

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Agha Faisal

C.P. No. D-4188 of 2020

M/s Panjgour Goods Transport Co.

Versus

Federation of Pakistan & others

ALONG WITH

Special Customs Reference Applications

No.469 and 955 of 2017 & 139 of 2018

Collector of Customs

Versus

M/s Panjgour Goods Transport Co. & others

Date of Hearing: 07.10.2021

Petitioner in petition: Through Ms. Dil Khurram Shaheen Advocate.

Respondent Federation of Pakistan: Through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General along with Mr. Hussain Bohra, Assistant Attorney General.

Respondent No.3 in petition and applicant in SCRA's: Through Mr. Khalid Rajpar Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Instant petition along with three Special Custom Reference Applications have been argued by Mr. Khalid Rajpar, Advocate and so also Ms. Dil Khurram Shaheen Advocate appearing for the respective parties on the ground that these involve common owner of vehicles and have an identical questions based on somewhat similar facts disclosing a modus operandi of the petitioner (which is respondent No.3 in References).

2. This petition pertains to release of vehicles owned by petitioner M/s Panjgour Goods Transport Co. (who is also contesting respondent in the three Special Customs Reference Applications), which are also subject matter of three SCRA's.

SCRA No.469 of 2017

3. This Reference involves smuggling of Bitumen (Dammar) along with oil of Iranian origin. A Hino Oil Tanker bearing registration No.TLG-281 was being used for transportation of smuggled/non-duty paid Iranian diesel oil when the vehicle was apprehended/intercepted on its way from Baluchistan to Karachi via costal highway. It was disclosed that the Goods Declaration-1 bearing Machine No.776 dated 14.04.2016 was processed and the goods (bitumen) were out of charged by customs Panjgur along with Builty No.1182 dated 16.05.2016 of M/s Al-Zubair & Munir & Co. with declared description of Bitumen (Dammar). Search of oil tanker was however conducted in presence of mashirs, which revealed that the discharge as well as filling caps of the subject oil tanker were welded and the oil tanker was tactically wrapped with steel sheets by welding. The smuggled goods thus were obscured in a 22-wheeler oil tanker so that it may not be ascertained.

SCRA No.955 of 2017

4. Involved in this Reference is a Hino Truck/Trawler bearing registration No.TAJ-059 laden with diesel oil and Bitumen (Dammar). The search of the vehicle was carried out in presence of mashirs when they found Bitumen (Dammar) loaded on the upper portion and beneath portion was filled with diesel oil stored in tanks fitted on Hino Truck/trawler in a way that said portion was obscured/disguised from upper portion filled with Bitumen. In this case also the documents to legitimize the import of Bitumen (Dammar) were presented whereas the driver and

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other occupants failed to produce the import or other documents relating to Iranian Diesel oil found in a hidden area of tank.

SCRA No.139 of 2018

5. This Reference also involves Hino Oil Tanker bearing registration No.TMA-905 found filled with Iranian Diesel along with its occupant. The driver was asked to produce the documents which could justify lawful import of Iranian Diesel oil but he failed.
6. We have heard learned counsel for the parties and perused material available on record.
7. In all above three references Order-in-Originals were passed wherein along with the smuggled goods, vehicles were also found to be in violation of Section 2(s), 156(2), 157(2) and 178 of Customs Act, 1969 read with clause (a) and (b) to the preamble of SRO No.499(I)/2009 dated 13.06.2009. In SCRA 955 of 2017 however Bitumen (Dammar) was not ordered to be confiscated. These References however are only to the extent of release of vehicles, as ordered by the Tribunal in terms of impugned judgments.
8. The offence is governed by SRO 499(I)/2009 issued under section 181 of Customs Act, 1969 in supersession of its earlier SRO No.487(I)/2007. It provides that no option shall be given to pay fine in lieu of confiscation in respect of following goods or class of goods namely:-
 - (a) Smuggled goods falling under clause (s) of section 2 of Customs Act, 1969;
 - (b) Lawfully registered conveyance including packages and containers found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of Section 2 of Customs Act, 1969.
 - (c) Etc.
9. Undoubtedly goods as classified under clause (s) of Section 2 of Customs Act, 1969 were being smuggled by evading payment of

duties/taxes leviable thereon. Now as far as subject vehicles are concerned it appears that in a classified and designed manner goods were attempted to be smuggled apparently in a uniform way. Nobody came forward for the release and discharge of diesel oil and Bitumen (in some references), which were confiscated out rightly being smuggled via subject vehicles. Petitioner's/Respondent's counsel has not utter a word or has not attempted to dislodge the case of the applicant that there was an attempt to smuggle the goods via subject vehicles however it was only in defence pleaded that owner of the vehicles was at all involved and/or that he had no knowledge about such offence.

