

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

CUSTOM REFERENCE NO. 43 OF 2018

**THE DIRECTORATE, GENERAL OF INTELLIGENCE AND
INVESTIGATION-CUSTOMS.**

Vs.

IFTIKHAR HUSSAIN CHAUDHARY, ETC.

Applicant by : Ms. Naziran Malik, Advocate.

Respondents by : Mr. Aasim Shafi, Advocate.

Date of hearing : 19.10.2020.

LUBNA SALEEM PERVEZ J. Through the present Custom Reference application, the Applicant has proposed the following questions said to arise out of the order dated 06.06.2018, passed by the Customs Appellate Tribunal in Customs Appeal No. 236/CU/IB/2017/176:-

- i. *Whether it is not unlawful to claim that the manually punched chassis i.e "9123" of the impugned Toyota Land Cruiser is a genuine chassis number?*
- ii. *Whether manual punching of chassis number of the impugned Toyota Land Cruiser constitutes tampering of chassis number in the eye of law?*
- iii. *Whether it is not unlawful to order release of the impugned vehicle with manually punched/tampered chassis number?*
- iv. *Whether in terms of judgment of the Honourable Supreme Court of Pakistan reported as PLD 1992 Supreme Court 393, it is not mandatory for the owner of the impugned vehicle to prove that the vehicle is not smuggled one?*
- v. *Whether failure on the part of owner of the vehicle to discharge the burden of proof does not render the vehicle liable to confiscation in terms of section 156(1)89 of the Customs Act, 1969?*
- vi. *Whether failure on the part of owner of the vehicle to rebut the lab-report does not constitute admission on his part that the impugned vehicle is tampered and smuggled one?*
- vii. *Whether the impugned judgment is sustainable in the eye of law when the learned Appellate Tribunal failed to conduct factual inquiry into the following:-*
 - *Whether chassis number i.e. *9123* on the impugned vehicle is complete deification of the impugned vehicle?*

- *Whether the same is a standard chassis number?*
 - *Whether it does contain significant letters/characters showing geographical area of origin of the vehicle as Europe, Asia, etc.*
 - *Whether chassis number i.e. *9123* provides information about description of the vehicle, its security code, manufacturing plant and serial number?*
 - *Whether chassis number on the vehicle i.e. *9123* does constitute chassis number by any definition.*
- viii. *Whether the impugned judgment is sustainable in the eye of law when it is passed by mis-reading and non-reading of evidence?*
- ix. *Whether it is lawful for the learned Appellate Tribunal to release the impugned tampered/smuggled vehicle?*

Brief facts are that the Applicant, in pursuance of information that the motor vehicle, Toyota Land Cruiser (TZ) Prado Jeep, bearing Registration No. LE-3080 Model 1997, Chassis No. KZJ95469123(2980-cc), is a non-duty-paid/smuggled vehicle, intercepted the same and when the driver/owner failed to produce documentary evidence of lawful import and payment of duties and taxes, detained the vehicle u/s 17 of the Customs Act, 1969. Detention of the said vehicle was subsequently converted into seizure u/s 168, 2(s) and 16 Customs Act, 1969 read with SRO 566(I)/2005 dated 06.06.2005 and section 3(1) of the Import and Export Control Act, 1950, punishable u/s 156(1)/89 of the Customs Act, 1969 read with SRO 489(I)/2009 dated 03.06.2009, on the basis of Forensic Science Laboratory(FSL) ICT Police, Islamabad, Report, according to which the chassis number i.e. 9123 is manually punched. The order-in-original No. 46/2017 dated 11.10.2017 (hereinafter referred to as ONO) was passed after issuing show cause notice, whereby the learned Collector adjudication upheld the detention of the applicant and order seizure of the vehicle. The respondent assailed the ONO before the Customs Appellate Tribunal, Islamabad which while allowing the appeal it has been held as under:-

“On 30.04.2018 the Learned counsel for appellate submitted a Photo Copy of FG along with other Japanese Language record in support of legal import of seized vehicle. All these documents were provided to the departmental representative for verification. Written reply was furnished wherein it was mentioned that GD No. 147894/2016 dated was filed by one Muhammad Masood Khan for clearance of his imported used Land Cruiser Prado, Automatic Model 1997, Chassis No. KZJ 95-469123, Engine No. IkZ-TE and capacity 2982 cc. This Tribunal with the assistance of both parties also examined copy of GD and found that the name of importer is mentioned as Muhammad Masood Khan son of Muhammad Anwar Khan R/o House No. L-3/14, Gulshan-e-Waseem, Buffer Zone, Karachi. At S No. 42, Description of goods is mentioned as “USED LAND CRUISER PRADO 1997, 2980 CC CHASSIS NO. (46) 9123 ENGINE NO. IKZ MODEL”. The genuineness of this GD has been confirmed/ by the department

but their contention is that the chassis number of the vehicle lawfully imported by the said Muhammad Masood Khan were procured and manually purchased on the chassis plate of Seized vehicle with intent to legalize the same under cover of genuine import/Cleared documents.

