

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Munib Akhtar

Justice Athar Minallah

Justice Syed Hasan Azhar Rizvi

Civil Petition No.2330 of 2023

(Against the judgment dated 15.02.2024 of the Peshawar High Court, Peshawar passed in Customs Reference No.36-P of 2021)

Bashir Ahmad

...Petitioner

Versus

Director, Directorate of Intelligence of Investigation
(Customs), FBR, Peshawar and another

...Respondents

For the petitioner:

Mr. Naveed Akhtar, ASC
(via video link for Peshawar)

For the respondents:

Mr. Shahid Qayyum, ASC
(via video link for Peshawar).

Date of hearing:

12.09.2024

ORDER

Athar Minallah, J.- The petitioner Bashir Ahmed, son of Mulla Muhammad Khan, has sought leave under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**) against the judgment of the High Court, dated 10.05.2023, whereby questions of law proposed by the respondent department were answered in its favour.

2. The officials of the respondent-department had detained a vehicle described in the recovery memo as 'Hino LPG Gas Bowzer' (**'vehicle'**). Instead of LPG, it was transporting foreign origin betel nuts in its tank. The vehicle and the smuggled foreign origin betel nuts were initially detained under section 17 of the Customs Act 1969 (**'Act of 1969'**) on 04.06.2020 and later they were seized under sections 157 read with 168 *ibid*. A criminal case was also registered under the Act of 1969. During the investigation, the petitioner had disclosed to the Investigating Officer that he was not the owner of the

vehicle, rather he was employed as a driver. The latter had provided the details of the owner of the vehicle but, despite issuing multiple summons, the owner preferred not to join the investigation. After completion of the investigation, the contravention report was submitted before the Adjudicating Officer and the latter then issued a show cause notice dated 05.10.2020. The Adjudicating Officer, after completing the proceedings, ordered the outright confiscation of the foreign origin betel nuts and the vehicle, since the allegation of smuggling defined under section 2(s) of the Act of 1969 stood established. The vehicle was outrightly confiscated without giving an option under section 181 of the Act of 1969 in the light of the SRO 499(I)/2009 dated 13th June 2009 (**'SRO 499'**) issued by the Federal Board of Revenue in exercise of powers thereunder. The appeal preferred by the petitioner was partly allowed by the Customs Appellate Tribunal (**'Tribunal'**) vide judgment dated 15.07.2021. The outright confiscation of the foreign origin betel nuts was maintained while the vehicle was ordered to be released by giving an option under section 181 against payment of redemption fine. The Tribunal was of the opinion that the option could be exercised since the vehicle was not involved in the transportation of smuggled goods previously. The option was given by the Tribunal on the basis of its interpretation of SRO 499. The respondent-department had proposed questions of law for consideration of the High Court by filling a reference application under section 196 of the Act of 1969. The questions were answered in favour of the respondent-department and against the petitioner vide the impugned judgment.

3. We have heard the learned counsel for the petitioner at great length. He drew our attention to the notification dated 20.08.2024, whereby an explanation was added in the SRO 499 after the Table

therein. He further placed reliance on the second proviso to subsection 2 of Section 157, which was inserted through the Finance Act 2021, dated 30.6.2021 and later omitted by the Finance Act 2022, dated 30.6.2022. He has argued that the benefit ought to have been extended since they were beneficial in nature.

4. It is not disputed that the vehicle was designed and exclusively meant for transportation of LPG Gas and not any other goods. It is not disputed that the vehicle was used for transporting foreign origin betel nuts. The vehicle was, therefore, exclusively used to carry smuggled goods covered under section 2(s). The foreign origin betel nuts were outrightly confiscated after the offence under section 2(s) stood established and it was later maintained by the Tribunal. The concurrent findings regarding confiscation of the foreign origin betel nuts as offending goods falling under section 2(s) were not challenged and thus attained finality. The dispute is, therefore, regarding the vehicle and whether it could be released by giving an option under section 181 of the Act of 1969. It is noted that the petitioner was employed as a driver and he was not its owner. He had disclosed the details of the owner but the latter did not contest the outright confiscation. The appeal before the Tribunal was filed by the petitioner claiming to be an aggrieved person and not the owner, who had preferred not to join the proceedings at any stage. The only question raised before us is whether the vehicle was liable to outright confiscation or the benefit under section 181 of the Act of 1969 could have been extended by ordering its release in lieu of payment of the redemption fine. As already noted, the factum of foreign origin betel nuts being smuggled goods and its outright confiscation had attained finality.

