not lead evidence in defense. They were eventually found guilty and sentenced as aforesaid.

5. Prior to the impugned judgment, departmental disciplinary proceedings had been taken against the Appellant and the co-accused Examiners. While the co-accused Examiners were removed from service, the Appellant was reverted to the post of Examiner. They appealed to the Federal Service Tribunal. Pending appeal, the department reduced the Appellant's penalty and instead gave him the lowest stage in the time scale of Appraisers. Nonetheless, by judgment dated 16-07-1991 (Exhibit 13G), the Federal Service Tribunal was inclined to dismiss the Appellant's appeal on the merits, as that of the co-accused Examiners. Only Saifullah Sial appealed to the Supreme Court. That appeal too was dismissed by judgment dated 03-02-1992 (Exhibit 13H). During the course of arguments, Mr. Shahid Ali Qureshi, learned Special Prosecutor Customs had also placed reliance on the findings in the aforesaid judgments that the shipping bills had been interpolated. However, since the learned Special Prosecutor did not advert to Articles 55, 56 and 57 of the Qanun-e-Shahadat Order, 1984 *i.e.* whether said judgments could be

taken as relevant evidence for the purposes of criminal prosecution, I do not base my findings on said judgments.

6. Heard learned counsel and reappraised the evidence with their assistance. Submissions of learned counsel are recorded in the course of the judgment *infra*.

7. The underlying facts were as follows. In October and November 1983, six shipping bills were presented to the Customs for exporting to Singapore a total of 120 bales declared as *"dyed cotton terry towels"* with a specific size, quantity, weight and value while claiming rebate in customs duty and taxes under subsisting SROs. For processing the shipping bills, orders were passed for examining 10% of each consignment so as to verify the goods declared, and especially whether the goods were *"bleached"* or *"dyed"* inasmuch as, the rebate allowed on dyed goods was greater than that on bleached goods. Such examination was conducted on 17-11-1983 by the co-accused Examiners, Saifullah Siyal and Mohammad Aurangzeb, and the Appellant acting as the Appraising Officer recommended *"shipment may be allowed"*, which was so allowed by the Principal Appraiser. However, the consignment was intercepted and put to a re-examination in full on 20-11-1983. The re-examination revealed that instead of the declared *"dyed cotton terry towels"*, the actual goods were *"bleached cotton ribbed bar mops"*; instead of the declared size of 37x45 and 42x84 inches, the actual size was 15x18 inches; instead of the declared quantity of 40,000 - 44,000 pieces under each shipping bill, the actual quantity was 24,000 pieces; instead of the total declared gross weight of 116,756 kg, the actual total gross weight was 6360 kg; instead of the declared total value of Rs. 11,885,030/- the actual total value was only Rs. 288,000/-. Had rebate been granted on the consignments as claimed, the loss to the exchequer would have been Rs. 24,91,102/, hence the FIR on 24-11-1983.

8. It was an admitted fact that the examination report of 10% of each consignment was inscribed by the co-accused Saifullah Siyal and

Mohammad Aurangzeb on the reverse-side of the shipping bills under their signatures, and *"shipment may be allowed"* was inscribed by the Appellant under his signature. When the shipping bills were called, those reflected the following:

(a) words and figures appeared as interpolations in the examination reports to read that the goods inspected were *"bleached"* (instead of "dyed"); that the size was *"15x18"* instead of the declared *"42x84"* and *"37x45"*; and that pieces in the bales were *"1200"* instead of the declared *"2200"*.

(b) a note, dated 17-11-1983, was inscribed by the co-accused Javed Arshed, the clearing agent, that the wrong consignment had been sent by his godown keeper as a similar consignment of 120 bales of dyed terry towels was also lying in the godown; and requested that since the ship is about to sail, the shipment may be allowed and the 4th copy of the shipping bills may be retained for which they were ready to face action.

(c) a note, dated 17-11-1983, was inscribed by the Appellant with his signature recommending as follows:

> *"Examination report 'A' and clearing agent's request above may be seen. Party has admitted wrong declaration. 4th copy may be retained for necessary action. Shipment may be allowed."*

9. In other words, if the aforesaid interpolations and additional notes were read into the examination reports, those portrayed that the Appellant and the co-accused Examiners had detected that the goods were mis-declared; on the same day the clearing agent was confronted who took the stance that his godown-keeper had sent the wrong goods by mistake and requested that the goods examined may be allowed to sail without processing the rebate; and that on the same day the Appellant accepted such request on the condition that the 4th copy of the shipping bills be withheld until further action. Apparently, the 4th copy of the shipping bills was the one that was to be used for processing the Exporter's claim to rebate.

