

THE HIGH COURT OF SINDH AT KARACHI

[SPECIAL APPELLATE COURT, CUSTOMS]

Special Criminal Appeal No. 02 of 2018

[The Director, Directorate of Transit Trade, Karachi v. Syed Shams Ahmed Burney]

Appellant : The Director, Directorate of Transit Trade, Karachi through Mr. Muhammad Khalil Dogar, Advocate.

Respondent : Syed Shams Ahmed Burney through Mr. Muhammad Hashim Anhar, Advocate.

Date of hearing : 16-04-2025

Date of decision : 16-04-2025

JUDGMENT

Adnan Iqbal Chaudhry J. - This appeal under section 185-F of the Customs Act, 1969 by the Director, Directorate of Transit Trade, Karachi, is from judgment dated 07.11.2017 passed by the Special Judge (Customs & Taxation) in Case No. 122/2014 whereby he acquitted the Respondent, a bonded carrier, from the charge of pilfering goods in transit *en route* Karachi from the Torkham border with Afghanistan.

2. Heard learned counsel and perused the evidence.

3. The charge for which the Respondent was tried was as follows:

“That on 13-12-2014 Directorate General of Transit Trade Custom House, Karachi reported a matter that you accused being Ex-Director of M/s. Al-Tajjir & Co (Pvt) (Bonded Carrier) filed GD declared description and value of goods as US Army Reverse Cargo two units of Transformer, however on physical examination of cargo found to contain cement blocks instead of declared transformers. You accused pilferage the US reverse Cargo from container No. EMCU9355884 and also evaded duty and taxes to the tune of Rs. 102,48,273/- therefore you have committed an offence punishable under Section 156(1) (8) (89) of the Customs Act, 1969.

And, I hereby direct you accused to be tried by this Court on the aforesaid charge”.

4. The defense was that the pilferage, if any, took place between Kabul and the Torkham border crossing between Afghanistan and Pakistan, or between Torkham and the NLC Terminal at Jamrud *i.e.*

before the container was delivered to the personnel of the Respondent as the bonded carrier.

5. Learned Special Judge acquitted the Respondent in view of the testimony of the I.O. namely Muhammad Rahim (PW-5), which is discussed in the impugned judgment as follows:

“From perusal of all the evidence of prosecution witnesses it is clear that no Pws have deposed against the present accused. Pw-5 the Investigating Officer also did not state a single word against the present accused Syed Shams Burney. In cross examination the Investigating Officer admitted that as per documentary evidence the goods were not examined at Torkham Border. Investigating Officer further admitted that he could not verify the place of incident. He also admitted that there is possibility of pilferage between Kabul to Torkham, Torkham to Jamrood NLC point. Investigating Officer also admitted that there is a possibility that the cargo were mis-declared from the place consignment originated from third party from Kandhar. Further it is evident from the record and cross examination of Pws that driver of the vehicle was present at the time of examination and he did not run away from the place the examination conducted i.e. IC-III terminal Port Qasim but the prosecution did not arrest him shows their lack of interest in true investigation. It is an admitted fact that the goods were not examined at Torkham Border nor the scanning of the container was done by the customs department it means the customs authorities are not verifying the presence of declared goods in the container, whereas all the Pws have stated that the customs and shipper seals were intact before examination at Karachi. This is a case of no evidence as such the prosecution has not succeeded in establishing its case against the present accused beyond any reasonable doubt. The point is therefore, answered in negative.”

6. Though the examination report on the reverse of the GD (Exhibit 4/B), prepared at Transit Station Torkham, stated that the container was examined and was found to be as per the GD, the investigation had revealed that the container was never opened for examination due to its ‘sensitivity’. The Customs officers who had prepared the examination report at Torkham were not examined as witnesses by the prosecution. Apparently, as per Exhibit 8/A/4, which was the report of the Director of Transit Trade, the container was also not scanned by the Customs before affixing the PCCSS seal as the container’s height was greater than the height of the scanner installed at NLC Terminal Jamrud. Admittedly, the PCCSS seal was found intact when the container was eventually examined and opened at Port Qasim, Karachi.

7. With the above evidence, the finding of the Special Judge that charge against the Respondent was not established beyond reasonable doubt, does not call for any interference. The Appeal is therefore, dismissed.

JUDGE

Karachi

Dated: 16-04-2025

*PA/SADAM