

TaxHelpline Case No. 189 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**Customs Appeal No. 139/LB/2012 Date of hearing 12.6.2013
Date of judgment 13.6.2013**

**Ch. Muhammad Mubeen, Member (Judicial)
For the appellant Malik M. Arshad, Advocate. For the
respondent Mr. Abdul Latif, Inspector.**

**Muhammad Mohsin S/o Mohammad Yousaf, Resident of
Village Jathike, Tehsil Samberial, District Sialkot.**

Vs

**1. Superintendent, ASO, MCC, Samberial, Sialkot. 2. Collector
of Customs, MCC, Samberial, Sialkot. 3. Additional Collector
of Customs (Adjudication), Samberial, Sialkot**

ORDER

CH. MUHAMMAD MUBEEN, MEMBER (JUDICIAL):- This judgment will dispose of Custom Appeal No. 139/LB/2012 filed by the appellant against order No. 01/2012 dated 24.7.2012, passed by the learned Collector of Customs, MCC, Samberial, Sialkot.

2. Brief facts of the case as reported by the Superintendent Customs, Anti-smuggling, MCC, Samberial, are that on 20.1.12 a secret information received that an exempted Ambulance vehicle Toyota Hiace Ambulance Van bearing registration No. LES-11-5354 having chassis No. TRH223-6004250 was used being commercial van within the jurisdiction of Gujranwala Division intercepted the said Van near More Samberial. The person sitting on the driving seat on demand has failed to provide any documents relating to the lawful possession and payment of customs duty except registration book and photocopy of bill of entry showing legal import in the name of M/s Sachal Sarmast Welfare Trust, Karachi exempted from customs duty. Therefore, the same was seized under section 168 of the Customs Act, 1969 after serving notice under section 171 ibid to

the said person. As consequence of adjudication proceedings the seized vehicle was confiscated out rightly. Being aggrieved by the said order, the appellant filed the present appeal before this Tribunal.

3. It is contended by the learned counsel for the appellant that the charge against the appellant was of clause (10A) of sub-section (1) of section 156 of the Customs Act, 1969 which relates to violation of any condition, limitation or restriction imposed by the Federal Government or by the Board for grant of partial or total exemption from customs duties. The other clauses namely (9) and (90) of sub-section (1) of section 156 have wrongly been invoked because admittedly the Ambulance was imported through authorized route in accordance with law, thus out right confiscation of the same is void and illegal. It is further contended by him that the main reason given by respondent No.2 for out right confiscation of the vehicle is that on reference by him, the Board has directed vide its letter No.1(7)/2003.Cus.Exm-23161-R dated 15.2.12 to confiscate out rightly the impounded seized Ambulance which means that respondent No.2 had not applied his mind while taking quasi judicial decision and just by following the directive of the Board confiscated the same which rendered the impugned order nullity in the eyes of law. It is argued by him that that second ground taken by respondent No.2 for out right confiscation of the vehicle of non issuance of NOC by the Collector of Port of import is also void and illegal because respondent No.2 was not supposed to seek NOC and instead thereof he should have referred this case to the Port of importation for adjudication as it is settled principle of law that any violation of exemption shall be adjudicated by the authority which granted such exemption. It is added by him that respondent No.2 had no jurisdiction to adjudicate or as the case may be re-open the matter in which the exemption was granted by some other Collectorate. Had there been any violation of Chapter 99 or SRO 576(I)/2006 dated 5.6.06 respondent No.2 would have initiated a report and sent the same to the Collector of Port of import for adjudication of such violation. Respondent No.2 had neither any authority nor he was competent to adjudicate the matter in question resultantly the out right confiscation of the same is also void, illegal and without jurisdiction. It is further added that respondent No.2

himself released the identical vehicles on violation of the relevant Chapter and notification on payment of redemption fine in addition to payment of leviable duties and taxes.

4. On the other side Mr Abdul Latif, Inspector rebutted the contentions raised by the appellant and defended the impugned order. It is stated by him that during investigation, it was found that the Ambulance was purchased from importing institutions/hospitals without compliance of prescribed procedure, thus the out right confiscation of the same is lawful after applying judicial mind and on the basis of facts available on record by the department. It is further stated that according to the guidance of FBR's letter dated 15.2.12 and compliance with SRO 576(I)/2006 dated 5.6.2006 and other relevant provisions of sub chapter III and chapter 99 of Pakistan Customs Tariff read with CGO 12 of 2002 dated 15.6.02 the charitable or non-profitable trusts or hospitals can not dispose of ambulance. It is asserted by him that the out right confiscation of vehicle was not violative of section 223 of the Customs Act, 1969 as the competent authority has passed the impugned order after applying the judicial mind and according to the provisions of law. It is further asserted by him that it is the responsibility of the institute importing the vehicle to obtain NOC from the concerned import collectorate from where the vehicle was imported before disposal of the same as required under SRO 576(I)/2006 dated 5.6.2006.