10. The aforesaid shipping bills were produced in evidence as Exhibit 4A/1 to 4A/6 by PW-1, Sarwar Aleem, the Appraising Officer at the Export Processing Section. The re-examination reports prepared after intercepting the consignment were produced as Exhibit 5A/1 to 5A/6 by PW-2, Abdul Hameed Malik (Complainant), who was the Acting Principal Appraiser at the Export Section. These reports were then affirmed by PW-3, PW-4, PW-6, PW-7 and PW-10 who were the re-examining officers, so also by PW-8 who was one of the mashirs.

11. The case of the prosecution was that the Appellant and the co-accused Examiners had cleared the consignment for shipment as mis-declared by the co-accused Exporters and knowing it to be so; that when they came to know that they are about to be exposed, they made the aforesaid interpolations and additional notes in the shipping bills in an attempt to avoid criminal liability.

12. Under section 342 CrPC, the Appellant and the co-accused Examiners were confronted with the shipping bills. They did not deny what was inscribed thereon in their hand-writing and under their signatures. The stance of the Appellant was the same as that of the co-accused Examiners *viz.* that the alleged interpolations and additional notes were always part of the original examination report *i.e.* they had detected and noted the mis-declaration at the outset. The Appellant stated: *"I recommended to allow the shipment on the request of the clearing agent but subject to retention of fourth copy of the shipping bills due to adverse report of the two examiners."* Thus, the Appellant acknowledged that even though the shipping bills presented to him appeared with interpolations, and which disclosed that the goods were materially mis-declared, he was nonetheless inclined to allow shipment because the clearing agent had agreed to put the rebate on hold. Therefore, the fact that the consignments were mis-declared in material particulars, and was known to the Appellant to have been so mis-declared, was not only established but was also a fact admitted by the Appellant. **The question was whether he had initially cleared the consignments by suppressing the mis-declaration, and then**

later on, apprehending exposure, whether he made interpolations and additional notes in the shipping bills to portray that the mis-declaration had been detected and addressed before recommending shipment.

13. The erstwhile Principal Appraiser Export, who had allowed shipment on the recommendation of the Appellant, was Syed Rashid-uz-Zaman. His statement was recorded by the I.O. during investigation on 05-03-1984. At trial, he was examined by the prosecution as PW-5. He stated that when he cleared the shipping bills the aforesaid interpolations and additional notes did not exist; and that he had allowed shipment as the examination reports did not disclose any mis-declaration. His deposition was as follows:

> *"When this shipping bill was presented before me i.e. Ex. 4A/1 the Examiner's report did not have any addition, insertion & cutting at that time. I see Ex. 4A/1 and say that examination report bears additions, insertions in respect of 'bleach' after words '100 percent cotton terry towels'. The size was not mentioned when the bill was presented but now I see the 'size 37 x 45" is mentioned in the bill. The quantity was not mentioned at the time of presentation of bill but now the quantity is also mentioned '1200' instead of 2000. When the bill was presented before me the words marked 'B' were not on it when it was presented before me. The writing marked 'C' on the same were also not mentioned at that time when it was presented before me. …… I see Ex. 4A/2, Ex. 4A/3, Ex. 4A/4, Ex. 4A/5 and Ex. 4A/6. Same is the position in the above shipping bills except Ex. 4A/3. In this case Ex. 4A/3 there is no request of statement of the Appraiser as is given in other five cases. If these additions would have been there, there was no possibility of the shipment of the goods, on the contrary it was a case of seizure."*

On cross-examination he reiterated:

> *"Nothing was written on these documents afterwards in my presence nor it was added nor over written in my presence. When this shipping bill was presented it was written that 'quantity, size checked as per Invoice and E-II Form confirmed cotton terry towels' and on this report I allowed shipment. ……*
> *It is correct that it is written in the description of the examination report of SU Sial accused 100% cotton terry towel bleached, but the word 'Bleached' was not written when I allowed the shipment. It is correct that it is written in the examination report of accused S.U. Sial under the packing that 'conformed 100% cotton terry towel bleached', but the same has been written latter on when I allowed the shipment. …… It is correct that there was higher rate of rebate when the terry towels dyed and there was lower rate of rebate when the terry towels were bleached."*