10. This controversy does not involve any complexed or complicated question of fact. There exist undeniable facts that these vehicles were used in an attempt to smuggle the goods from another country and hence we are not obliged to probe whether the subject vehicles were used to carry the smuggled goods.

11. Now the only proposition is whether the events, as disclosed in the respective seizure reports of all three references followed by show-cause notices and passing of Order-in-Originals, could be distinguished from the frame of SRO 499(I)/2009 as far as owners plea is concerned. Preamble (b) of the aforesaid SRO provides that the option shall not be given to pay fine in lieu of confiscation in respect of a vehicle which is defined as good/goods in terms of sub-clause (b) of the said preamble. Thus, a lawfully registered vehicle/conveyance, having packages and containers inside, found carrying smuggled goods, in false cavities or were being used exclusively or wholly for transportation of offended goods under clause (s) of Section 2 of Customs Act, 1969 becomes a subject matter of such offence. This clause (b) has emphasized that a vehicle or conveyance used exclusively or wholly for transportation of offended goods cannot be distinguished from the one having packages

and containers inside as such conveyance having packages and containers are inclusive of such definition of vehicle/conveyance.

12. In Reference No.469 of 2017 however there was a special cavity found to have been carved out through steel sheets being welded whereas in SCRA No.955 of 2017 also Bitumen (Dammar) was kept on the upper portion of the tank fitted on the Hino Truck trawler where the smuggled Iranian oil was obscured. In the third Reference i.e. No.139 of 2018 Hino Oil Tanker/trawler exclusively claimed to have carried the smuggled diesel oil. This would not take away any right of the custom officials as subject clause (b) of SRO 499(I)/2009 is clear that all such conveyance/vehicles used exclusively or wholly for transportation of the smuggled goods are inclusive of all those having packages and containers inside.

13. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*¹, wherein it was held that release of a confiscated vehicle carrying smuggled goods could not be sanctioned in lieu of payment of a redemption fine, pursuant to clause (b) of the SRO. The said judgment was maintained by the honorable Supreme Court². Division benches of this Court have also consistently followed the reasoning such as in the *Niaz Muhammad case*³, *Nasir ul Haq case*⁴, the *Faiz Muhammad case*⁵ and the *Aurangzaib case*⁶.

14. The Impugned Judgment in the Reference Applications are contrary to earlier pronouncements, as enumerated supra, hence, cannot be sustained, Whereas, the findings contained in the order in appeal are correct appreciation of the subject SRO *ibid*.

¹ Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020); judgment dated 23.07.2020.

² Per Maqbool Baqar J in Civil Petitions 730-K to 760-K of 2020; Order dated 11.02.2021.

³ Niaz Muhammad vs. Federation of Pakistan & Others (CP D 1753 of 2020).

⁴ Nasir ul Haq vs. Federation of Pakistan & Others (CP D 4524 of 2020).

⁵ Faiz Muhammad vs. Federation of Pakistan & Others (CP D 296 of 2020).

⁶ Director, DG I&I v. Aurangzaib SCRA No.700/2019 & CP No.D-1853/2020

15. In view of the reasoning and rationale herein contained, the common question framed for determination supra is:

Whether on facts and circumstances of the case, the Tribunal has erred in law by releasing the vehicles against redemption of fine ignoring the spirit of SRO 499(I)/2009 dated 13.06.2009?

16. This question is answered in the affirmative in favor of the applicant department and against the respondent in the reference applications. All three Special Customs Reference Applications stand allowed in the above terms. As a consequence hereof, the subject petition, along with pending application/s, is hereby dismissed.

17. 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.