5. Section 181 provides that whenever an order for confiscation of goods is passed under the Act of 1969 then the Adjudicating Officer passing the order is empowered to give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the latter thinks fit. The fine imposed is in addition to any duty or charges that are payable in respect of such goods and of any penalty that might have been imposed in addition to the confiscation of goods. The Federal Board of Revenue, however, is empowered to specify the goods or the classes of goods where such option shall not be given. Moreover, the provision also authorizes the Board to fix the amount of fine which shall be imposed on any goods or classes of goods imported in violation of the provisions of section 15 or of a notification issued under section 16 or in violation of any other provision of the Act of 1969 or any other law for the time being in force. In exercise of powers conferred under section 181 of the Act of 1969, the Board has specified the goods or classes of goods where option under section 181 shall not be given by the Adjudicating Officer. Likewise, those goods or classes of goods have also been specified whereby the Board has fixed the amount or extent of payment of fine. The order of the Board, passed under section 181 of the Act of 1969, specifying the goods or classes of goods where no option is to be given or, a fine and its limits have been fixed, are described in the notification published in the gazette i.e. SRO 499. SRO 499. The preamble describes the goods or classes of goods from clauses (a) to (g) regarding which an option under section 181 cannot be given. The Table specifies such goods or classes of goods regarding which the fine and its limit have been fixed for the purposes of giving an option. This Court, in the case of Wali Khan,¹ has held that the Board, in pursuance of its powers conferred under section 181 of the

¹ Collector of Customs, Peshawar v. Wali Khan and others (2017 SCMR 585)

Act of 1969, is empowered to specify any goods or classes of goods which shall not attract the option contemplated under sub section (1) *ibid*. As a corollary, when the Board has exercised its power and has issued an order, then the Tribunal is bereft of jurisdiction to order the release of such goods or class of goods by giving an option under section 181 of the Act of 1969. The Board, under clause (b) of the preamble of SRO 499, has explicitly ordered that an option cannot be given for the release of 'lawfully registered conveyances including packages and containers found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Customs Act, 1969'. SRO 499 was amended vide notification dated 20-08-2024 and, *inter alia*, clause (ba) was inserted. It provided that no option could be given when a lawfully registered conveyance found carrying smuggled goods was seized for the third time. However, it explicitly excluded goods or classes of goods described under clause (b) of the SRO 499. The amendment, therefore, did not affect the prohibition of giving of the option in case of conveyances covered under clause (b) of the preamble of SRO 499. The reliance of the learned counsel on this amendment is thus misconceived. Moreover, the Explanation added after the Table through the amendment also did not apply to the preamble, particularly clause (b) thereof. There is also no force in the argument of the learned counsel for the petitioner that the proviso inserted and later omitted in section 157(2) should be considered as a beneficial legislation and the benefit thereunder be extended in the case in hand. The vehicle was seized in the year 2020 and it was out rightly confiscated before the insertion of the aforementioned proviso. It remained effective for a short period and it was omitted through the Finance Act 2022. The proviso was inserted in section 157, which generally explains the 'extent of confiscation' and does not in any

manner affect, limit or interfere with the powers conferred on the Board under section 181 of the Act of 1969 in the context of giving an option to release the goods in lieu of payment of fine. Sections 157 and 181 are independent of each other and the former cannot be construed as having an overriding effect on the latter. The inserted and then omitted proviso was not relevant nor attracted in the case before us. The vehicle was found carrying smuggled goods and being used exclusively for the transportation thereof. It was, therefore, covered under clause (b) of the preamble of SRO 499 and the option contemplated under section 181 could not have been given for its release. The Tribunal was bereft of the jurisdiction of giving the option and ordering the release of the vehicle against a fine. The High Court had correctly interpreted the provisions of the Act of 1969 read with SRO 499 while answering the questions proposed to it.

6. We have noted yet another crucial aspect of this case which appears to have been overlooked by the Tribunal i.e the locus standi of the petitioner to file the appeal under section 194 A of the Act of 1969. Admittedly, he was not the owner nor was the vehicle registered in his name. He himself had disclosed that he was employed as a driver and had given details of the owner of the vehicle but, despite multiple summons issued by the Investigating Officer, the disclosed owner did not join the investigation nor had he filed the appeal before the Tribunal. The petitioner, who was employed as a driver, was pursuing the matter regarding the release of the vehicle in the manner contemplated under section 181 of the Act of 1969. Section 181 explicitly provides that the Adjudicating Officer may give the 'owner' an option to pay a fine in lieu of confiscation of the goods. Section 194-A of the Act of 1969 confines the right of appeal before the Tribunal to a person aggrieved. The expression 'aggrieved person'

in the context of section 196 of the Act of 1969 has been interpreted by this Court in the case of Sher Andaz² as denoting a person who has got a legal grievance i.e a person who is wrongfully deprived of anything to which he is legally entitled and not merely a person who suffers some sort of disappointment. An aggrieved person is the one whose legal right has been invaded or whose pecuniary interest is directly and adversely affected. This Court has held that the expression 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right or the imposition upon a party of a burden or obligation. The statutory right of appeal provided under section 194-A of the Act of 1969 is confined to an aggrieved person or an officer of Customs. The petitioner was admittedly not the owner of the vehicle nor had the latter sought benefit under section 181 of the Act of 1969. It is also not the case of the petitioner that he was authorized by or was acting as a lawful attorney on behalf of the owner.

6. The above are the reasons for our pronouncement of the decision in the open Court whereby leave was refused and the petition was dismissed.

Islamabad the

12th September 2024

NOT APPROVED FOR REPORTING

*Aamir Sh./Rameen Moin, LC**

² Director-General, Intelligence and Investigation-FBR v. Sher Andaz and others (2010 SCMR 1746)
Director, Directorate-General of Intelligence and Investigation and others v M/s Al-Faiz Industries (Pvt.) Ltd. and others (2006 S C M R 129)