5. I have heard the arguments of the learned counsel for the appellant and Mr. Abdul Latif, Inspector for the respondent department and with their able assistance perused the record. A letter No.01/SS/09 dated the 1st September, 2009 issued by the Board shows that the importing and clear Collectorates have the lawful jurisdiction to adjudicate such like matters, thus the impugned order has been passed by the learned Collector of Customs is without jurisdiction. According to SRO 576(I)/2006 dated 5.6.2006 or Chapter 99 if any violation has been made by any person, the Collectorate of Customs would have initiated, a report and then sent the same to the Collector of Port of import for adjudication purpose but in the present case the Collector of Customs himself was passed the impugned order. The learned

counsel for the appellant has made a statement that the MCC (Appraisement) Karachi issued NOC for registration of Ambulances after payment of leviable duty and taxes but in the present case the learned Collector of Customs have refused to do the same, which according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 is not permissible as it is discrimination between the citizens of Pakistan. The learned Additional Collector of Adjudication, Samberial vide order-in-original No.77-82/2012 dated 6.6.2012 observed as under:-

"I have examined the whole record of the case available, Board's and Collectorates replies and the written request put forth by the respondents and have found that the said vehicle was imported as ambulance in the name of M/s Sachal Sarmast Welfare Trust, Karachi duty free as per provisions of PCT 9913 sub Chapter III and SRO 576(I)/2006 dated 5.6.2006. Hence it was not supposed to be sold without NOC from the concerned importing Collector. But the same has been found as sold by the above said trust to Mr Asmat Ullah, in breach of the undertaking the trust submitted at the time of its import though there is no condition of obtaining such NOC attached in chapter 99, PCT 9913 under which the same was imported. But as the respondent has violated the relevant/applicable conditions of obtaining the said NOC as per SRO 576(I)/2006 dated 5.6.2006 as amended vide SRO 799(I)/2006 dated 5.8.2006 and no plausible explanation has been tendered in this regard. In view of the same, I hereby order confiscation of the same under section 156(I)/9, 10A and 90 of the Customs Act, 1969 for violation of the provisions of PCT 9913 and relevant SRO 576(I)/2006 dated 5.6.2006 as amended vide SRO 799(I)/2006 dated 5.8.2006.

However, as the vehicle is legally imported and not a smuggled one and as reported by the Deputy Collector ASO, is not being misused and it still in its originally imported as Ambulance. Moreover, the accused has also stated that he purchase this vehicle verifying it as legally imported but without knowing the condition attached to its import to be fulfilled by the importing trust not by him. Further, the person has submitted the legal undertaking to the effect that he has not utilized nor shall utilize it otherwise than for the purpose it has been imported. He has not misused it by any way. The same is still

an ambulance. Moreover, the remedy provided in the PCT 9913 and the SRO mentioned above for violation of the said condition of import is the payment of leviable duties and taxes on the same. Moreover, the vehicle has not been misused in terms of para 2 of the Board's above said letter and the respective Collectorate instead of issuing the above said NOC has advised release if the vehicle has the same status of ambulance, which the same does have and as such vehicles have been so ordered release vide Collector of Customs (Appeals) Rawalpindi (Camp Office at Peshawar) which was upheld by the Honorable Customs Appellate Tribunal Peshawar Bench vide Customs Appeal No.96/PB/2012, where it did find appropriate their release upon payment of duties and taxes and redemption fine, therefore, keeping in view the same, I take a lenient view and give the accused an option to redeem the said ambulance, upon payment of redemption fine of Rs.20,000/-, in lieu of confiscation, along with -the leviable duties and taxes thereof".

The aforesaid order-in-original of the learned Additional Collector of Customs (Adjudication) Samberial is well reasoned. Even otherwise the appellant is ready to pay redemption fine in addition to duty and taxes leviable under the law.

6. For the foregoing reasons, the appeal is accepted and the impugned order passed by the learned Collector of Customs, Samberial, is set aside only to the extent of the present appellant.

Appeal accepted

Disclaimer /Note: We have reproduced the judgment for facilitation of readers, however, the readers must study the original or certified copy of the above said judgment before referring it in any Court of Law. The judgment as reproduced above is a reported judgment available in law magazines and journals namely **2013 PDS 1483**.
