

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 757 of 2024

Date

Order with signature of Judge

Fresh Case.

1. For Order on CMA No.4456/24 (U/A)
2. For Orders on Office objection No. 26 & 28.
3. For Orders on CMA No. 3354/24 (Exp)
4. For hearing of main case.
5. For Orders on CMA No. 3355/24 (stay)

29.11.2024.

Mr. Faheem Raza Khuhro, Advocate for Applicant

1. Granted.
2. To be satisfied before the next date.
3. Granted subject to all just exceptions.
- 4-5. Through this Reference Application, the Applicant has impugned Order dated 03.06.2024 passed in Customs Appeal No. K-486/2024 by the Customs Appellate Tribunal, Bench-III, at Karachi proposing the following question of law:-

1. Whether the private cars (Corolla, Mehran, etc.) and double cabin conveyance used wholly and exclusively in the smuggling of contraband goods can be released on redemption fine in violation of the provisions of Section 157(2) of the Customs Act, 1969 and clause (b) to SRO No. 499(I)/2009 dated 13.06.2009?

Heard learned Counsel for the Applicant and perused the record. It reflects that certain goods were seized and thereafter a Show Cause Notice was issued, which stands adjudicated vide Order-in-Original dated 05.03.2024 in the following terms:-

- “4. Having heard the arguments of both sides and perused the case record, I order as under:
 - (i) Since no one appeared to claim ownership of the seized foreign origin 360kgs of Betel Nuts and no documents of legal import of seized goods were produced before this forum, it is concluded that charges levelled in the show cause notice that the seized goods, i.e. (i) 360 Kgs of Betel Nuts had been smuggled into the country without payment of leviable duty and taxes

thereon stand established. Therefore, the entire quantity of seized goods as mentioned above is outrightly confiscated under clause (8) of Section 156(1) of the Customs Act, 1969 read with Sub-Sections (2) of Section 156 of the Act *ibid* for violation of Sections 2(s), 16, 17, 156(2), 178 and 187 of the Customs Act, 1969 of the Customs Act, 1969 further read with Section 3(I) of Imports & Export Control Act, 1950.

(ii) As regards the impugned seized vehicle, there is nothing on record which indicates any false cavity or chamber in the vehicle besides connivance of the owner of the seized vehicle has not been substantiated and there is no evidence that the impugned seized vehicle was previously also involved in any act of smuggling. Nevertheless, I have reached to the conclusion that charge of carriage of smuggled Betel Nuts in the seized vehicle is established, and accordingly, I also order confiscation of one unit Suzuki Mehran Car (Reg: No.AAY-034) under Section 157(2) of the Customs Act, 1969 punishable under clause 89(i) of sub section 1 of section 156 *ibid*. However, keeping in view the submissions of the respondent/owner of the seized vehicle, and considering the fact that this vehicle is a lawfully registered showing the ownership of per false cavities, and not covered under clause (b) of preamble SRO 499(I)/2009, dated 13.06.2009, an option is given to owner of the vehicle under Section 181 of the Customs Act, 1969 read with Clause (f) of Serial Number 1 of Table of SRO 499(I)/2009, dated 13.06.2009, to redeem the same in lieu of confiscation on payment of redemption fine equal to 20% of the customs value of the vehicle to be re-assessed and re-ascertained by the appropriate officer. A personal penalty of Rs. 10,000/- (ten thousand rupees only) is also imposed on owner of the vehicle in terms of clause 89(i) of sub section 1 of section 156 of the Customs Act, 1969. The claimant/owner of vehicle is strongly cautioned that in case the impugned vehicle is found carrying smuggled/contraband goods again, it will be outrightly confiscated without fail. The vehicle, if redeemed, may be handed over to the lawful owner/claimant after the redemption fine and personal penalty have been paid.”

Insofar as the goods in question are concerned, they were confiscated outrightly as per para-4(i) above; however, the vehicle was ordered to be released on payment of fine in terms of SRO No. 499(I)/2009 dated 13.06.2009. The department being aggrieved preferred appeal before the Tribunal and the appeal has been dismissed through impugned order. On perusal of the finding of the Adjudicating Authority, it clearly reflects that the vehicle in question

had no false cavity or chamber nor there is any finding of fact to the effect that it was exclusively and wholly used in the offence of smuggling; therefore, exercising powers under 181 of the Customs Act, 1969 read with SRO No. 499 (ibid), the same has been ordered to be released on payment of 20% fine in lieu of confiscation. Perusal of the Seizure Memo also reflects that there is no allegation as to the vehicle having any false cavity or chamber nor any allegation that it has been exclusively or wholly used in the offence of smuggling.

In view of above, no exception can be drawn to the orders passed by the forums below; hence the question proposed is answered against the Applicant and in favour of the Respondent. As a consequence thereof, instant Reference Application is dismissed in *Limine* with pending application(s).

Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of Section 196(5) of Customs Act, 1969.

J U D G E

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