

TaxHelpline 2013/220

BALUCHISTAN HIGH COURT

Custom References Nos.20 and 23 of 2008, decided on 15th July, 2013, Date of hearing: 2nd May, 2013

Before Jamal Khan Mandokhail and Ghulam Mustafa Mengal, JJ

**Ch. Mumtaz Yousaf, Standing Counsel and Muhammad Azam for Appellants.
Sadbar Jan for Respondents. Nemo for Respondent**

**COLLECTOR OF CUSTOMS, FEDERAL EXCISE AND SALES TAX
CUSTOMS HOUSE, QUETTA and others**

VS

MUHAMMAD USMAN and others

ORDER

GHULAM MUSTAFA MENGAL, J]---By this common judgment we propose to dispose of Customs Reference Applications Nos.20 and 23 of 2008 filed by the Collector Customs, Federal Excise and Sales Tax, Quetta against the order dated 25th March 2008, passed by the Member, Technical-I, Customs Appellate Tribunal Bench-1 Karachi in Customs Appeals Nos.Q-78 of 2007 and Q-778 of 2001, in which the following questions of law have been raised:-

"(i) Whether learned Member Technical Appellate Tribunal Bench-1, Karachi failed to properly examine the filers of the case brought before him vide case No. No, 01-Cus/Seiz/NKD/06 and Cus/PS/O9/2001 dated 31-1-2006 and 15-1-2001.

(ii) Whether the findings of the learned Member Technical Appellate Tribunal, Bench-1 Karachi are based on mis-reading and non reading of record facts placed before him during the course of hearing, leading to the seizure of the goods/vehicle.

(iii) Whether the learned Member Technical Appellate Tribunal Bench-1, Karachi failed to appreciate the provisions of the Customs Act, 1969.

(iv) Whether the learned Appellate Tribunal was not bound by law to give reasons for its decision and to pass a speaking order. "

2. The facts briefly stated are that on 31st January 2006 and 15th January 2001, the staff of Customs Mobile Squad, Nokkundi and Pishin Scouts seized coach and Hino Bus bearing Registration No.QAG=1155 and QAF-2545 loaded with contraband goods and recovered smuggled goods valuing Rs.3,09,69S and 8,92,256 C.I.F The Deputy Collector (Preventive) and Additional Collector, Customs, Quetta have out rightly confiscated the seized goods and ordered for release of the vehicles seized in the cases against payment of redemption fine of 30% of the customs value of the vehicles vide orders dated 18th February 2006 and 21st April 2001 respectively.

3. Feeling aggrieved the owners of the vehicles/respondents preferred appeals before the Collector Customs, Sales Tax and Federal Excise (Appeals), Quetta. The learned appellate authority after hearing the arguments of learned counsel for the parties and examining the record came to the conclusion that the impugned order was in accordance with law and in line with clause (b) (vi) of S.R.O No.574 (I)/O5 dated 6th June 2005 and dismissed the appeals, The relevant portion of the conclusion drawn by the Collector (Appeals) 'is reproduced below for the sake of facility:--

"I have gone through the record of the case and submissions put forth by the appellant as well as the departmental representative have also been considered and come to the conclusion that vehicle in "question registered with MRA released on 30% fine equal to customs value by the adjudicating officer vide Order-in- Original No.211 of 2006 is correct in law and in line with clause (b)(vi) of S.R.O. 574(I)/05 dated 6-6-2005, hence appeal filed on grounds lack merit and also without legal substance is therefore, dismissed."

4. Aggrieved by the above order the respondents/owners of the vehicle preferred appeals before the appellate Tribunal, Karachi. The learned Member Technical, Customs Appellate Tribunal Bench-I, Karachi after hearing the arguments of the parties and examining the record came to conclusion that since in these cases the value of offending goods is lower than the ascertained value of vehicle, therefore, allowed the appeals, modified the impugned orders and reduced the fine to Rs.30,000. Per vehicle vide consolidated order dated 25th March 2008, hence these references.

5. In Reference No.23 of 2008, notice was sent to the respondent No.1, but it could not be served due to incomplete address, thus publication was made in the daily Newspaper Jhang, Quetta dated 15th May, 2012, but the respondent No.1 remained absent, thus he was proceeded against ex parte vide order dated 15th August 2012 and

case was adjourned to a date in office. Finally we have heard Ch. Mumtaz Yousuf, Standing Counsel, who submitted that Order-in-Original No.211 of 2006 dated 18th February, 2006 and Order-in-Original No.739 of 2001 passed by the Deputy Collector (Preventive) Customs, Quetta is absolutely in accordance with the provisions as contained in clause (b) (vi) of S.R.O No.574(I)/2005 dated 6th June 2005 but the learned Member Technical, Customs Appellate Tribunal Bench-I, Karachi has failed to consider this legal aspect of the case and the reduction of fine on seized vehicle is against the provisions of the Customs Act, 1969.

6. On the other hand Mr. Sadbar Jan, learned counsel for the respondent No.1 in Customs Reference Application No.20 of 2008, while repelling the arguments of the learned Standing Counsel argued that the impugned order is in accordance with law and there is no illegality and jurisdictional defect in the order of the Member Technical, Customs Appellate Tribunal Bench-1, Karachi. He prayed that the reference being non-maintainable may be dismissed.

7. We have examined the case in the light of arguments put forth by learned counsel for the parties and have also perused the record as well as relevant provisions of section 181 of Customs Act, 1969, which read as under:--

"181. Option to pay fine in lieu of confiscated goods,--Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit.

Explanation.--Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that/night have been imposed in addition to the confiscation of goods:

Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given:

Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under section 16, or any other law for the timing being in force. "

8. A careful perusal of section reproduced hereinabove makes it abundantly clear that

this section empowers the Adjudication Officer to give owner of goods an option to pay in lieu of confiscation of goods such fine as he thinks fit, whereas, the second proviso of the said section provides that the Board may by an order fix an amount of fine which in lieu of confiscation shall be imposed on any goods or class of goods imported in violation of provisions of section 15 or of a notification issued under section 16 or any other law for the time being in force, In exercise of such powers the Central Board of Revenue issued S.R.O No.574(I)/O5 dated 6th June 2005, clause (b) of the said S.R.O provides that quantum of fine shall not be less than that specified in column No.3 of the column below and other taxes and penalties imposed under the relevant law, which rate has been fixed as 30% of the Customs value in case of lawfully registered conveyance found carrying offending goods under section 2 (s) of Customs Act, 1969.

9. In an unreported case titled as Said Gul v. The Collector of Customs and others (sic); some vehicles were used in conveyance of smuggled goods. After hearing the parties, the adjudication officer released the vehicles against payment of redemption of fine equal to 30% of C.I.F value of each vehicle. Said order was finally assailed before the honorable Supreme Court, while dealing with this question, the honorable Apex Court held as follows:--

"We have heard learned counsel for the parties at length and perused the record. The CBR in exercise of powers issued S.R.O. No. 5743(I)/05 dated 6-6-2005, clause (b) whereof provides that quantum of fine shall not be less than one specified in Column No.3, clauses (a) (ii) of the aforementioned Notification reads "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 section 2 (s) of the Customs Act, 1969, whereas clause (II) provides "subject to provisions of clause (i), where an option is given to pay fine in lieu of confiscation, the quantum of fine in lieu of confiscation in respect of offences specified in column (ii) of the table blow shall be (not to be at a rate less than that) specified in column (iii) of the table below and shall be over and above the custom duties and other Taxes and penalties imposed under the relevant law. Clause (vi) covers the cases of petitioners is reproduced below;-

"(vi), Lawfully registered conveyance including packages and containers not covered under sub-clause (ii) of clause (a) found carrying offending goods under section 2 (s) of the Customs Act, 1969 (added by S.R.O. (I)/2005 dated 18-11-2005 30%.

In view of the above discussion we find no substance in this Custom Reference Application, which is accordingly dismissed. "

10. For the foregoing reasons, we allowed these customs references and set aside the impugned order dated 25th March 2008 passed by Member (Technical-1) Customs, Excise and Sale Tax Appellate Tribunal, Bench-1, Karachi and orders dated 17th February, 2006 and 21st April, 2001, passed by the Deputy Collector (Preventive), Customs House, Quetta and the Additional Collector, Customs respectively are restored.

11. Both the references are disposed of in the above terms.



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