

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Reference Jurisdiction)

Special C.R.A. No. 162 of 2019

Date	Order with signature of Judge
------	-------------------------------

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Mahmood A. Khan.

Collector of Customs,
Model Collectorate of Customs (Preventive),
Custom House, Karachi..... Applicant

Versus

Ms. Nausheen Leghari and two others Respondents

Date of hearing : 08.02.2021

Date of Judgment : 08.02.2021

Mr. Khalid Mehmood Rajpar, Advocate for the Applicant.
Ms. Rukhsana Ahmed, Advocate for the respondent.

JUDGMENT

Aqeel Ahmed Abbasi, J: Instant Reference Application has been filed by the Customs Authorities against the impugned judgment dated 23.10.2018 passed by the Customs Appellate Tribunal, Karachi Bench-1, in Custom Appeal No.1591 of 2017, whereby, appeal filed by the respondent against Order-in-Original No.294/2017-18 dated 20.1-0.2017 passed by the Collector of Customs (Adjudication), Karachi, has been allowed and the Order-in-Original as referred to hereinabove has been declared to be void, ultravires, ab-initio and illegal, whereas, following questions have been proposed for consideration by this Court:-

- I. *Whether the learned Customs Appellate Tribunal did err in law by not considering that respondent No.1 did not have locus standi in the case as no transfer of ownership in respect of the impugned vehicle had taken place in her name?*

- II. *Whether the respondents fully discharged the burden of proof in respect of the impugned vehicle in terms of Section 156(2) of the Customs Act, 1969, and in terms of Section 156(1) (89) of the Customs Act, 1969?*
- III. *Whether the Customs Appellate Tribunal did misinterpret Section 2(s) and the penal clauses (89) and (90) of Section 156(1) of the Customs Act, 1969?*
- IV. *Whether the learned Customs Appellate Tribunal did err in law by not considering that the impugned vehicle manufactured in 2013 cannot be registered with the purported embassy in 2010 and that also without issuance of NOC from the Customs Authorities?*
- V. *Whether the evasion of customs-duty and taxes on the impugned vehicle does constitute of offence of smuggling under section 2(s) of the Customs Act, 1969?*
- VI. *Whether on the facts and the circumstances of the case, the learned Tribunal did err in law by deciding the case on mis-reading and no-reading of the law points involved therein?*

2. Learned counsel for the applicant submits that Customs Appellate Tribunal did not examine the relevant facts and the law applicable in the instant case as according to learned counsel, the respondent failed to produce the import documents in respect of subject vehicle, whereas, the burden of proof to show the lawful possession of the vehicle was upon its owner, which was not discharged by the respondent. It has been further contended by the learned counsel for applicant that the case of smuggling in terms of Section 2(s) read with clauses (89) and (90) of Section 156(1) of the Customs Act, 1969, was made out against the respondent, therefore, the Customs Appellate Tribunal was not justified to allow the appeal filed by the respondent and set-aside the Order-in-Original in the instant case. It has been prayed that the questions proposed through instant reference application may be answered in favour of the applicant and against the respondent. In support of his contention,

learned counsel for applicant has placed reliance in the following case law:-

- (1) Pakistan Mobile Communications Ltd. v. Sindh Revenue Board Karachi and 2 others (PTCL 2015 (CL) 43)
- (2) Collector of Customs, Peshawar v. Wali Khan and others (2017 SCMR 585)
- (3) Collector of Customs, Multan v. Muhammad Tasleem (PTCL 2002 (CL) 80)
- (4) Abdur Rauf Khan v. Collector, Central Excise & Land Customs, Peshawar and 3 others (1980 SCMR 114)

3. Conversely, learned counsel for the respondent has vehemently controverted to the submissions made by the learned counsel for applicant and also raised objection as to maintainability of instant reference application, as according to learned counsel, the questions proposed through instant reference application are questions of fact, whereas, the impugned judgment passed by the Customs Appellate Tribunal in the instant case has been passed after scrutiny of all the facts and the relevant documents available on record and there is no factual error or legal infirmity in the judgment passed by the Customs Appellate Tribunal in the instant case. It has been further contended by the learned counsel for respondent that respondent is a subsequent purchaser of a registered vehicle, which is otherwise freely importable and has not been seized by the Customs Authorities from notified areas, on the contrary, it was wrongfully detained and seized while plying on the territorial limits of the city merely on the presumption by the Customs Authorities that since respondent is not in possession of import documents, therefore, the subject vehicle is the smuggled vehicle. Learned counsel for the respondent has further submitted that neither any notice was issued by the Customs Authorities under Section 26 and 171 of the Customs Act, 1969, nor any opportunity of being heard was provided to the respondent to explain her position regarding

lawful ownership and possession of subject vehicle. It has been further contended by the learned counsel for respondent that there is no allegation of tampering of chassis or fake documents of the subject vehicle nor any material has been produced by the Customs Authorities to support their allegation of smuggling. According to learned counsel, the respondent had produced the relevant documents including the registration book before the Customs Authorities and discharged the burden of proof in terms of Section 156 (2) and Section 187 of the Customs Act, 1969, however, the applicant miserably failed or either to disapprove the documents produced by the respondent or produce any material or documents to support their allegation of smuggling. It has been contended by the learned counsel for respondent that it is clear cut case of highhandedness and abuse of law by the Customs Authorities to acted malafidely and seized the vehicle of the respondent without following the legal procedure and in the absence of any positive evidence or material, whereas, the documents produced by the respondent including original registration book issued by the Motor Registration Authority along with insurance policy, copy of Japanese Export Certificate No.02104/3111023992014945 showing Chassis No.SALGA2EE8DA101632 and copy of Tax Payment of Motor Registration Authority Challan No.0000057713 dated 10.06.2015, constituted the relevant documents to establish the lawful ownership and possession of the subject vehicle, particularly, when such documents were not disputed by the Customs Authorities. While concluding the arguments learned counsel for respondent submits that the questions proposed through instant reference application and the controversy involved in the instant case is already covered by a recent judgment of Divisional Bench of this Court in the case of The Additional Director, Directorate General of Intelligence and Investigation – FBR, Regional Office, Karachi vs. Imran in SCRA

No.110 of 2014, along with other reference applications and C.Ps decided through a common judgment dated 09.07.2020, copy of which has been placed on record in support of her contention. It has been prayed that reference application filed by the applicant department may be dismissed and the questions proposed may be answered against the applicant and in favour of the respondent in terms of aforesaid judgment passed by the Divisional Bench of this Court on the similar legal controversy involved in the instant case.

4. We have heard the learned counsel for the parties, perused the record and the impugned judgment passed by the Customs Appellate Tribunal with their assistance and also gone through with the judgment relied upon by the learned counsel for the parties, specially, the judgment passed by the Divisional Bench of this Court in the aforesaid Reference Applications, CPs and High Court Appeal. Briefly, the relevant facts as taken cognizance by the Customs Appellate Tribunal, in the impugned judgment, relating to the allegation and charge of smuggling against the respondent in respect of subject vehicle i.e. Land Rover (Jeep), Model 2013, Registration No.BAF-6940, Chassis No.SALGA2EE8DA101632, Engine No.P88W936C-064-AJ, Colour Beige, and copy of Tax Payment of Motor Registration Authority Challan No.0000057713 dated 10.06.2015, are that respondent No.2 as neither the importer nor has been charged with the allegation of having smuggled the subject vehicle, respondent is the subsequent purchaser of the subject vehicle duly registered with the Registration Authority, produced the original Registration Book issued by the Motor Vehicle Registration Authority, Karachi, along with documents of Insurance Policy, copy of copy Japanese Export Certificate No.02104/3111023992014945 and copy of Tax Payment of Motor Registration Authority Challan No.0000057713 dated 10.06.2015. During the course of

investigation, Customs Authorities collected the information about verification of documents from the office of Excise & Taxation and Narcotics Control Officer and Motor Registration Wing, Karachi, through letter dated 10.03.2017, whereas, Registration Authority admitted the fact that said vehicle bearing registration No.BAF-6940 was re-registered on 10.06.2015 from Terminal No.216 (Re-registration) from the user I.D. of Mr. Ali Akbar, Excise and Taxation Inspector, ETI, and same was authenticated by the Excise, Taxation and Narcotics Officer (Re-registration), Mr. Waqar Siddiqui, on 05.08.2015. It further transpired that subject vehicle was originally auctioned by the Embassy and the particulars including Chassis Number of the auctioned vehicle are exactly similar with the subject vehicle, which was seized by the Customs Authorities while plying on road within the territorial limits of the city. At the time of auction, CPLC status of the subject vehicle, NOC status by the Embassy, sale custody status and H.P.A. status were found clear at the time when the subject vehicle was auctioned. Nothing has been produced by the Customs Authorities to establish that the documents as referred to hereinabove, particularly, the registration book issued by the Motor Vehicle Registration Authority is either forged, bogus nor it has been established that the process of registration of subject vehicle was in violation of Provincial Motor Vehicle Ordinance, 1965. It has also come on record that while seizing the subject vehicle no notice under Section 26 or under Section 171 of the Customs Act, 1969, was issued by the Customs Authority nor any opportunity appears to have been provided to the owner of the subject vehicle, who produced the relevant documents at the time of seizer, which shows that the Customs Authorities proceeded in haste while intercepting a registered vehicle plying on road within city limits on the presumption that subject vehicle is a smuggled vehicle as the documents of import could not be produced at the time of it seizure. The adjudicating

