

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application (“SCRA”) No.1539 of 2023

Date

Order with signature of Judge

PRESENT:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Mohammad Abdur Rahman

HEARING / PRIORITY CASE:

1. For order on CMA No.3896/2023.
2. For hearing of CMA No.3897/2023.
3. For Regular Hearing.

Dated: 13th November 2024

Mr. Shahid Ali Qureshi, Advocate for Applicant.

Mr. Omer Memon alongwith Mr. Muhammad Rizwan,
Advocate for Respondent No.1.

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ORDER

Through this Reference Application the Applicant department has impugned judgment dated 08.06.2023 passed in Customs Appeal No.K-755/2023 by the Customs Appellate Tribunal Bench-II, Karachi; proposing the following questions of law:-

- I. Whether on the facts and the circumstances of the case, the Customs Appellate Tribunal is justified to hold that the respondents have provided the material evidence with regard to import of 22 number of weapons of various bore according to which the customs duty and other taxes have been paid at the time of their import in accordance with law?*
- II. Whether the Customs Appellate Tribunal has seriously erred in law by not appreciating that the respondent had not produced verifiable documents pertaining to impugned weapons either to the applicant or to the adjudicating officer and failed to discharge the burden of proof within reasonable time in accordance with law?*

2. Heard learned counsel for the parties and perused the record. It appears that some search was conducted after obtaining a warrant from the concerned Magistrate under Section 162 of the Customs Act, 1969 and, thereafter, the goods in question were seized and a Show Cause Notice was issued, which was adjudicated by the Adjudicating Authority against the Respondent No.1 in the following terms: -

“12. I have examined the case record and considered the replies / documents submitted by either side. The seizing agency seized 22 weapons as per detailed above on allegation of being smuggled one; whereas, two other weapons against which import documents were furnished, after due verification, were released. The arguments and written replies along with support documents submitted by all the respondents clearly show that the documents are either cash memos/sale invoices (all without showing any Sales Tax Registration No.) or copies of arm licenses which only show local transactions /sale-purchase of these arms. However, none of the respondent has furnished any single document/evidence to suggest bona fide import of any of the twenty two seized weapons. In absence of any such evidence, it is held that seized weapons are smuggled and have been brought into country in violation of section 2(s) and 16 of the Customs Act, 1969; therefore in terms of clause 89(1) of the act *ibid* read with SRO 499/2009 dated 13.06.2009 further read with SRO 566(1)/2005 6th June, 2005 the seized weapons are confiscated outright. **Since, the seizing department has not controverted the veracity of submitted documents by either of the respondent, therefore it is held that they have discharged their liability under sections 156(2) and 187 of the act *ibid*; hence no penalty is imposed on either of the respondent.**”

3. Respondent No.1 being aggrieved preferred an appeal before the Tribunal and the Tribunal through impugned judgment has decided the appeal in favour of the Respondent No.1 in the following terms: -

“11. Evidential and tactical burden was initially placed on the Appellant in a Customs offence who was only to show some evidence to *prima facie* discharge his evidential burden and thereafter, the same was to be shifted to Customs authorities. Indeed, the Appellant was duty-bound to discharge his burden of proof by producing the documents showing lawful possession of the goods. In fact, the Appellant at the time of raid by the Respondents, had produced local invoices of the licensed arms dealers from where these weapons had been purchased. Side by side, he also produced before the concerned officials, valid arms and ammunition Licenses issued by the competent authority. The Appellant produced before us Sales Invoices in respect of all the seized weapons along with their respective licenses issued by the Home Department, Government of Sindh, which have been annexed with the Memo of Appeal from Page 77 to Page 243. The department has raised no objection as to the veracity of these documents. The learned adjudicating authority has also confirmed and acknowledged this fact.

12. The record of the case suggests that on receipt of these invoices/documents pertaining to 24 weapons recovered from the custody of the Appellant, the Respondent had approached the Arms and Ammunition dealers for

verification to the extent of the legal import of these weapons. Out of 24, only two weapons were certified to be legally imported, which were released accordingly. For the rest of the 22 weapons, the vendors were issued Show- Cause Notices to explain their legal status. The Counsel for the Appellant has annexed to the main appeal replies submitted by the arms vendors submitted to the concerned adjudicating authority wherein they have explained the criteria of procurement of the subject weapons and their subsequent sales. M/s Tactical Arms has given complete information showing the details that certain weapons were imported whose GDs were supplied; in some cases weapons were purchased from individual licensees and purchasing details had been provided; and in some cases weapons had been procured from the firearms dealers and accordingly purchase documents were provided to the concerned adjudicating authority.