14. Ms. Zahrah Sehr Vayani, learned counsel for the Appellant had questioned the veracity of PW-5's testimony by submitting that as the Principal Appraiser he was the one who had ultimately allowed the shipment, and yet he was not nominated as an accused person. But, unlike the Appellant, the statement of PW-5 was that he had allowed shipment on shipping bills that did not contain any interpolation and did not disclose any mis-declaration. That had set him apart from the accused persons.

15. The I.O. of the case, namely Abdul Bari Khan Hameedi was examined as PW-9. He produced as Exhibit 13A a letter dated 17-11-1983 by the Appellant to APL, the shipping company engaged for the consignments in question, which letter was received by the latter on 19-11-1983, and which read:

> *"6 Six S/Bills of C/Agent M/s. Jawed Co. of Cotton Terry Towels for Singapore may kindly not to be shipped till further orders wherein shipment has been allowed."*

Per the I.O. he was provided Exhibit 13A on 05-01-1984 when he recorded statements of officers of Eastern Express Company, the sister concern of APL. In that regard the prosecution examined Syed Shahidur Rehman Bukhari as PW-11, who was the erstwhile tally clerk at Eastern Express Company. He deposed that on 19-11-1983, the Appellant and the co-accused Examiner Mohammad Aurangzeb had come to him and asked him to receive Exhibit 13A in back-date of 17-11-1983; that he refused and informed the Appellant that the shipping documents had already been taken away by the Customs; that he took the Appellant his senior officer namely Changez Hassan Niazi, who received Exhibit 13A on the current date of 19-11-1983.

16. Learned counsel for the Appellant pointed out that after attributing Exhibit 13A to the Appellant, PW-11 was not able to identify the Appellant in Court. But, as pointed out by the learned Special Prosecutor, PW-11 was a private person whose deposition was being recorded after 18 years since he had last seen the Appellant, and therefore it was expected that he may not recognize

the Appellant after such a long time. Otherwise, PW-11 had no motive to give false evidence.

17. *Ex facie* there are interpolations in the examination reports inscribed on the shipping bills. The figures of the actual size and quantity of the goods versus the declared size and quantity appear out of place, so also the words *"bleached as against dyed"* after *"cotton terry towels"*. If these interpolations are ignored, then clearly the initial examination report had falsely stated that the goods were found *"as per the invoice & S/B* (shipping bills)*"*. The fact that the interpolations were made afterwards is supported by the testimony of PW-5 Syed Rashid-uz-Zaman, the Principal Appraiser, who stated that when he had endorsed the shipping bills on 17-11-1983 the interpolations were not there and the examination report did not disclose any mis-declaration.

18. PW-11, the employee of the concerned shipping company had stated that the Appellant had come to him on 19-11-1983 and asked that his letter dated 17-11-1983 for stopping shipment (Exhibit 13A) be acknowledged in the back date of 17-11-1983. That evidence suggested that on 19-11-1983 *i.e.* two days after clearing the shipping bills on 17-11-1983, the Appellant had reason to believe that the consignments would be intercepted and hence Exhibit 13A so as to create evidence to mitigate liability. It appears that in the same vein the Appellant and the co-accused Examiners managed to retrieve the shipping bills and make interpolations and additional notes either before the consignments were re-examined on 20-11-1983 or right thereafter. The argument of the Appellant's counsel was that the shipping bills at that point in time were in the custody of the Preventive Officer, who was never examined by the prosecution. But, even if there was no evidence that the Preventive Officer too was complicit, that did not establish that the shipping bills were in safe custody and not accessible by the Appellant working in the same department. The fact of the matter remained that the interpolations in

the shipping bills benefitted only the Appellant and the co-accused Examiners.

