

Taxhelpline Case No. 156 of 2013

[BALOCHISTAN HIGH COURT]

Customs Reference No. 58 of 2006, decided on 3rd December, 2012

Before Jamal Khan Mandokhail and Ghulam Mustafa Mengal, JJ

**INSPECTOR-GENERAL, FRONTIER CORPS BALOCHISTAN
through Collector of Customs, Sales Tax and Federal**

Excise, Quetta

Vs

Messrs ALLAUDDIN and another

JUDGMENT

GHULAM MUSTAFA MENGAL, J.---Through this Custom Reference Application under section 196 of the Customs Act, 1969 the appellant has assailed the impugned order dated 31st May 2006, passed by the Member Technical, Customs, Excise and Sales Tax (Appellate Tribunal) Karachi Bench-1 at Quetta, wherein vehicle has been released.

2. Brief facts of the case are that on 27th May, 2003 Pishin Scout seized a Mitsubishi Pajero Jeep bearing Registration No.BC-3396 along with two other vehicles at Shela Bagh Check Post, from unknown smugglers when being smuggled into the country without having import document as such, a case was instituted under sections 2(s) and 16 of the Customs Act, 1969 read with section 3(1) of the Imports and Exports (Control) Act, 1950 and S.R.O.374(I)/2002 dated 15th June, 2002. Show Cause Notice was displayed on the Notice Board of the Headquarters Office, F.C. Balochstan, Quetta, one Allauddin claimed ownership of the vehicle. After hearing the learned counsel for the parties, all the vehicles were confiscated by the Collector (Adjudication), Quetta vide order

dated 28th October, 2004. An appeal was filed by the owner of the vehicle before the Appellate Tribunal, Customs, Excise and Sales Tax Karachi Bench-I, at Quetta, seeking relief given by the Government vide amended S.R.O. 574(I)/2005 i.e. release of smuggled vehicles on payment of import levies plus 30% redemption fine of CIF value, who after hearing the learned counsel for the appellant, allowed the appeal and released the confiscated vehicle in terms of the provisions of amended S.R.O.574(I)/2005 dated 6th June 2005 vide order dated 18th May, 2006, issued on 31st May, 2006.

3. Being aggrieved by the order of the Customs, Excise and Sales Tax Appellate Tribunal, Karachi Bench-I, at Quetta dated 18th May 2006, issued on 31st May 2006, appellant has filed the instant Reference and along with Reference an application under section 5 of the Limitation Act, 1908 has been filed for condonation of delay.

4. Ch. Mumtaz Yousuf, learned Standing Counsel has contended that the vehicle in question was declared tampered by the F S. L, as such, the learned Appellate Tribunal Customs, Excise and Sales Tax Karachi Bench-I, at Quetta has failed to appreciate the provisions of Customs Act, 1969 and S.R.O. 574(1)/2005 dated 6th June 2005, whereby no option is provided for release of the tempered vehicle and on the point of limitation he argued that the approval from the Central Board. of Revenue dated 26th August, 2006 was received on 2nd September, 2006 and due to law and order situation in the city from 26th August, 2006 to 30th August, 2006 the appeal could not be filed in time.

5. On the other hand despite service, respondent No.1 remained absent.

6. We have considered the arguments advanced by the learned Standing Counsel and perused the record. From the perusal of record it shows that this Reference was presented in the office on 19th September, 2006 and copy of the approval is not available on record. The first legal question as to whether the limitation provided by section 196 of the Customs Act, 1969 will govern the proceedings or the limitation provided by section 5 of the Limitation Act, 1980.

Period of limitation for filing of Reference has been prescribed in section 196 of the Customs Act, 1969, which is ninety days of the date on which the aggrieved person or Collector, as the case may be was served with the order of the Appellate Tribunal under subsection (3) of section 194-B. We are of the considered view that where limitation is provided by any special enactment, other than the Limitation Act, section 5 of the Limitation Act is not applicable for condonation of delay if occasioned in filing such lis. Thus the submissions made by the learned Standing Counsel for condonation of delay have no force.

7. For the foregoing reasons, instant Reference Application being barred by limitation is dismissed.

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