ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 576 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of CMA No.2741/2024.

06.08.2026

Mr. Pervaiz Ahmad Memon, advocate for the applicant.
Mr. Muhammad Nadeem Qureshi, advocate alongwith Mr. Shahroze Nadeem advocate and Mr. M. Salman Khan, advocate for the respondent.

The impugned judgment observes as follows:

"8. I have perused the case record and heard both parties to the dispute. The case revolves around the following questions:

Q-(i). Whether the seized solvent oil is foreign origin smuggled oil within the contemplation of Section 2(s) of the Customs Act, 1969?

Q-(ii). Whether the Respondent department has proved beyond any shadow of a doubt that the seized goods were smuggled within the context of Section 187 and 2(s) of the Customs Act, 1969?

Q-(iii). Whether the confiscation of vehicle(s) carrying seized goods was justified within the context of Section 157(2) of the Customs Act, 1969?

9. Appellant No. 1 has provided the trail of documents that supports their contention. Record of the case suggests that the appellant purchased the solvent oil through Bank trade Transaction vide Sales Delivery memo/commercial Invoice & Sales Tax Invoice, all even No. 44280 dated 21-12-2024 issued by M/s ENAR petroleum Refining facility II, near Peoples Steel Mills Javedan Nager, Mangho Pir Karachi, issued in favor of M/s Star Enterprises, Rawalpindi

10. The purchase of the subject goods was duly entered in the WeBoC system as 25,000 liters of Solvent Oil by M/s ENAR Petroleum Refining. The invoice so produced is reflected in the Sales Tax return filed by ENAR. The Respondent department has not challenged the invoice nor the origin of the goods has been mentioned nor the lab test has been conducted, therefore, the allegation levelled by the Respondent department become weak and devoid of lawful evidence.

11 A critical perusal of the seizure report and the Show-Cause Notice reveals that the case has been framed on the basis of mismatching of the quantity of Solvent Oil loaded in the Oil Tanker vis-à-vis the quantity mentioned on the Invoice.

12. The Solvent Oil was carried in Oil Tanker bearing registration No. JQ-0075 which was unloading said solvent oil in the underground tank of the petrol pump. Rest of the oil was loaded in the Mini vehicle/Oil Tanker bearing registration No JY-2412 for its

further disposal. For this reason, the quantity found in the mini oil tanker did not match with the invoice. It was incumbent upon the Respondent department to have reconciled the total inventory viz. shifted in the tank and shifted in the mini tanker. However, merely on the basis of mismatching of invoice quantity, a case of smuggling has been framed against the appellant.

13. Moreover, the table in the Show-Cause Notice indicates only 18,700 litres of Solvent Oil. Indeed, it is in contradiction with the actual quantity mentioned on the documents as the vehicle was carrying 25000 litres of Solvent Oil. There is a missing quantity of 6,300 litres of Solvent Oil as is evident from the Show-Cause Notice, no explanation thereof has been given by the Respondent department for this discrepancy.

14. No test has been conducted by the Respondent department in respect of the seized Solvent Oil. Further, the case of the Respondent is that the quantity of seized oil does not tally with the quantity mentioned in the invoice. Moreover, Respondent's assertion is that the Solvent Oil Tanker No. JQ-0075 has also shifted some Solvent Oil in the Mini Vehicle/Oil Tanker bearing Registration No JY-2412 for its further disposal Merely shifting Oil from Oil Tanker to mini oil tanker does not warrant the charge of smuggling.

15. Further, certain samples were reportedly drawn for lab test purposes, however, as per the Appellant representative of the Appellant was not present at that point in time. Therefore, the lab report, if any, would become dubious and unacceptable as evidence against the Appellant. Even otherwise, no lab test report has been placed on record concerning the Solvent Oil, which could confirm the origin of the subject goods. Therefore, the Respondent department has failed to substantiate their allegations of the subject goods to be of foreign origin or smuggled one through any documentary evidence. Hence, the answer to question (i) is given in the negative in favour of the Appellant No. 1 and against the Respondent.

16. In respect of answering the second question, it is imperative to reproduce below Section 187 of the Customs Act, 1969, to better understand the pre-requisites of these provisions of law: -

> "187. Burden of proof as to lawful authority etc.- When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall lie on him:-
>
> Provided that any person, alleged to have committed an offence under this Act, shall bear the burden of proof that any property owned by him in his name or someone else name was not acquired from the proceeds of such crime.
>
> Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules."

