

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Customs Reference No.28/2019**

Collector Customs, Model Customs Collectorate (MCC), Islamabad, etc.

*versus*

Sikandar Khan

Applicant by: Ms. Huma Noreen Hassan, Advocate for applicant.

Respondent by: Mr. Waseem Sajjad Zafar, Advocate for respondent.

Date of Decision: 17.03.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through the captioned reference, the applicants have called in question judgment of the Customs Appellate Tribunal, Islamabad, dated 18.06.2019, whereby vehicle bearing registration No.C-2700 (Peshawar), of make and model Mercedes Benz (1981) has been released to its owner.

2. Succinctly, applicants have detained the aforesaid vehicle owned by Sikandar Khan / Respondent under Section 17 of the Customs Act, 1969, whereafter notice under Section 166 of the Customs Act, 1969 was issued to the respondent with respect to investigation of the matter, though the respondent failed to put in appearance, as such, on examination of the vehicle by Forensic Science Laboratory, same was found cut and weld, per se, the said vehicle was also found to be smuggled one, whereby the vehicle was seized vide Order-in-Original, dated 19.11.2018. Feeling aggrieved thereby, the respondent preferred an appeal, which was

accepted by the learned Customs Appellate Tribunal, Islamabad vide impugned judgment dated 18.06.2019. Hence, instant custom reference.

3. Learned counsel for applicants contend that the learned Customs Appellate Tribunal while passing the impugned judgment failed to consider the fact that the respondent has only stressed on technicalities vis-a-vis auction and registration of the vehicle instead of discharging the burden of proof against the charges made against the respondent in the show cause notice; that the vehicle in question has been found cut and weld by the Forensic Science Laboratory, therefore, not roadworthy and there will always be an apprehension to its use in the act of terrorism; that the respondent has failed to produce any import or export documents with respect to seized vehicle; that the learned Customs Appellate Tribunal while passing the impugned judgment has not correctly interpreted the Customs Act, 1969 in respect of smuggled vehicles while passing the impugned judgment, which is liable to be set-aside.

4. Conversely, learned counsel for respondent contended that the lab report produced by the applicants is doubtful and no second opinion with respect to the vehicle of being cut and weld or smuggled was obtained; that in terms of Section 211 of the Customs Act, 1969, the importer and exporter shall maintain their record not less than five years, as such, this Section is not applicable in this case for the reason that seized vehicle is of Model 1981; that the learned Customs Appellate Tribunal has rightly appreciated the facts and circumstances of the case and passed the impugned judgment in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that the applicants have highlighted the following questions of law to be answered by this Court in the instant custom reference:

- i. Whether the learned Customs Appellate Tribunal not failed to consider that the burden of proof in terms of Section 187 of the Customs Act, 1969 lies on the respondent, with regard to provide the basis of registration of the said vehicle, whereby he remained failed to produce any import and export document?
  - ii. Whether the learned Customs Appellate Tribunal is justified in passing the order to the petitioner to release the said vehicle unconditionally?
  - iii. Whether the impugned judgment passed by the learned Customs Appellate Tribunal is not in violation of Section 2(s) & 16 of the Customs Act, 1969 and Section 3(1) of Imports & Exports (Control) Act, 1950, punishable under clause (89) of Section 156(1) of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13.06.2009 and Section 3(3) of the Imports & Export (Control) Act, 1950?
7. Learned counsel for respondent at very outset contends that vehicle bearing registration NO.C-2700 (Peshawar), of make and model Mercedes Benz (1981), was auctioned by the Pakistan Army authorities in the year 1995 against sale consideration of Rs.37,000/-, on 30.05.1995, as such, the said record has been verified by the Excise and Taxation Office, Motor Registering Authority, Peshawar through the Central MT & Stores Depot, Golra Road, Rawalpindi vide their confirmation letter dated 15.08.1995,

which is available in the record of Motor Registering Authority, Peshawar, therefore, no charge under Section 2(s) of the Customs Act, 1969 is made out and the vehicle has validly been registered in Pakistan, which was imported by Pakistan Army at the relevant time.

8. We have confronted the additional record of verification prepared by MRA, Peshawar and Central MT & Stores Department Golra Road, Rawalpindi to the learned counsel for applicants having been placed on record through C.M. No.45/2021, per se, learned counsel for applicants is not in position to rebut the same, therefore, nothing is left in favour of applicants qua their claim of subject vehicle having been smuggled.

9. In view of above, instant custom reference is not made, therefore, same is hereby answered in NEGATIVE and the order of the Customs Appellate Tribunal having been passed in line with the verification report is hereby MAINTAINED.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.