

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 690-K of 2022

*[Against the judgment dated 18.03.2022
of the High Court of Sindh, Karachi
passed in Special Customs Reference
Application No. 05/2016]*

Shahzad. ... Petitioner

Versus

*The Collector of Customs, Model Collectorate of
Customs (Preventive), Karachi and another. ... Respondents*

For the Petitioner:	Ms. Dil Kurram Shaheen, ASC.
For the Respondents:	Mr. Munawar Ali Memon, ASC. <i>[Via video-link from Karachi]</i> Ch. M. Javed, Chief Customs. Mr. M. Tahir, Director Law, Customs. <i>[At Islamabad]</i>
On Court Notice:	Rana Asadullah, Additional Attorney-General for Pakistan.
Date of Hearing:	07.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. Following question of law was proposed in the reference jurisdiction exercised by the High Court of Sindh under section 196 of the Customs Act, 1969 (hereinafter referred to as '**the Act**')

'Whether the learned Appellate Tribunal, Bench-I, Karachi has misinterpreted the meaning and interpretation of clause (s) of Section 2 and 157 of the Customs Act, 1969, while releasing the vehicle in question, thereby defeating the clear intent to law?'

2. An LPG bowser found parked at a road side was searched by the Customs Anti-Smuggling Organization on suspicion and was found containing foreign-origin high speed diesel (HSD) for transportation. It is nobody's case that the smuggled goods that is (foreign-origin HSD) is not covered by section 2(s) of the Act. On the strength of the registration book found inside the vehicle, the petitioner being the owner was served with seizure notice under section 171 of the Act followed by Show Cause Notice dated 21.04.2015 under section 180 of the Act inquiring the petitioner as to why HSD and vehicle should not be confiscated and penalty be imposed.

3. The only defence of the petitioner was that the vehicle was on contract and an agreement with Mr. Qadir for transportation of LPG was also pleaded. It was also pleaded that he was unaware of the smuggling of the goods, i.e. foreign-origin HSD and hence prayed for the release of the vehicle.

4. In view of such defence, the Deputy Collector, Collectorate of Customs (Adjudication), Quetta passed the order-in-original on 20.05.2015 for outright confiscation of both the HSD and the vehicle. The petitioner being aggrieved to the extent of confiscation of the vehicle filed an appeal before the Collector, Collectorate of Customs (Appeals), Karachi, which was dismissed through order-in-appeal on 29.06.2015 on the count that the petitioner could not justify his stance and he has not approached with clean hands.

5. The petitioner then approached to the Customs Appellate Tribunal, Karachi ('**the Tribunal**') in appeal, which was allowed *vide* order dated 21.10.2015 on the consideration that the investigating officer could not prove the nexus between the petitioner being owner and the smuggled HSD and thus set aside the order of confiscation of vehicle.

6. Aggrieved of the order of the Tribunal, the respondent before us filed a reference under section 196 of the Act on the ground that the law was not applied properly and that Abdul Razzak case¹ was distinguishable. Petitioner's only defence, as stated above, was and is that the subject vehicle was hired by another person at the relevant time and he had no knowledge that it was being used to transport smuggled HSD.

7. Section 157 of the Act unambiguously talks about the confiscation of the conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act. Proviso to sub-section (2) of section 157 of the Act only caters for its release by an authorized officer of the customs as required by the prescribed rules pending adjudication of the goods involving its confiscation, subject to furnishing sufficient guarantee from the scheduled bank for due production of the conveyance at any time and place it is required by the appropriate officer to be produced. Sub-section (3) of section 157 of the Act also related to confiscation of vessel which includes, tackle, apparel and furniture.

8. The distinction however was made in terms of the S.R.O. 499(I) /2009, dated 13.06.2009 issued under first proviso to section 181 of the Act and that such relaxation is not available where conveyance is found carrying smuggled goods in specially made cavities, hidden or being used exclusively and wholly for the transportation of the smuggled goods and that such activity is apparent. A hire agreement produced at the Tribunal stage is only a contract between two private persons and would not be convincing for the Court to take any different view, however, under the reference jurisdiction the High Court rightly discarded the effect of such agreement as nothing was produced in the two forums below. The burden to prove that the owner had

¹ Abdul Razzak Vs. Pakistan (PLD 1974 SC 5).

no nexus with the smuggled goods or with such transaction and transportation is on the petitioner himself and this has not been discharged satisfactorily at all. As noted, nothing is disclosed as to what amount was received by the petitioner under the contract nor the motor registration wing was informed of such contract as required under Motor Vehicle Rules, 1969. Surprisingly, the registration book was also found inside the vehicle though an authority letter in this regard for driving the vehicle could have been sufficient as registration book is an important document to claim title. He has also not satisfactorily discharged the burden that the hidden cavities or the separate hole made in the roof of LPG bowser for such purposes of transporting goods was not in his knowledge and that such "rebuilding" of the LPG bowser has rendered its use for the transportation of LPG as unfit.

9. When the petitioner has failed to disclose the disconnect between smuggled goods managed through his vehicle having special cavities for the transportation of the smuggled goods it would not sink to the option of the owner to pay fine rather falls in the proviso to the said section and consequently such options are not available.

10. In view of the above, we are not inclined to interfere with the impugned judgment of the High Court. Therefore, leave to appeal is declined and consequently this petition is dismissed.

Chief Justice

Judge

Judge

Islamabad:
07.05.2025
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Approved for Reporting