authority in the instant case while ignoring the aforesaid documents and without seeking proper verification of No Objection Certificate dated 30.01.2015 and the process of auction by the concerned Embassy, charged the respondent under Section 2(s) read with Section 156 (2) and 178 of the Customs Act, 1969, punishable under clauses (89) and (90) (i) of the Customs Act, 1969, and passed the Order-in-Original No.294/2017 dated 20.10.2017, which was assailed by the respondent by filing an appeal No.K-1591/2017, before the Customs Appellate Tribunal, Karachi Bench-1, who vide judgment dated 23.10.2018 was pleased to declare the ONO passed by the adjudicating authority as illegal, void, ab-initio by holding that the Customs Authorities have failed to establish the allegation and charge of smuggling under Section 2(s) read with Section 156(1), (89) and (90) (i) of the Customs Act, 1969. Customs Department being aggrieved by such judgment have filed instant reference application under Section 196 of the Customs Act, 1969, by proposing six questions, as referred to hereinabove with the prayer to set-aside the impugned judgment and answer the questions proposed in favour of the applicant and against the respondent.

5. From perusal of the impugned judgment passed by the Customs Appellate Tribunal, Karachi, in the instant case, it has been observed that after having taken complete stocks of the relevant facts and on examination of the documents produced by the parties in respect of the subject vehicle, which could not be disputed or controverted by the Customs Authorities before the Customs Appellate Tribunal. Finding on facts has been recorded by applying the relevant provisions of the Customs Act, 1969, including the provisions of Section 2(s), 156(1), (89), (90), 26, 171 and 187 of the Customs Act, 1969, the above provisions of law have already been examined in detail and interpreted by superior Courts in various

judgments including a recent judgment passed by the Division Bench of this Court in SCRA No.110/2014 (The Additional Director, Directorate General of Intelligence and Investigation, FBR- Karachi v. Imran) (along with several other SCRAs, CPs and HCA) through common judgment dated 09.07.2020, under similar facts and circumstances of instant case, the questions proposed through instant reference application and the legal points decided by this Court in the aforesaid references, primarily revolved around the facts as to what constitute an offence under Section 2(s), 156(1), (89) and (90) of the Customs Act, 1969, it will be advantageous to reproduce the relevant paragraphs of the judgment passed by this Court in SCRA No.110/2014 (along with several other references, CPs and HCA), wherein, the scope and application of the aforesaid provisions of the Customs Act, 1969, have been dealt with in detail while placing reliance on the judgments of the Hon'ble Supreme Court and the High Court, particularly, judgment passed by the Divisional Bench of this Court on 06.02.2013 in SCRA No.263/2010 (Saif-ur-Rehman and another v. Member (Judicial-1), Customs Appellate Tribunal, Bench-1, Karachi and others), the relevant finding by the Divisional Bench of this Court, which reads as follow:-

“7. We have reproduced the relevant facts, questions proposed and the findings recorded thereon by the Divisional Bench of this Court in the aforesaid reference application at length, as we are of the view that the facts and legal issues involved in all these cases are similar to the facts and legal issues of the above cited case, and, therefore, would be relevant to decide the questions of law and legal points involved in these reference applications and the connected petitions as well as High Court Appeal. As we have already observed that in none of these cases, there is any allegation against the owners/subsequent purchasers for having committed an act of smuggling in terms of Section 2(s) of the Customs Act, 1969, as neither they have imported subject