17. In fact, under the provisions of Section 187, where a person is found to be in possession of certain goods, which fall under a prohibited category or which in an unlawful manner find traces in the possession or custody of the accused, in such cases the burden is upon the accused to show that he falls under some exemption or exception to hold such goods. Further, the evidential and the tactical burden is initially placed on the offender in a

Customs offence, who has only to present some evidence to prima facie discharge his evidential burden and, thereafter, the same is to be shifted to Customs department. The Appellant was duty-bound to discharge his burden of proof by producing the documents showing lawful possession of the seized goods.

18. The record of the case reveals that the Appellant has produced before the concerned officials a copy of the invoice and the sales tax return showing the local procurement of Solvent Oil from ENAR. However, the seizing agency without reconciling the documents with the actual quantity procured and disposed of, has made out this case merely on the plea of mismatching of quantities.

19. This leads me to conclude that in light of the provisions of Section 187, the initial burden of legal possession of the seized goods had been discharged by Appellant No. 1 and shifted onto the Department.

20. I am guided by the judgment of hon'ble Sindh High Court in the case of Muhammad Hasan Nadeem and 2 others vs. Model Customs Collectorate (Enforcement and Compliance) through Collector and 4 others (2021 PTD 764) wherein the hon'ble Court has as under: -

> "The law places the initial burden upon the person to show that the goods in possession are in accordance with lawful authority, however, it is well-settled law in Customs matters that while the evidential and tactical burden is initially placed upon on the person, he only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same shifts upon the Customs authorities."

21. Based on the above legal scenario, I am of the considered view that the Appellant had adequately shifted the burden onto the Respondent Department by producing the invoice and sales tax return. Now it was incumbent upon the department to establish that the goods were of foreign origin and smuggled within the context of provisions of Section 2(s) and 16 of the Customs Act, 1969. Therefore, the answer to question (ii) is also given in the negative in favour of the Appellant No. 1 and against the Respondent department.

22. As regards Question (iii), it is observed that the subject vehicle was carrying the seized goods. In the foregoing paras, we have concluded that Appellant No. 1 has shifted the burden under Section 187 of the Customs Act, 1969, as to the legal procurement of the seized goods, therefore, the vehicle carrying lawfully procured goods cannot be seized and confiscated. The provisions relating to the confiscation of the conveyance carrying smuggled goods are contained in Section 157(2) of the TESTED Customs Act, 1969, which reads as under. -

> "(2) Every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation."

23 The underlining point in this provision is 'used in the removal of any goods liable to confiscation'. It is clear from the above-detailed discussions that the subject goods were not smuggled one, therefore, not liable to confiscation, hence the vehicle used in carrying these goods is also not liable to confiscation.

24. Faced with a similar situation, the Hon'ble Supreme Court of Pakistan in the judgment reported as PLD 1974 SC 5 has laid down the following dictum: -

> "No innocent person should be unjustly punished or deprived of his property. This was the cardinal principle, which was followed by the learned Judge of Calcutta High Court in the last mentioned case. We too think this was correct principle upon which the authorities should proceed."

> 25. In light of the above factual and legal position, the confiscation of the vehicle is declared to be unlawful and without lawful authority. Accordingly, the answer to Question (iii) is given in the negative in favour of Appellant No. 2 and against the Respondent Department.
>
> 26. In view of the foregoing deliberations, I am left with no option but to allow the instant appeal and set aside the impugned Order and the Show-Cause Notice. The Respondents are directed to release the goods and the vehicles to their lawful owner/Appellants forthwith."

The only argument articulated by the learned counsel for the applicant is that the sales delivery memo adduced by the respondent in evidence, available at page 51 is fake, hence, the judgment impugned may not be sustained.

Learned counsel for the respondent controverts the aforesaid and states that the evidence has already been duly appreciated by the Appellate Tribunal and no case is made out for denovo consideration and to agitate the same in reference jurisdiction.

We are assisted with no reasons to disagree with the argument articulated by the learned counsel for the respondent. The learned Appellate Tribunal is the last fact finding forum in the statutory hierarchy and admittedly the impugned judgment has been rendered in appreciation of evidence. We are not sitting in appeal and no question of law arising from the facts and circumstances has been articulated before us to entertain this reference application. In view hereof, reference application is dismissed.

A copy of this decision may 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

Khuhro/PS