

IN THE HIGH COURT OF SINDH, KARACHI
S. C. R. A. No. 1495 of 2023

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Arshad Hussain Khan

Applicant: The Collector, Collectorate of
Customs, Custom House Hyderabad.
Through Mr. Pervaiz A. Memon,
Advocate.

Respondents: Farooq Shah Afridi & another
Through Mr. Iqbal Riaz, Advocate.

Date of hearing: 26.11.2024.

Date of Order: 26.11.2024.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant (department) has impugned Judgment dated 31.05.2023 passed in Customs Appeal No. H-389 of 2023 by the Customs Appellate Tribunal Karachi, through which the Vehicle in question has been ordered to be released against payment of redemption fine @20%, proposing various Questions of law; however, in our considered view, for the present purposes, only Question No. (A) is relevant which reads as under:-

“(A) Whether under the law and facts of the case, the learned Customs Tribunal was justified in setting aside the outright confiscation of NISSAN Truck Reg No. C-1457 when it was evident that the same vehicle was used wholly and exclusively for smuggling of full load of F/o cloth (23,000 Kgs, value Rs. 20 million plus duty and taxes of Rs. 10 million approx.) in violation of Section 2(s) and 157(2) of Customs Act, 1969?”

Heard Counsel for the parties and perused the record. It appears that a Show Cause Notice was issued to the Respondent along with the owner of the goods and thereafter, order-in-original was passed whereby, the goods as well as vehicle were confiscated out rightly on the ground that the goods were found to be smuggled, whereas the Vehicle in question had been used in transportation of smuggled

goods. The present Respondent being owner of the vehicle in question preferred appeal before the Tribunal and through impugned Judgment the appeal has been allowed in the following terms:-

“We have heard learned Counsel for the appellant as well as the departmental representative and perused the record available on file. The delay in filing appeal is condoned. The appellant has argued for unconditional release of vehicle. He has been unable to demonstrate that he was unaware of legal status of goods transported through the vehicle. The charge of smuggling of goods stands established and no successful rebuttal has been rendered. The vehicle has rightly been confiscated in this case. However, by taking a lenient view, an option under Section 181 of the Customs Act is extended to the appellant to redeem vehicle on payment of fine @ 20% of customs value of the carrier vehicle. Subsequently, the vehicle may be handed over to the lawful owner. The order in original is modified to this extent only.”

On perusal of the aforesaid observations, it appears that the Tribunal has recorded an adverse finding against the Respondent to the effect that the Respondent was unable to demonstrate that he was unaware of the legal status of goods transported through his vehicle, whereas the charge of smuggling of goods stands established and no successful rebuttal has been made. The Tribunal further observed that the vehicle has been correctly confiscated in this case. However, at the same time, the Tribunal on its own has allowed an option to redeem the vehicle on payment of fine @ 20% by exercising powers under Section 181 of the Customs Act, 1969. This Court has time and again observed that the Tribunal cannot assume the powers of an adjudicating authority, specially under Section 181 of the Customs Act, 1969 for redeeming goods and Vehicles confiscated outrightly. At best, when the fact of a case so warrant, matter could be remanded to the adjudicating authority with directions. However, in this case, the entire finding of fact is against the Respondent, but even then, an option has been given to pay fine in lieu of outright confiscation in terms of Section 181 of the Customs Act, 1969. In the case of **Collector of Customs, Peshawar**¹, it was held by the Supreme Court that the requirement to give option to pay fine in lieu of confiscation in respect of confiscated goods is not absolute and is subject to the Notification issued by FBR under Section 181, and the order of the Tribunal for imposition of redemption fine in lieu of outright confiscation of smuggled goods was held to be unlawful and in violation of section 181 *ibid*.

¹ 2017 SCMR 585

In view of the above, the proposed Question is answer in favor of the Applicant and against the Respondent; and consequently, thereof, the impugned Judgment stands set aside. This Reference Application is allowed. Let copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

J U D G E

Arshad