

25/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
Mr. Justice Muhammad Ali Mazhar

(AER)

Civil Appeals No. 2016 and 2017 of 2022

(Against the judgment dated 10.05.2022 passed by
the High Court of Sindh, Karachi in C.P. No. D-1390 of
2020 and SCRA No. 303 of 2020)

M/s Middle East Construction Company, Karachi.

... Appellant
(in both cases)

Versus

The Collector of Customs, Karachi.

... Respondents
(in both cases)

For the Appellant:
(In both cases)

Mr. Shahzada Mazhar, ASC.
(Through video-link, Lahore)

For the Respondent:
(In CA. 2016/22)

Mr. M. Nadeem Qureshi, ASC.
Ms. Sania Rasool Bhutto, Asst. Collector
(Through video-link, Karachi)

Date of Hearing:

16.02.2023

ORDER

Qazi Faez Isa, J. The learned counsel for the appellant states that both these appeals pertain to the import of four prime movers which were imported through two Goods Declarations wherein the appellant described the imported goods, as per Pakistan Customs Tariff Code 8701.2040, that is, 'Road tractors for semi-trailers (prime movers) of 280 HP and above'. The Customs authorities did not clear the goods alleging that they were trucks and also older than five years and as such could not be imported under the Import Policy Order, 2016. The orders of the adjudicating officer were assailed before the Customs Appellate Tribunal, Karachi (**the Tribunal**) and the Tribunal set-aside the same *vide* judgments dated 17 January 2020.

2. The respondent assailed the judgments of the Tribunal in Special Custom Reference Applications No. 303 and 304 of 2020 and the appellant

filed Constitution Petition No. D-1390 of 2020, since the Customs department was not complying with the judgments of the Tribunal.

3. The learned Mr. Shahzada Mazhar submits that the learned Judges of the High Court proceeded to determine facts, which in the last resort the Tribunal could only do, and did so by directly accessing what is stated to be the website of the manufacturer of the imported vehicles (Hino, Japan), and set-aside the well reasoned judgments of the Tribunal. He submits that the references filed by the respondent, Collector of Customs, did not call upon the High Court to undertake the exercise of logging on to any website, which, in any event, the High Court could not do, nor could it take it upon itself to do so. The learned counsel has also pointed to the photographs of the vehicles reproduced in the impugned judgments which he says are not in respect of the same vehicles as those imported by the appellant. The learned Mr. Shahzada Mazhar submits that the jurisdiction of the High Court is invoked under section 196 of the Customs Act, 1969 (**'the Act'**) which permits only '*a question of law arising out of [the Tribunal's] such order*' as per sub-section (1) of section 196 of the Act, which is reiterated in sub-section (5) of section 196 of the Act whereby the jurisdiction of the High Court is limited to *question of law*.

4. On the other hand the learned Mr. Nadeem Qureshi, representing the respondent, has referred to the *examination report* and to the *re-examination report*, which was ordered to be conducted by the adjudicating officer, and states that these reports clearly state that the vehicles could not be imported under the Import Policy Order, 2016 and that the imported vehicles were not *prime movers*, as stated, but were trucks. Concluding his submissions, he states that the judgments of the learned Judges of the High Court were well reasoned and do not call for interference by this Court.

5. We enquired from the learned counsel for the respondent whether the *digital pictures taken at the time of inspection* (at page 66 of CPLA No. 2057/2022) correctly depicted the vehicles under consideration and he stated that they did. However, these are different from the photographs inserted in the impugned judgments.

6. We have heard the learned counsel for the parties and examined the photographs and documents on record. The orders-in-original of the

adjudicating officer referred to different reports but he did not himself opine on the nature of imported vehicles. The re-examination report is reproduced in the orders-in-original (at pages 60-61 of CPLA No. 2057/2022) which commence by stating that the vehicles were '*prime mover trucks six wheelers*' but then goes on to state that the same were '*trucks instead of prime movers*', and as such there is an apparent contradiction therein. Be that as it may, an examination or re-examination report should give reasons in disagreeing with the inspection report issued by the pre-inspection company, Bureau Veritas, which had categorised the vehicles as *prime movers*. The Tribunal on its part stated that the ground with regard to non-importability of the vehicles, as subsequently alleged, was not specifically stipulated in the show cause notices.

7. The importer has to disclose the nature of the imported goods, and if he produces a pre-shipment inspection certificate of an approved pre-shipment inspection company the importer discharges the initial burden of proof. The certification by Bureau Veritas confirms the categorization of the vehicles in the Goods Declarations as *prime movers*. If the Customs department did not accept such certification it was required to produce evidence in rebuttal. In the instant case the examination report and the re-examination report do not state why the inspection report of the pre-shipment inspection company (Bureau Veritas) was not correct nor do the examination and re-examination reports contain reasons for the determination that the vehicles were in fact trucks.

8. It is also well settled that the Tribunal is the last forum for the determination of facts. In these cases the Tribunal had concluded that the imported vehicles were *prime movers*. The learned Judges of the High Court undoubtedly realized the shortcomings in the respondent's references, therefore, they took it upon themselves to ascertain the nature of the vehicles. The High Court's jurisdiction under section 196 of the Act is limited to a *question of law*. It did not lay within the jurisdictional domain of the High Court to itself determine the nature of the imported vehicles. If the learned Judges of the High Court preferred any particular reports which were before them, and if they were setting aside the judgments of the Tribunal then they should have given valid reasons for their preference. However, the High Court should not have embarked upon determining the nature of the vehicles itself, and to do so by relying upon material which

had not been produced either before the adjudicating officer or the Tribunal. We cannot endorse the manner in which the learned Judges of the High Court took it upon themselves to ascertain the nature of the imported vehicles.

9. The impugned judgments of the High Court are not sustainable for the aforesaid reasons. Therefore, these appeals are allowed by setting aside the impugned judgments of the High Court and by restoring the judgments dated 17 January 2020 of the Tribunal. Resultantly, the subject vehicles be released immediately on payment of the applicable duties and taxes, if the same have not already been paid.

Islamabad
16.02.2023

Approved for Reporting
Arif