

IN THE HIGH COURT OF SINDH, KARACHI

**Special Criminal Revision Application No. 170 of 2019
Along with Special Criminal Revision Application Nos. 178,
185, 186, 187, 188, 190, 207 & 208 of 2019**

The Director, Directorate General of Intelligence and
Investigation-Customs, Regional Office, Karachi.....Applicant

Versus

The Special Judge, Customs, Taxation
And Anti-Smuggling at Karachi and others.....Respondents

Mr. Zain A. Jatoy, advocate for applicant in RA No. 170/2019.

Mr. Ashiq Ali Anwer Rana, advocate for applicant in connected RAs

Mr. Aqil Ahmed, advocate for respondents in RAs except
RAs No. 207 & 208 of 2019

Mr. Muhammad Riaz for respondents in RAs No. 207 & 208 of 2019

Date of hearing: 17.12.2019.

Date of Order: 30-12-2019

ORDER

FAHIM AHMED SIDDIQUI, J:- Since all the above Special Criminal Revision Applications are connected, therefore, it is advisable that all these special criminal revision applications should be disposed of by one and the same order.

2. In these matters, the applicant feels aggrieved with the impugned order, whereby the learned Special Judge has declared the criminal proceedings before the Court of Special Judge (Customs & Taxation) as *coram-non-judice* and the challan was returned for adjudication before the proper forum.



3. I have heard the arguments and perused the record.

4. Mr. Zain Ali Jatui, the learned counsel appearing for the applicant after recital of the impugned order opens his arguments. According to him, the applicant obliged to file the instant revision because the impugned order is patently illegal and against the spirit of law. He submits that the construction of law, as done by the learned Presiding Officer, is also inappropriate and it amounts to counteract the statutory definition of smuggling. According to him, the learned trial Court has not applied the judicial mind at the time of pronouncement of the impugned order. After quoting definition clause of the statute, he submits that the learned trial judge misconstrued the law by holding that only the specified and notified goods can be considered as 'smuggled goods' but the fact is that any permissible or restricted goods if brought into the country without payment of duty, the said act will be considered as smuggling. He submits that betel nut is permissible but restricted imported item, and no such goods can be imported without Phytosanitary Certificate and certification of fit for human consumption from the exporting country as well as certification of plant protection department of the country. He points out that the betel nuts usually imported in whole i.e. as seed also known as 'areca nut' or 'areca seed', as such it is in the interest of indigenous species of flora and fauna that without certification and approval of the Plant Protection Department of country 'areca seed' should not be imported in the country. He submits that if such goods are imported in the country from routes where customs facilities are not available, the act will fall under the definition of smuggling. In support of his contentions, he relies upon **Salooka Steels Ltd vs Director General, Coast Guard Pakistan** (PLD 1981 Quetta 1) and



Collector of Customs vs Minhaj-ud-Din and another (PTCL 2009 CL. 533).

5. Mr. Ashique Ali Rana, appearing for the applicants in connected special criminal revision applications adopts the arguments of Mr. Jatoi.

6. Mr. Aqueel Ahmed, the learned counsel for the respondents in the aforementioned criminal revisions, strongly support the impugned order. According to him, the learned trial Court has mentioned nothing but what is described in the statute. He submits that the law is very much clear according to which import of specified and notified articles amounts to smuggling. He submits that the importing of permissible items will not be smuggling even if duty is not paid and the only action is adjudication and recovery of duty plus fine. He submits that since the betel nuts are neither specified nor notified; therefore, recovery of any amount of such goods will not be smuggling and possessing of such articles is not offence but a person from whom it is recovered has to face adjudication and pay duty and fine as determined by the adjudicating officer. According to him, the betel nuts are being still imported with some restrictions and the respondents have imported the same while GDs are available with them. He submits that the condition of the requisite certificate was imposed just a few months before the incident and these goods were imported prior to such restrictions, as such the condition of production of such certificates is not attracted to the case of the respondents. In support of his contentions, he relies upon **Zafar Ahmed Phul vs the State (1981 PCrLJ 66)**, **Amanullah Khan vs Shabbir Hussain, SHO and another {1984 Cr.LJ 3096(I)}**, **Mrs. Haim Tabbara vs Director General, Pakistan Coast Guard (PLD 1980 Karachi 44)**, **Shabbir Ahmed Shah vs Pakistan (PLD**



