

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No.D- 1548 of 2018

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI &
MR. JUSTICE ZULFIQAR AHMED KHAN.

Naqeebullah

Vs.

Federation of Pakistan and others.

Petitioner: through Ms. Dil Khurram Shaheen, advocate
Respondents: through Dr. Shahnawaz Memon, advocate &
Mr. Mir Hussain, Asstt. Attorney General.
Date of Hearing: 06.11.2018.
Date of Order: 06.11.2018.

Learned counsel for petitioner under instructions submits that petitioner will be satisfied and will not press instant petition provided that the respondents may be directed to allow provisional release of the subject vehicle "Hino Trawler bearing Registration No.JV-0248 having Chassis No.FS600A-10183, Model Year 1981 subject to petitioner's depositing the original documents of ownership along with registration book of the Hino Trawler before the Nazir of this Court, whereas, petitioner will not create any 3rd party interest in respect of subject vehicle till final decision by the Customs Appellate Tribunal, where the appeal of the respondent department is pending. It has been further prayed that the Customs Appellate Tribunal may be directed to decide the appeal of the respondent department, preferably, within a period of four weeks from the date of this order and in case such appeal is dismissed, the respondent may be directed to release the subject consignment of the petitioner as well within fifteen days of Tribunal's order on the appeal. Learned counsel for the petitioner submits that this Court as well as other benches of this Court have been pleased to pass similar orders in number of similar petitions, whereby, respondents have been directed to allow provisional release of the vehicle with the condition that no third party interest will be created in respect of such vehicle till final decision by the Appellate Tribunal on the appeal. In support of her contention, learned

counsel has placed on record the copy of order dated 02.11.2017 passed by the Divisional Bench of this Court in ***C.P.No.D-5266/2017 (Mehboob Khan (Manager) M/s. Haji Aziz Goods Transport Company Karachi v. Federation of Pakistan and others)*** and order dated 10.05.2018 in ***C.P.No.D-1364/2018 (Guldar v. Federation of Pakistan and others)***.

2. Learned counsel for the respondent could not controvert above factual position, however, submits that since an Appeal No.209/2018 against the Order-in-Original No.51/2018 dated 16.01.2018 is pending before the Customs Appellate Tribunal, the Customs Appellate Tribunal, Karachi, may be directed to decide the appeal of the respondent department at an early date, whereas, the provisional release of the Hino Trawler shall be made subject to final decision by the Customs Appellate Tribunal, and the release of the container (subject goods) shall also be made subject to decision by the Appellate Tribunal in the appeal filed by the department.

3. We have heard the learned counsel for the parties and perused the record with their assistance and have also examined the orders already passed by the Divisional Bench of this Court as referred to hereinabove. Admittedly, Order-in-Original has been passed in favour of the petitioner, whereas, an appeal has been filed by the respondents before the Customs Appellate Tribunal Karachi, however, neither the Order-in-Original has been suspended nor any interim relief have been obtained by the respondents so far, whereas, the request of the petitioner for provisional release is not being acceded by the Customs Authorities, merely on the ground that appeal has been filed against the Order-in-Original. Since the petitioner is willing to deposit the original documents of ownership/registration in respect of the subject Hine Trawler before the Nazir of this Court, with an undertaking that no 3rd party interest will be created till final decision by the Customs Appellate Tribunal, therefore, request of the petitioner for provisional release in terms of earlier orders already passed by this Court appears to be reasonable.

4. Accordingly, instant petition is disposed of with the directions to the petitioner to deposit of the original ownership/registration document of the subject Trawler i.e. "Hino Trawler bearing Registration No.JV-0248 having Chassis No.FS600A-10183, Model Year 1981 before the Nazir of this Court

along with an undertaking that no 3rd party interest will be created in respect of subject vehicle till decision by the Customs Appellate Tribunal in Appeal No.209/2018, whereas, Nazir shall issue a certificate to this effect, whereafter, respondents shall allow provisional release of subject Trawler to its owner after proper verification and identification, within seven days. It is expected that Customs Appellate Tribunal will decide the appeal of the respondents i.e. Appeal No.209/2018, preferably, within a period of one month from the date of receipt of this order, which shall be supplied to the Tribunal by the respondents within seven days, however, after providing opportunity of being heard to both the parties. If the respondents' appeal is decided against the respondents and in favour of the petitioner, respondents shall allow the release of the subject consignment/container as well, within two weeks from the date of receipt of such appellate order of the Customs Appellate Tribunal, unless the respondents may obtain some appropriate restraining order from the competent Court of jurisdiction in this regard. It is further clarified that if the appeal is decided against the respondents, petitioner may intimate such fact to the Nazir of this Court by filing appropriate application in the instant petition, and may obtain further orders for final release of Trawler as well as for return of original documents in accordance with law.

Petition stands disposed of in the above terms along with listed application.

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