

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
SCRA No.164 of 2022

Date _____ Order with signature of Judge _____

Hearing of case

- 1) For hearing of main case
- 2) For hearing of CMA No.1134 of 2022

16.01.2025

Mr. Khalid Rajpar, Advocate for the Applicant
Mr. Bacha Zaib, Advocate for the Respondent

Through this Reference Application, the Applicant has impugned judgment dated 11.01.2022 passed by the Customs Appellate Tribunal, Bench-III, Karachi, in Customs Appeal No.H-7388/2021, proposing the following questions of law:-

- i) Whether in view of the facts and circumstances of the case the impugned vehicle exclusively and wholly used for the transportation of smuggled HSD recovered from concealed / hidden tanks, is liable to outright confiscation under clauses (8) and (89) of subsection (1) of Section 156 and Section 157 (2) of the Customs Act, 1969, read with clause (b) of preamble of SRO 499 (1)/2009 dated 13.06.2009?
- ii) Whether in view of the facts and circumstances of the case the impugned judgment passed by the Appellate Tribunal is not violative of Section 157(2) of the Customs Act, 1969, read with clause (b) of preamble of SRO 499(1)/2009 dated 13.06.2009?
- iii) Whether the learned Appellate Tribunal was justified to give retrospective effect to newly added proviso to Section 157(2) of the Customs Act, 1969, introduced through Finance Act, 2021-22?
- iv) Whether the Appellate Tribunal was justified and has the jurisdiction to allow release of outrightly confiscated vehicle on payment of fine and penalty which was used exclusively and wholly for the transportation of smuggled goods of Section 2(s) i.e. HSD in concealment shows mens rea?
- v) ✓ Whether the Appellate Tribunal has not erred in law that the evident purpose of Section 157 of the Customs Act, 1969 is to penalize & discourage clandestine involvement of driver / owner of the conveyance used in assistance & commission of an offence under the act as hold by the Hon'ble Courts (PTCL-2016 CL 680)?
- vi) Whether the Appellate Tribunal has not erred in law by ignoring that the matter of the similar nature has already been decided by the Hon'ble High Court of Sindh vide its judgment dated

2. Heard learned Counsel for the Parties and perused the record. It appears that after a seizure of diesel and the vehicle in question, Show-Cause Notice was issued and thereafter an Order-in-Original was passed by the Adjudicating Authority, whereby, the diesel as well as truck in question were confiscated outrightly without any option to pay fine in lieu of confiscation. For the present purposes the issue before us is only in respect of vehicle in question. The owner of the vehicle being aggrieved preferred appeal before the Tribunal and through impugned order, the appeal has been allowed in the following terms:-

8. I have given due consideration to this matter and in my view the intent of the legislature while making the above changes was to give benefit of doubt to the owners of vehicles carrying smuggled goods who might have been under the impression that they were carrying legally imported goods / locally produced goods and were not aware of the implications. That is why they have been given two shots at proving their innocence and hence an option of paying redemption fine for the first two offences of this kind. However, in case of secret cavities it is obvious that these have been designed specifically for concealing the smuggled goods and therefore it is easy to establish malafide against owner of such vehicles. The parliament would naturally not like to extend any concession to such individuals who deliberately take part in such illegal activities. Therefore, in my view the Adjudication Officers can refuse the request for redemption of such vehicles legitimately under section 157 of the Customs Act, 1969.

9. From the foregoing discussion, it is obvious that while adjudicating such cases, the Adjudication Officers have to decide first the mens rea on the part of owners of such vehicles before considering their request for redemption under Section 181 of Customs Act, 1969. In this particular case, the counsel for appellant asserts that they cavity found and referred to by the respondent Collectorate is not a secret cavity as it is visible from outside and is routinely used by the appellants for storing extra fuel and other goods for the use of driver and his helpers. At any rate the quantity of diesel seized is not more than 25,00 liters which is not a significant quantity by any stretch of imagination.

10. In view of above facts, in all fairness it would be too harsh to order outright confiscation of impugned vehicle and therefore giving the benefit of doubt and on compassionate grounds, the appellant is allowed to redeem the impugned vehicle under Section 181 of Customs Act, 1969 on payment of redemption fine equal to 20% of the value of vehicle to be ascertained in the usual manner by the Collectorate along with a penalty of Rs.10,000/-. The impugned Order-in-Original No.133/2021 dated 17.05.2021 is modified to the above extent only. The Collectorate shall however, remove the secret cavity, if any and record the full particulars of the impugned vehicle as well as his owner before release of the vehicle."

3. From the aforesaid observation of the Tribunal and the stance of the Respondent, it appears that benefit of Section 157 (2) of the Customs

Act, 1969 and the second proviso thereof (since omitted) has been granted and the vehicle in question has been released on payment of redemption fine and penalty. The said proviso was inserted through Finance Act, 2021 effective from 01.07.2021 and was thereafter omitted through Finance Act, 2022. The Show-Cause Notice in this matter as well as seizure and the order are prior to insertion of this proviso and therefore the Tribunal has failed to appreciate the law and the applicability of the said proviso, which was never in existence at the time of seizure of goods. Moreover a finding of ~~the~~ fact has been recorded by the Tribunal that there was a secrete cavity hence ~~no~~ exception can be drawn to this. The goods were correctly confiscated outrightly by the Adjudicating Authority by following proviso to Section 181 of the Customs Act, 1969 read with SRO No.499(1)/2009 dated 13.06.2009 and therefore no exception could have been drawn to such finding of the Adjudicating Authority.

4. In view of the above, the proposed Questions are answered in favor of the Applicant and against the Respondent; and as a consequence thereof, the impugned Judgment stands set aside. This Reference Application is **allowed**. Let a copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.