1979 Karachi 68), and the State vs Muhammad Irfan and others (1987 PCrLJ 325).

7. Mr. Muhammad Riaz, learned counsel for the respondents in Special Criminal Revision No. 207 & 208 of 2019 prefers to adopt the arguments of Mr. Aqueel Ahmed.

8. In the instant case, the prime question is regarding the statutory definition of 'smuggling'. After referring Section 2 clause (s) of the Customs Act 1969 (hereinafter referred to as 'the Act'), the learned Judge declares that the offence of smuggling is possible in respect of specified and notified articles only. An analysis of the impugned order in the light of the definition given under clause (s) of Section 2 of the Act, may be resorted for seeking a proper reply to the question. It will guide us to reach a conclusion that the learned presiding officer of the Special Court has construed rightly about the statute mentioned above or not.

9. Before entering into further discussion, it would be appropriate to refer to the literal rule of interpretation, which is the basis of nearly all court decisions concerning some statutes. According to literal rule, the judge must rely on the exact wording of the statute while describing the law. By applying 'the golden rule of interpretation', a judge can deviate from this rule only when the grammatical construction of the statute will give some absurd meaning and it is necessary to trace the intention of the legislature. Nevertheless, when the language of the law is plain and simple and convey the meaning without any doubt and ambiguity, there is no need to avoid the literal or textual meaning of the law. Similarly, the words of law cannot be read in isolation and the entire statute is to be read to give a proper comprehension. There is no doubt that the definition given under



clause (s) of Section 2 of the Act is required to be carefully applied to the goods allegedly recovered being suspected as smuggled. If the statute has given a precise scope to the definition, then it will not be appropriate to contract or expand the same.

10. Before entering into further discussion, it would be appropriate to quote clause (s) of Section 2 of the Act, which reads as under:

"Definitions.- In this Act, unless there is anything repugnant in the subject or context:-

(a)...

....

(s) **"smuggle"** means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or en route pilferage of transit goods or evading payment of customs-duties or taxes leviable thereon, -

(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred and fifty thousand rupees in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station, and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly;"

From the underlined portion of the statutory provision (underlines are mine), it is evident that if there is 'prohibition and restriction' on certain goods then the same cannot be brought in or taking out of Pakistan by breaching such restriction or prohibition OR without payment of customs duty or taxes. The customs authorities are justified to locate and seize such goods wherever the same is available and also proceed against the persons, who are in possession of or involved in bringing, trading, abetting and connivance in respect of such goods.



11. While reading a statute, it is necessary to read the entire statutory provision before reaching to a conclusion. As explained above, if the language of the law is clear and unambiguous, the reading should be with textualist spirit but at the same time contextuality should not be ignored. From the bare reading of the definition given above, it is clear that prohibited or restricted items cannot be brought into or taken out of Pakistan freely. Amongst those articles some are mentioned in sub-clause (i) of clause (s) of Section 2 of the Act, which are specified goods from which some are prohibited e.g. narcotics and some are restricted like precious metals, precious stone, and currency, etc., while prohibited goods are further explained and specified in Section 15 of the Act. However, import and export of certain goods are subject to some restrictions like quantity, license, permission as well as duty and taxes leviable to them. There are certain other articles, which are described in the initial part of sub-clause (ii) of clause (s) of Section 2 of the Act, which includes manufactured articles of precious metals and stone etc. in the specified list of goods while in the later parts, it describes those goods which are notified by the Government of Pakistan in official gazette as prohibited or restricted for import or export. It is also clarified that for the second category of specified goods i.e. manufactured items of precious metals/stone and notified goods may not be fall under the definition of smuggling if the same are within the worth of rupees one hundred and fifty thousand.

