

2014 P T D 281

[Peshawar High Court]

Before Qaiser Rashid Khan and Musarrat Hilali, JJ

BAKHTIAR

Versus

DEPUTY COLLECTOR CUSTOMS and others

Writ Petition No.4272 of 2010, decided on 23rd October, 2013.

Customs Act (IV of 1969)---

---Ss.169 & 201---Constitution of Pakistan, Art.199---Constitutional petition---Auction of seized/confiscated vehicle, during pendency of appeal---Auction/sale proceeds, payment to owner of vehicle---Scope---Deduction of certain amount from such sale proceeds---Scope---Petitioner's vehicle was seized by the Customs Officials, thereafter issuing show-cause notice the same vehicle was confiscated---Petitioner preferred appeal before Collector of Customs (Appeals) who ordered for the release of vehicle on payment of redemption fine---During pendency of appeal, the Customs authorities auctioned/seized vehicle for a sum of Rupees 15,70,000---On application of petitioner, the Customs authorities refunded only a sum of Rupees 7,61,749---Contention of the petitioner was that Customs authorities could not deduct a substantial amount from sale proceeds and as such Customs authorities be directed to refund entire sale proceeds to the petitioner/owner of vehicle after deduction only auctioneer charges---Validity---Appellate authority had ordered the release of seized vehicle in favour of the petitioner against payment of redemption fine and re-export of the same vehicle to Afghanistan--Customs authorities had not challenged the appellate order before higher forum and the same had become final---Customs authorities were well within their legal right to put the seized/confiscated vehicle to auction even during the pendency of appeal---Sale proceeds of auction during pendency of appeal had to be kept deposited and could not be appropriated by Customs authorities by way of taxes, etc., considering themselves to be the final arbiter in the matter---Petitioner was entitled for sale proceeds of vehicle after the deduction of the amount of redemption fine only---Constitutional petition was allowed accordingly.

Danish Ali Qazi for Petitioner.

Muhammad Ali for Respondents.

Date of hearing: 23rd October, 2013.

JUDGMENT

QAISER RASHID KHAN, J.---Through the petition in hand, the petitioner prays that the impugned refund order C.No.02/PR-E/Veh/ 03/2010/2091 dated 22-9-2010 deducting Rs.808,251 out of the total sale proceeds of Rs.1,570,000 be declared void ab initio and the department be directed to pay the remaining amount of auction proceeds to the petitioner after deduction of Redemption Fine of Rs.50,000.

2. Succinctly stated facts leading to the instant petition are that the petitioner's vehicle i.e. Hino Truck No.NGR 4287 while entering through a road pass No.CGJ22/2002 was stopped and seized by the Customs Mobile Squad whereafter show cause notice was issued to the petitioner and subsequently through Order-in-Original No.88/2010, the vehicle was confiscated. An appeal was preferred against the said order before the Collector Appeals who ordered the release of the vehicle to the petitioner on payment of Redemption Fine of Rs.50,000 vide mutatis mutandis Order-in-Appeals Nos.331-32/2010 dated 30-6-2010 and further ordered that the said vehicle be re-exported to Afghanistan under the proper customs escort through Customs Station, Torkham and to ensure its proper dispatch across the border. However, during the pendency of the appeal,

the respondent department had auctioned the seized/ confiscated vehicle on 16-3-2010 for a sum of Rs.15,70,000 and on the application of the petitioner for the refund of the sale proceeds only a sum of Rs.761,749 was ordered to be refunded to him vide Refund Order dated 22-9-2010. However, another vehicle No.KBL-34496 which was also seized/confiscated along with the petitioner's vehicle vide the same Order-in-Original No.88/2010 was also auctioned for Rs.1,815,000, but its sale proceeds to the tune of Rs.17,96,850 were released to the owner and only a token amount by way of auctioneer charges were deducted therefrom, and thus the petitioner was even otherwise discriminated against which prompted him to approach this court through the instant petition.

3. Learned counsel for the petitioner argued with vehemence that the Order-in-Original of the Collector appeals dated 30-6-2010 ordering the release of the vehicle to the petitioner on payment of Redemption Fine of Rs.50,000 and its re-export to Afghanistan was not challenged by the custom authorities and the same had attained finality and the act of the respondents in putting the seized vehicle to auction was though in accordance with law but under no provision of law could they deduct a substantial amount from its sale proceeds by way of alleged taxes and only a small sum of Rs.761749 was ordered to be released to the petitioner which act was not only illegal but also discriminatory when in a similar situation through Refund Order C.No.04/PR-E/Veh/10/1898 dated 5-7-2010 the entire sale proceeds were ordered to be released to the owner of the auctioned vehicle after deduction of only a small amount by way of auctioneer charges.

4. The learned counsel for the respondents on his turn defended the impugned order and in this regard referred to subsection (4) of section 169 of the Customs Act, 1969 and argued that as per the said provision of law, the customs authorities could auction the seized vehicle even during the pendency of the appeal, before the appellate forum. As far as the deduction of substantial amount by way of taxes etc. from the sale proceeds of the seized vehicle is concerned, the learned counsel relied on the provisions of section 201 of the act *ibid* and argued that the figure as worked out by the respondents was proper and the petitioner was ultimately held entitled to a sum of Rs.761749 and thus the impugned order does not suffer from any illegality or impropriety.

Arguments heard and record perused.

5. There is no cavil with the argument of the learned counsel for the petitioner that the Order-in-Appeals Nos.331-32/2010 dated 30-6-2010 whereby the appellate authority ordered the release of the seized vehicle in favour of the petitioner against the payment of Redemption Fine of Rs.50,000 and its re-export to Afghanistan was not challenged by the respondents before a higher forum and for all intents and purposes, the same had become final. No doubt, under section 169 of the Customs Act, 1969 the custom authorities/respondents were well within their legal right to put the seized/confiscated vehicle to auction even during the pendency of the appeal. However, the said section also provides that on the happening of such event, the sale proceeds were to be kept deposited pending adjudication of the case or disposal of the appeal or revision as the case may be and could not be appropriated by the customs authorities way of taxes etc., considering themselves to be the final arbiter in the matter. By exercising their discretion to put the seized vehicle to auction, the customs authorities could not wriggle out from the explicit language of the Order-in-Appeal dated 30-6-2010 through which the vehicle was ordered to be released in favour of the petitioner on the payment of Redemption Fine of Rs.50,000 albeit with a condition that the same be re-exported in one piece to Afghanistan. Moreover, why in a similar situation through Refund Order C. No.04/PR-E/Veh/10/1898, dated 5-7-2010, the entire sale proceeds of the vehicle were ordered to be released in favour of another person and only a token amount by way of auctioneer charges were deducted therefrom leaves much to be desired at the respondents' end.

As a corollary to the above discussion, this writ petition is allowed, the impugned order dated 22-9-2010 of the respondent No.1 is set aside and accordingly the petitioner is held entitled to the sale proceeds of the vehicle to the tune of Rs.15,70,000 minus Rs.50,000 by way of Redemption Fine as ordered by the learned appellate forum vide order dated 30-6-2010.