13. In this scenario, the question as to whether the weapons procured by the Appellant were purchased legally on payment of sale price is answered in the affirmative. It is a universal law of nature that no one is responsible for an action or inaction of others. In terms of Section 187 of the Customs Act, 1969, the appellant had discharged the burden of proof by producing the local Sales Invoices and their respective licenses. Therefore, there is no cavil to this presumption that when goods are procured locally, they are presumed to be duty and taxes paid. In fact, the vendors have not denied that they had not sold the weapons to the Appellant rather they have produced valid import/local procurement documents in respect - of all the 24 weapons. The respondent/seizing agency have failed to substantiated that the produced documents were untrue and/or they have made further inquiry to prove these documents as nature or charge the vendors for selling non-duty paid goods. This factual position clearly wipes out the allegations of smuggling and unlawful possession of weapons.”

4. On perusal of the record and the findings of the Adjudicating Authority, it reflects that though the authority came to the conclusion that Seizing Department has not controverted the veracity of the documents produced by the Respondent No.1 i.e. cash memos and sales invoices and, therefore, no penalty was imposed, whereas, he has further held that liability under section 156(2) & 187 of the Customs Act, 1969 stands discharged; but at the same time, notwithstanding these observations the goods in question were confiscated outrightly on the ground that the import documents were not produced, nor sales tax invoices were proper. The Tribunal has also concluded that the department has raised no objection as to the veracity of the documents produced by the Respondent No.1 so mentioned in
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Para 11 of the Tribunal's order, as cited above. Once the two forums below have concluded that the genuineness of the documents so produced is not disputed; in our considered view, Respondent No.1 had discharged his initial burden in terms of Section 187 of the Customs Act, 1969 and it had shifted to the department to establish that the goods in question were in unlawful possession of Respondent No.1. Strangely, the Applicant department also wasn't aggrieved of with the observations of the Adjudicating Authority as no Appeal was preferred, nor of the Tribunal by way of a rectification application. In these peculiar facts and circumstances of the case we do not see any reason to interfere with such finding of Tribunal.

5. The controversy as to shifting of initial burden as contemplated under Section 187 *ibid* has already been decided by this Court vide Judgment dated 01.02.2024 in Special Customs Reference Application No.633 of 2020 in the case of *[Re: Director, Directorate General, I&I (Customs), Hyderabad v. Messrs Smart Power System Private Limited and another]*, in the following terms:

3. Perusal of the aforesaid finding of the Tribunal reflects that the initial burden, if any, on the Respondent as contemplated under Section 187 of the Customs Act, 1969, was discharged (though to a certain extent only) by stating and producing the sale/purchase receipt from Seller. Once the Respondent offered a reasonable explanation as to the possession of goods in question, which is either acceptable or raised a doubt, in that case the burden was shifted upon the prosecution to establish the case¹. The law is further settled that the burden of proof is shifted in terms of section 187 of the Customs Act, 1969 upon furnishing of documents of purchase upon the Customs authorities and has to be discharged satisfactorily by them². Record reflects that despite so many directions of the Tribunal, departmental representative failed to verify such receipt / document. In that case the Applicant department is not justified in insisting that the burden as above was not discharged in accordance with Section 187 *ibid* as the receipts are not relevant or fake. This could have been agitated only if the directions of the Tribunal had been complied with and a contrary finding was recorded.

¹ Collector of Customs v Naimatullah (2003 PTD 2118)

² Muhammad Gul v Member Judicial Appellate Tribunal (2013 PTD 765)

6. In view of hereinabove facts and circumstances of the case, firstly a finding of fact has been recorded in favour of Respondent No.1 by the forums below as to the veracity of the documents, and secondly; the initial burden also stands discharged; therefore, the proposed questions are answered against the Applicant department and in favour of the Respondent No.1. Accordingly, this Reference Application stands ***dismissed***. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS
