JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL REVISION NO.13 OF 2025

ABDUL MANAN
VS
COLLECTOR ADJUDICATION, CUSTOMS ETC.

Petitioner by: Ms. Safina Khan, Advocate for the Petitioner.

Respondents by: Mr. M.D. Shahzad, Advocate for the Respondent No.3.

Date of hearing: 21.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Revision Petition, Abdul Manan **("Petitioner")**, has assailed the Order dated 17.12.2024 **("Impugned Order")** passed by the learned District & Sessions Judge/Judge Special Court (Customs, Taxation & Anti-Smuggling), Rawalpindi/Islamabad **("Trial Court/Special Judge Customs")**, whereby the Petitioner's Application for issuance of NOC qua Vehicle, Hino Bus bearing Registration No.BSB-464 **("Subject Vehicle")**, has been disposed of.

2. The brief facts of the case giving rise to filing of instant Criminal Revision Petition are that on 23.05.2024, on receipt of information by Collector Customs regarding the smuggling of a huge quantity of foreign origin goods, the Subject Vehicle was stopped by the Customs officials at Chungi No.26 and the Subject Vehicle was shifted to State Warehouse, Islamabad for detailed examination. On search of the Subject Vehicle in the presence of Driver Ali Bukhsh, Conductor Abdul Manan, and Customs Staff, huge foreign-origin goods were recovered from secret cavities of the Subject Vehicle. The Subject Vehicle was seized by the Customs Officials and FIR No. 25/2024 dated 23.05.2024 with the Model Collectorate of Customs, Islamabad was registered. After the Subject Vehicle was seized, a Notice was issued to the Driver, who subsequently appeared before the Collector. The Collector then issued an order for the Subject Vehicle's release, contingent upon the payment of a 20% redemption fine based on the Subject Vehicle's customs value, to be paid by the lawful owner or claimant. However, a personal penalty of Rs.30,000/- was also imposed upon the claimant/owner of the

Subject Vehicle as he failed to exercise his caution/diligence, subject to NOC from Special Judge Customs.

3. The Petitioner filed an application before the learned Trial Court/Special Judge Customs for appropriate order praying therein that No Objection Certificate regarding the Subject Vehicle may be issued in his favor which was disposed of vide the Impugned Order. Being aggrieved by the Impugned Order, the Petitioner filed the instant Criminal Revision Petition.

4. The learned counsel for the Petitioner contended that the Special Judge Customs has no jurisdiction or relevance to the seized vehicle or goods, as the matter pertains to a civil issue. They further argued that no cavity was found in the Subject Vehicle, which was merely being used as a passenger bus; that the value of the goods is less than Rs. 3,000,000/- and nothing in these goods are prohibited but purchased from the open market by the passengers sitting in the Subject Vehicle; that an Application for the issuance of NOC for the Subject Vehicle was submitted to the learned Special Judge Customs; however, the Judge refused to entertain it. It was further argued that the learned Special Judge Customs neither accepted nor formally rejected the application, but instead verbally stated that she had no jurisdiction over the Subject Vehicle or the NOC; that the Subject Vehicle is currently parked under open sky, which exposes it to potential damage, particularly to its body and tyres. In the last, the learned counsel requested that the Respondents be directed to release the Subject Vehicle without condition of NOC and set aside the Impugned Order to the extent of NOC from the Special Judge Customs.

5. The learned counsel for Respondent No. 3 argued that the Petitioner's counsel has failed to point out any illegality or irregularity in the Impugned Order; that the learned Trial Court/Special Judge Customs has passed a well-reasoned order keeping in view the law and facts available on record; and that the instant Revision Petition may kindly be dismissed.

6. The learned counsel for the parties have been heard and record has also been perused with their able assistance.

7. Upon receiving information by the Collector Customs that a large quantity of foreign-origin goods would be smuggled through the Subject Vehicle, a raiding

party was constituted. This party arrived at Chungi No. 26 in Islamabad, where they intercepted the Subject Vehicle, which was being driven by the accused Ali Buksh, with Abdul Manan serving as the Conductor/Cleaner. Upon searching the Subject Vehicle, a large quantity of foreign-origin cigarettes, cashews (kaju), betel nuts, skimmed milk, and Iranian diesel were recovered from the hidden cavities of the Subject Vehicle. The recovered goods were valued at Rs. 8,843,731/-. As a result, a case was registered under Sections 156(1)(89)(i) and 178 of the Customs Act, 1969. The Customs authorities took possession of the Subject Vehicle along with the foreign goods, and an investigation was initiated. On 01.07.2024, the learned Collector (Adjudication) Customs, Islamabad, issued an order in which the seized goods were confiscated, and the Subject Vehicle was redeemed by releasing it upon payment of a redemption fine based on the Subject Vehicle's customs value, to be paid by the lawful owner/claimant. A personal penalty of Rs. 30,000/- was also imposed on the claimant/owner of the Subject Vehicle, along with the condition that No Objection Certificate (NOC) be obtained from the Special Judge Customs.

8. The Petitioner has not challenged the order of the Collector (Adjudication), Islamabad before the Customs Appellate Tribunal, as he is not aggrieved by the order and is willing to pay the redemption fine and the penalty of Rs. 30,000/-. However, the Petitioner has challenged the condition of obtaining No Objection Certificate (NOC) from the learned Trial Court/Special Judge Customs. The learned Trial Court/Special Judge Customs when approached by the Petitioner through an application, the learned Trial Court/Special Judge Customs while disposing of the matter regarding the Subject Vehicle, vide the Impugned Order, held as under:-

> "*The issuance of NOC is not a mere procedural formality but involves assessing the larger implications, including the interests of justice and the rights of all parties concerned. It is essential to maintain the sanctity of the adjudicatory process by allowing the competent civil authority to examine the merits and legality of the application within the framework of law. Any premature interference at this stage may inadvertently pre-empt the findings of the adjudicating authority or undermine the jurisdiction.*
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> *Moreover, since, the vehicle in question is related to connected evidence of pending criminal investigation, further, the vehicle was used in the commission of offence and its due exhibition is required for the purpose of trial proceedings.*
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> *Consequently, at this stage, I find it appropriate to defer this matter for determination by the Civil adjudicating authority, ensuring a fair,*

impartial and legally sound resolution after exhibition of case property in the court in due process of law".

9. The learned counsel for the Petitioner apprised this Court that the trial of the instant case is in progress before the learned Customs Judge, Rawalpindi/Islamabad and five prosecution witnesses' statements have been recorded. From the attested copies provided by the learned counsel for the Petitioner, it transpires that the Subject Vehicle could not be exhibited as the same was not produced before the learned Trial Court/Special Judge Customs, as indicated in the examination-in-chief of PW-4, recorded on 11.11.2024. From the contents of the FIR, it is evident that the smuggled goods were concealed in the secret cavities of the Subject Vehicle, its exhibition is crucial for a just decision in the present case. Although the learned Trial Court/Special Judge Customs has deferred the decision regarding the fate of the Subject Vehicle to the Collector (Adjudication) Customs, Islamabad, through Order dated 17.12.2024, which approach is incorrect as the Collector (Adjudication) Customs has already released the Subject Vehicle, and its fate was determined in the Collector (Adjudication) Customs' Order dated 01.07.2024. In light of this, this Court expects that the fate of the Subject Vehicle should be decided by the learned Trial Court/Special Judge Customs based on its merits, after exhibiting the Subject Vehicle.

10. With the above said observations/directions, the instant Criminal Revision Petition is **disposed of**.

(MUHAMMAD AZAM KHAN)
JUDGE

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