

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

Customs Reference No.45/2015

Miraj Khalid

Versus

Customs Appellate Tribunal, Islamabad & 4 others

Applicant by : Mr Faheem Mustafa, Advocate.

Respondent by : Ch. Muhammad Nawaz, Advocate.

Date of Hearing : **09-12-2021**

ATHAR MINALLAH, C.J.- This Reference has been filed by Miraj Khalid son of Falak Sher (*hereafter referred to as the "Applicant"*) under section 196 of the Customs Act, 1969 (*hereinafter referred to as the "Act of 1969"*). He has raised questions of law stated to have arisen out of judgment, dated 06-10-2015, passed by the learned Customs Appellate Tribunal, Bench-I, Islamabad (*hereinafter referred to as the "Tribunal"*).

2. The Applicant enjoys the status of an overseas Pakistani, settled in Australia. He arrived in Pakistan on 15-09-2014, at the Benazir Bhutto International Airport, Islamabad. He was in possession of cellular mobile phones, which were in excess of the permissible

package allowance. The customs officials at the airport detained/seized the offending cellular mobile phones and notice under section 171 of the Act of 1969 was also served. The competent adjudicating authority issued show cause notice, dated 13-11-2014. The Applicant submitted a written reply and upon conclusion of the proceedings, Order-in-Original No.22/2014, dated 16-12-2014, was passed by the adjudicating authority. The imported items were ordered to be outrightly confiscated without giving an option to redeem the goods in lieu thereof. The appeal preferred by the Applicant was partially allowed vide Order-in-Appeal No.17/2015, dated 16-03-2015. The learned Collector (Appeals) allowed the re-export of the detained/seized cellular mobile phones. The department filed an appeal before the learned Tribunal and the same was allowed vide judgment, dated 06-10-2015. The appeal was allowed and the Order-in-Appeal, dated 16-03-2015, was set aside.

3. The learned counsel for the Applicant has contended that; the confiscated items were not imported for trading or pecuniary gain; the stance of the applicant before the adjudicating officer that the items were given to him by other overseas Pakistanis for being delivered to their relatives/friends as gifts was not controverted by the Department; the permissible package allowance was misinterpreted by the customs officials; section 2(s) of the Act of 1969 was not attracted; the items in excess of the permissible package allowance do not attract the outright confiscation of goods under section 181 of the

Act of 1969; the importation of mobile phones in excess is not covered under SRO 499(I)/2009, dated 13-06-2009 (hereinafter referred to as "**SRO 499**").

4. The learned counsel for the Department on the other hand has argued that; items imported in a large quantity by the Applicant attracted section 2(s) of the Act of 1969 and, therefore, the applicant was not eligible to claim benefit under section 181 of the Act of 1969. The learned counsel has referred to clause (a) of SRO 499.

5. The learned counsels for the parties have been heard and the record perused with their able assistance.

6. It is an admitted position that "mobile phone sets" are a notified item for the purposes of section 2(s) and sub section (2) of section 156 of the Act of 1969 vide notification, dated 06-06-2005. The Applicant had travelled to Pakistan and arrived at the notified customs area of Shaheed Benazir Bhutto International Airport, Islamabad. He presented his baggage before the appropriate customs officer. Nothing was concealed by the Applicant who has been living abroad as an overseas Pakistani. In the case of the Applicant's baggage and goods contained therein, Chapter XV of the Act of 1969 read with the Baggage Rules, 2006 (*hereinafter referred to as the "**Rules of 2006**"*) were attracted. Section 142 explicitly provides that when the baggage of a passenger contains any article which is either dutiable or its import is prohibited or restricted, then such articles or

goods could be detained at the request of the passenger for the purpose of being returned to him on his leaving Pakistan.

7. The Rules of 2006 apply to the baggage of the passenger arriving in or departing from Pakistan. The expression "allowance" has been defined as meaning duty free or dutiable allowance admissible to a passenger. Under the rules, "commercial quantity" has the meaning of quantity of goods imported for trading or pecuniary gain and not for personal use or gifts. Rule 14 provides that any article of baggage which is not covered under the duty free allowance shall be charged to such amount of duty and taxes as the Federal Government may, from time to time, notify. Rule 15(a) provides that allowance under the Rules of 2006 shall not be admissible in case of goods brought into Pakistan in "commercial quantity". Rule 16 explicitly describes those goods which have been declared as prohibited and not allowed to be brought in baggage. Rule 17 describes how goods brought in "commercial quantity" are to be treated.

8. It is noted that section 181 of the Act of 1969 provides that whenever an order for the confiscation of goods is passed, the officer passing the order may give the owner of the goods the option to pay in lieu of confiscation, such fine as the officer thinks fit. The proviso empowers the Federal Board of Revenue to specify the goods or class of goods when such option shall not be given. Pursuant to the aforementioned powers, the Board has issued SRO 499. The said notification has two distinct parts. In the first part those goods have

been described regarding which no option shall be given by paying fine while the second portion prescribes the quantum of fine in lieu of confiscation. Clause 2(b) of the Table of SRO 499 explicitly prescribes redemption fine amounting to 20% in case of baggage imported in "commercial quantities" by incoming passengers.

9. When section 142 of the Act of 1969, Rules of 2006 and SRO 499 are read together, it makes it obvious that baggage imported in commercial quantities do not attract the offence of section 2(s) unless the import is absolutely prohibited such as in case of narcotic drugs. The goods imported in commercial quantities as baggage item will be liable to confiscation but permissible to be released on payment of fine prescribed under section 181 of the Act of 1969, vide SRO 499.

10. In the case in hand, mobile phone sets were brought into Pakistan by the Applicant in his baggage and they were indeed in commercial quantity. The Applicant had not concealed the items at the time of his arrival. There is also nothing on record to show that the Applicant had brought mobiles phone sets for sale in Pakistan. The appropriate officer had either the option to detain the mobile phone sets which were in excess of the permissible allowance as contemplated under section 142 or upon confiscation extended the option of release on payment of duty and taxes and payment of 20% as redemption fine as prescribed under SRO 499.

11. We are of the opinion that the learned Tribunal had not properly appreciated the scheme of the law described under Chapter XV of the Act of 1969 read with the Rules of 2006 and SRO 499.

12. The Applicant, therefore, is entitled to be given an option under section 181 of the Act of 1969 to redeem the confiscated mobile phones on payment of leviable duty and taxes in addition to payment of 20% of fine as prescribed under SRO 499.

13. The questions proposed for our consideration are answered in the light of the above discussion. Consequently, the impugned judgment is set aside and the Order-in-Original and Order-in-Appeal shall stand modified in the above terms. The office is directed to send a copy of this opinion to the Registrar of the learned Tribunal as required under section 196 of the Act of 196

(AAMER FAROOQ)  
JUDGE

(CHIEF JUSTICE)

Announced in the open Court on 14-03-22.

JUDGE

(CHIEF JUSTICE)