ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 654 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objections 24 & 25.
2. For hearing of main case.
3. For hearing of CMA 307/2023.

04.08.2026

Mr. Pervaiz Ahmed Memon, advocate for the applicant.

Following questions of law had been proposed:

i. Whether the Appellate Tribunal has not erred in law by ignoring that the present chassis number is self-made/fake digits and original side of chassis frame number area is filled metallic filling?

ii. Whether the Appellate Tribunal has not erred in law that the similar issue was settled by Hon'ble Supreme Court of Pakistan vide judgment SCMR No.1410/2020 Govt. of Pakistan vs Sarfraz Khan petition No.800-P of 2019 decided on 28.05.20 20 where it was held that:

> *"if the respondent had purchased the vehicle without taking due care and complying with the requirements of Law, he could not claim to be a bonafide purchaser"*

iii. Whether Appellate Tribunal has not erred in law that as per second proviso of S-194-B of the Customs Act, 1969, the cases involving 2(s) items should be decided within 30 days whereas the said order was passed after lapse of that period. The relevant portion of Section 194-B is re-produced below:

> *"Provided further that in cases, wherein the provisions of clause (s) of section 2 have been invoked, appeals shall be decided within a period of thirty days"*

iv. Whether the Appellate Tribunal while concluding impugned order has failed to appreciate that smuggled Betel Nuts could have not been loaded on the vehicle under the garb of salt without the active knowledge and connivance of the owner of the truck and prove mens rea and is liable to confiscate under section 157(2) of the Customs Act, 1969?

v. Whether the Appellate Tribunal has not erred in law that the legal availability of imported vehicle is through goods declaration under section 79 of the Customs Act, 1969, or through auction documents under auction rules 2001 chapter-V and the claimant failed to produce any such documents of truck?

vi. Whether the Appellate Tribunal has not erred in law that the appellant has failed to discharge burden of proof of lawful possession in terms of clause (89) of Sub Section (1) read with Sub Section (2) of Section 156, further read with Section 187, of the Customs Act, 1969. In this regard, reliance is placed on a judgment passed by the Honorable Lahore High Court reported at PTCL 2015 CL.43 whereby it has been held that;

> *"the registration book alone cannot be treated as prima facie evidence of import and payment of customs duty and taxes to discharge the evidentiary burden of proof under Section 156(2) and 187." Further, it is well settled principle of law that "if the goods are in open place, then provisions of Section 162 and 163 are not applicable. The applicable provisions are those of Sections 68,"*

vii. Whether in consideration of the facts and circumstances of the case, the learned Appellate Tribunal has not erred to law to give option under Section 181 of the Customs Act, 1969, to redeem the smuggled/non-duty paid vehicle.

viii. Whether the 1" Respondent (herein) without associating himself with the adjudication proceedings under Section 179 of the Customs Act 1969 and claiming the impugned vehicle was entitled to filed Customs Appeal under Section 194-A of the Customs Act, 1969, as an aggrieved person?

Be that as it may, learned counsel states that the respondents have not joined adjudication, however, the benefit of such truancy was extended thereto by the learned Tribunal. Learned counsel states that notwithstanding the department's opposition to any contrary plea, even if the learned Tribunal was to give any credence to the case of the respondents then the correct course of action ought to have been to remand the matter to the adjudicating officer. Learned counsel places reliance on Division Bench's order of this Court dated 27.02.2025 passed in SCRA No.60 of 2024, which reads as follows:

> *"Through this Reference Application the Applicant has impugned judgment dated 01.11.2023 passed in Customs Appeal No.H-1117/2023 by the Customs Appellate Tribunal, Bench-III, Karachi, proposing various questions of law; however, at the very outset after briefly hearing the learned Counsel and after going through the record we have noticed that the Respondent in whose favour, the Tribunal has passed the impugned order had never appeared before the adjudicating authority as reflected from the Order-in-Original No.100 of 2023 dated 15.05.2023, whereas, the Tribunal has considered the contention of the Respondent including documents which were never presented before the original authority and based on that has overturned a finding of fact recorded at the original stage that vehicle imported into Pakistan was smuggled; hence, was liable for outright confiscation.*
>
> *While confronted it is contended by the Counsel for Respondent that no show cause notice was ever issued to the present Respondent, therefore, he could not appear before the Adjudicating Authority; however, if that be the case, then the Tribunal ought to have remanded the matter to the original authority for examining the contention of the Respondent as the Order-in-Original was an ex-parte order.*
>
> *In the circumstances, the impugned order of the Tribunal and Order in Original are hereby set-aside and the matter is remanded to the concerned adjudicating authority before whom the Respondent shall appear and place all material and documents which they had relied upon before the Tribunal; where after, the said authority shall pass appropriate*

> *Order-in-Original in accordance with law preferably within a period of 60 days from today.*
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> *The Reference Application is allowed in the above terms."*

Learned counsel seeks that this reference may be disposed of for the same reason and upon the same terms as the order aforesaid. Order accordingly.

A copy of this decision may also be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

M. Khan