7. Along with comments some computerize data was also annexed, in order to establish that fact the when the chassis number given by the appellant was feeded, the result was "Nothing Found". It should obviously be the same result, as the wrong date was inserted. According to report, data inserted was K2J95-46912-3 whereas the correct data was KZJ95469123 (with no breaking). Similarly in the comments filed on 02.05.2018 with regard to GD and other documents, the engine capacity was mentioned as 2982 cc whereas the correct figure as per GD is 2980. It seems that department concerned staff intentionally placed wrong information before, the Laboratory, adjudicating authority and this forum to mislead them.

8. Legal import of vehicle having chassis No. 469123 has been admitted by the respondents, in their additional comments dated 02.05.2018 and no record has been produced whereby it could be established that there is another vehicle with is having the same chassis number, being registered in the country. The report of laboratory does not reveal that any other number surfaced after chemical treatment or it was welded and filled. Once the GD filed was found genuine, then the burden was shifted on the shoulders of prosecution to establish their case through strong evidence. The prosecution failed to collect record from the concerned Motor Registration Authority to verify the initial registration or confirm the genuineness of same."

3. Learned counsel for the applicant reiterated the arguments made before the Customs Appellate Tribunal that the chassis number of the subject vehicle is tempered which fact has been proved by chemical treatment, vide FSL report, whereby it was revealed that No. 9123 is manually punched, therefore, the Tribunal has erred in setting aside the order passed in ONO.

4. On the other hand, learned counsel for the respondents supported the order passed by the learned Appellate Tribunal being just and lawful having passed after proper application of judicial mind.

5. Arguments heard, and record perused.

6. The above reproduced findings of the Appellate Tribunal as well as the questions proposed by the Applicant Department have been examined in juxtapose and it is found that none of the questions is a question of law said to arise out of the order of the Appellate Tribunal as well as ONO. Perusal of the impugned judgment of the Appellate Tribunal also revealed that the Appellate Tribunal has arrived at the finding by appreciating the documents/GD produced during the arguments which proved that the respondent is the third owner of the subject vehicle and the importer of the vehicle, as per GD, was one Muhammad Masood Khan. Moreover, Genuineness of these documents were not denied by the departmental representative.

7. It has now been settled that scope of reference before the High Court is limited to the question of law arising out of the order/judgment passed by the Appellate Tribunal. In reference jurisdiction High Court is not vested with the powers to decide the case by reappraising the evidence and material produced during adjudication and in appeal. The High Court under reference jurisdiction enunciate law by interpreting the provisions of law on the basis of facts found out by the Tribunal. The High Court cannot go beyond the findings of facts recorded by the Tribunal unless the findings are contrary to the record. The questions of fact does not involve legal controversies thus, are outside the scope of the reference jurisdiction before the High Court. In this regard reliance is also placed on the latest decision of the Hon'ble Lahore High Court in case reported as ***"Commissioner Inland Revenue vs. Ashraf Sugar Mills Ltd"*** (2020 PTD 962) wherein, it has been held that:-

"6. Needless to say that the findings of facts recorded by learned Appellate Tribunal, unless found to be either perverse or contrary to record, cannot be interfered with by the High Court, while examining questions of law proposed under the law. Scope of reference jurisdiction under the law is restricted only to the extent of examining questions of law arising from order passed by learned Appellate Tribunal and not to decide questions of facts, or for determining disputed facts. Reference is made to Messrs F.M.Y. Industries Ltd. v. Deputy Commissioner Income Tax (2014 SCMR 907), Commissioner Inland Revenue, Zone-I v. Messrs Industrial Chemicals (Pvt.) Ltd. (2017 PTD 756), Commissioner of Income Tax v. Ghee Corporation of Pakistan (Pvt.) Ltd. (2017 PTD 1167), Commissioner Inland Revenue v. Messrs Adeel Brothers (2017 PTD 1579) and Commissioner Inland Revenue, Zone-II v. Al-Hamad International Container Terminal (Pvt.) Ltd. (2017 PTD 2212)."

8. The Applicant has not proposed any question which requires interpretation of any provision of Customs Act, 1963, with regard to the fact and circumstances of case and the questions proposed by the applicant are questions of facts that do not give rise to any legal controversy requiring determination by this Court. Titled reference application is, therefore, dismissed, accordingly.

(MIANGUL HASSAN AURANGZEB) (LUBNA SALEEM PERVEZ)
JUDGE JUDGE