12. There is another category of goods, which are neither specified nor notified and the same can be imported or exported without any restriction but subject to payment of customs duty or tax. These goods if imported in the country without payment of duty but at the time of import, it is declared that such goods have been brought in and the person is ready to pay such



tax and duty, the act will not be considered as smuggling. It is worth noting that if the goods leviable for customs duty or tax are brought into the country with an intention to avoid payment of such duty or tax, the same will be an act of smuggling, as per sub-clause (iii) of clause (s) of Section 2 of the Act, and the term 'any goods' does not only cover the specified or notified goods but also includes all other goods, either their import or export is restricted or not, and the same are imported with an intention to avoid payment of customs duty or tax. The act of smuggling of lawful items, by intentionally evading customs duty, is done either deceiving or coupling the customs authorities or by utilizing routes that have not been specified as declared routes and/or where customs stations are not available. In both cases, the goods brought into or taken out of the country will be considered as smuggled goods irrespective of the fact that the same are either specified or notified goods or not.

13. In the present cases, undoubtedly the betel nuts are neither specified nor notified, as well as, the same is not prohibited but there are restrictions imposed under notification that the imported betel nuts must accompany the phytosanitary certificate and to be certified as fit for human consumption from the country of origin i.e. exporting country and without such certification, the said goods cannot be landed in the country. It is the said restriction, which opens venue of bringing betel nuts in the country through undeclared routes as mentioned in sub-clause (iii) of clause (s) of Section 2 of the Act and as per such definition, all those betel nuts, which are brought into the country without phytosanitary certificate and/or without payment of customs duty and taxes, the same will be considered as smuggled goods. It is the contentions of the learned counsel for the respondents that the betel nuts are neither specified nor notified items and



the same were brought into the country through declared routs and by filing requisite GDs and payment of duties but the phytosanitary certificates are not available, as the said consignments of betel nuts were already imported before the imposition of the condition of such restriction, and some of them are facing adjudication and ready to pay duty and fine. Even if the situation is the same as described by the respondents, the criminal case against them may not have vanished only because same does not fall within the ambit of smuggling as betel nut is not included in the list of specified or notified item for importation. Similarly, such contention also not bears weight that some of the respondents are facing adjudication and they are ready to pay requisite customs duty and fine, if any. The reason is that the criminal case and civil liability are two different and distinguished proceedings and both can be carried out simultaneously. In the present cases, the huge quantities of betel nuts were recovered, and at the time of recovery the respondents could not satisfy about the lawful import, as such, there was no other option with the prosecution but to consider the availability of such huge quantities in violation of restrictions mentioned above as well as willfully evasion of customs duty and taxes, hence the present case was rightly initiated. Nevertheless, if the respondents consider that they are not involved in the case and they have been falsely implicated then they may agitate their pleas of innocence before the trial Court and seek their pre-trial or pending trial acquittal as provided under Section 249-A or 265-K CrPC, as the case may be. So far as case laws cited by the learned counsel for the respondents are concerned, the same pertains to an era prior to amendments in clause (s) of Section 2, as such the same are not applicable to the cases in hand.



14. In view of the above discussion, a fair and definitive conclusion can be drawn that there are material impropriety in the impugned order passed by the trial Court i.e. the Court of Special Judge (Customs, Taxation & Anti-Smuggling), regarding definition of smuggling of betel nuts, as such all these criminal revision applications are allowed and the impugned orders passed therein are set-aside. The respondents are directed to appear/surrender before the learned trial Court, within seven days thereafter, the learned trial Court will proceed further with the cases of the respondents as per law. Nevertheless, if the respondents wilfully circumvent their appearance before the trial Court within the stipulated period of time, the trial Court will be at liberty to proceed against them as per law.