19. The final piece of evidence that clinches the *mens rea* was that even with the interpolations, the examination report inscribed on the shipping bills purportedly on 17-11-1983, falsely described the goods as "*cotton terry towels*". Whereas the re-examination on 20-11-1983 had revealed that 100% of the goods were "*ribbed cotton bar mops*". Had the mis-declaration of goods been exposed and inscribed on the shipping bills on 17-11-1983 as claimed by the Appellant, he would also have mentioned that the goods were in fact 'ribbed cotton bar mops' and would surely not have endorsed them as 'cotton terry towels' and allowed shipment with that description. It is settled law that since *mens rea* does not admit of positive evidence, it is to be gathered from the overt acts of the accused, the consequences ensuing and the surrounding circumstances. "Intention is presumed when the nature of the act committed and the circumstances in which it is committed are reasonably susceptible to one interpretation."[1]

20. I now advert to the submissions of the Appellant's counsel on points of law.

21. Learned counsel for the Appellant submitted that section 32(1)(a) of the Customs Act contemplates an offence by an exporter, not by an "officer of customs" such as the Appellant. While the act of giving a false statement under sub-section (1)(a) of section 32 of the Custom Act[2] is "to an officer of Customs", the offence under sub-section (1) attracts to "any person" in connection with any matter of customs knowing or having reason to believe that such document

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[1] *Shahbaz Khan alias Tippu v. Special Judge Anti-Terrorism Court* (PLD 2016 SC 1).

[2] Untrue statement, error, etc.- (1) If any person, in connection with any matter of customs-

> (a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or
> (b) ……..
> knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty of an offence under this section."

or statement is false in any material particular. Therefore, the words "any person" would include an officer of customs if he makes a false statement or certificate to another officer of customs.[3] As per section 2(o) of the Customs Act, read with section 3 thereof, an "officer of customs" included and includes "an officer of customs with any other designation". Apparently, *vide* SRO 95(I)/83 dated 12-02-1983 issued under section 3 of the Customs Act,[4] Appraisers and Principal Appraisers of the erstwhile Preventive Service[5] were also notified as officers of customs. In other words, if the Appellant acting as Appraiser was an officer of customs, so was the Principal Appraiser in the hierarchy above him, and to whom the Appellant had falsely certified that the consignments in question were found to be as per the shipping bills.

22. The other submission of the Appellant's counsel was that since the Appellant had withheld the process of rebate to prevent loss of public revenue, he could not have been charged with the offence under section 32(1) of the Customs Act. However, that act of the Appellant was after he had already committed the offence under section 32(1), and which was committed with the intent of defrauding the public revenue out of rebate. The process of rebate was only withheld by the Appellant *ex post facto* by making interpolations in the shipping bills when he came to know that he is about to be discovered. It was apparently a case of committing a second offence to conceal the first offence.

23. It is correct that the superior Courts have held that for the offence under section 32(1) of the Customs Act there must be an implication on tax revenue, but that is not to say that there is no

[3] For a similar view see *Muhammad Abdullah v. The State* (2008 YLR 1974).
[4] PTCL 1983 St. 300(ii).
[5] Before it was split into Preventive Service and Export Service.

offence until loss to the revenue actually occurs. It would suffice if the offending act indicates an attempt to defraud public revenue.[6]

24. In the instant case, had the false statements not been discovered, the Appellant and the co-accused persons would have succeeded in defrauding the public revenue out of rebate amounting to Rs. 24,91,102/-. The offence under section 32(1) of the Customs Act was therefore made out, the punishment for which is prescribed in clause 14(i) of section 156(1) of said Act. In any case, the Appellant was also charged and convicted for making interpolations in the shipping bills to fraudulently alter the examination report inscribed thereon, which was a separate offence punishable under clause 77(i) of section 156(1) of the Customs Act. Learned counsel for the Appellant did not advance any argument against the applicability of that provision.

25. For the foregoing reasons, none of the ground urged in appeal carry weight for an acquittal. The evidence brought by the prosecution had established the guilt of the Appellant and the charge against him was proved beyond reasonable doubt. The trial court had nevertheless awarded a lenient sentence. The appeal is dismissed. If the fine imposed has not been paid by the Appellant, he shall do so in in 20 days, failing which he shall be taken into custody to serve out the sentence awarded for default.

JUDGE

Karachi
Dated: 30-01-2024

[6] See *R.A Hosiery Works v. Collector of Customs (Export)*, (PTCL 2005 CL. 93), upheld by the Supreme Court in *Collector of Customs (Exports) v. R.A. Hosiery Works* (2007 SCMR 1881).