vehicles nor they have brought such vehicles into Pakistan from routes other than specified under Section 9 or 10 from any place other than a Customs Station, nor any evidence or material has been produced by the Customs Authorities, which could otherwise establish that documents produced, e.g. Registration Books issued by Excise & Taxation Department, Motor Vehicle Registration Authority, Government of Sindh, Form of Transfer Order, the sale/purchase agreements, the Custom Auction documents, Bank Challans towards payment of Additional Customs duty and taxes, CVT, registration fee, transfer fee and other charges etc., produced in respect of subject vehicles, are forged or bogus documents. Admittedly, all the owners of the subject vehicles in these cases are second, third or even fifth owners, and have supplied the above documents which, prima-facie, show that initial burden of proof to the effect that they are the bona-fide lawful owners/purchasers of the subject vehicles and have not committed any act of smuggling nor they are in possession of smuggled vehicles. The subject vehicles do not fall within the category of banned items as defined in Appendix-A of the Import Policy Order 2009, 2012, and 2016, however, their import is subject to certain conditions prescribed by the Federal Government through Notifications issued in terms of Section 2(s)(ii) read with 156 (2) of the Customs Act, 1969, Import Policy Order 2009, 2012, 2013 and 2016, which includes restriction of five years as to the age of manufacture of a vehicle to be imported. In fact none of the Motors Vehicles, subject matter of instant cases, is less than 5 years old rather, they are mostly old Models of 1998 to 2004, therefore, reference to provisions of Section 211 of the Customs Act, 1969, becomes relevant as it provides that **record required under sub-section (i) of Section 211 of the Customs Act, 1969, in respect of any imported item shall be kept for a period of not less than five years in such form as the Board may by Notification in the official gazette, specify.** In other words, any importer or owner of the imported items is under no legal obligation to maintain any record pertaining to import beyond the period of five years under the Customs Act, 1969, nor the Customs Authorities can demand such record under the Customs Act, 1969, hence non-availability of customs documents, older

than five years, particularly in cases of Registered Motor Vehicles, would not attract the provisions of Section 2(s) read with Section 156(1)(89) and (90) of the Customs Act, 1969.

8. We would now examine the provisions of Section 187 of the Customs Act, 1969, relating to discharge of burden of proof, according to which, when any person alleged to have committed an offence under this Act, and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or **other document prescribed by or under any law for the time being in force**, the burden of proving that he had such authority, permit, license or other document shall be upon such person. However, in all the above cases, respondents have produced original Registration Books issued by Motor Vehicle Registration Authority, along with Customs Auction documents, Bank Challans towards payment of Additional duty and taxes, Form of Transfer Order, Capital Value Tax (CVT), Registration Fee and other charges before the Customs Authorities to justify the lawful ownership/possession of the subject vehicles towards discharge of initial burden of proof in terms of Section 187 of the Customs Act, 1969. In the afore cited judgment, the learned Divisional Bench of this Court has elaborately dilated upon all the above legal issues and has been pleased to hold that record beyond the period of five years in terms of Section 211 of the Customs Act, 1969, cannot be requisitioned by the Customs Authorities, whereas, in terms of Section 187 of the Customs Act, 1969, once the initial burden relating to ownership and lawful possession of the imported vehicle has been discharged through production of original Registration Book issued by the Motor Vehicle Registration Authority or any other document prescribe by law or under any other law for the time being in force, then burden shifts upon the Customs Authorities to establish that either the Documents produced are forged, bogus or the same have been obtained illegally, hence of no legal consequence. No proceedings, whatsoever, have been initiated either against the previous owners of the subject vehicles, whose particulars have been provided by the respondents to the Customs Authorities, nor any action against the officials of the Motor Vehicle

Registration Authority and the Customs Authorities has been taken, for having issued the Registration Books on the basis of allegedly forged and bogus documents. On the contrary, in the absence of any material, inquiry/investigation or any steps required to be undertaken for establishing the charge of smuggling in terms of Section 2(s), or to make out a case that owners of the vehicles are found in possession of smuggled vehicles in terms of Section 156(89)&(90) of the Customs Act, 1969, without following the legal course of adjudication as provided under Chapter XIX of the Customs Act, 1969, subject vehicles have been detained/seized on the charges of smuggling. In all these cases, subject vehicles have been detained/confiscated in a highly arbitrary manner by the Customs Authorities while the same were playing within the city limits, inspite of the fact that initial burden to prove lawful possession of Registered Vehicles was discharged by the owners through production of aforesaid documents. Reliance in this regard can be placed in the case of **M/s. Muhammad Ateeq Paracha and others v. The State (PTCL 2004 CL. 551)** and **Abdul Razzaq v. Directorate General of Intelligence and Investigation – FBR and 2 others (PTCL 2016 CL. 837)**.

9. This Court in a recent judgment in the case of **Collector of Customs vs. M/s. Muhammad Tahir Construction Company, Loralai [(2020) 121 TAX 369 (High Court, Karachi)]** while examining the scope of importability of Hino Trucks in term of Import Policy Order 2016 and the provisions of section 187 of the Customs Act, 1969, relating to discharge of burden of proof, has been pleased to hold as under:

“7. Learned counsel for the applicant has not been able to point out any factual error or illegality in the impugned order passed by the Customs Appellate Tribunal in the instant case, nor could assist this Court as to how, on the basis of a purported certificate obtained from local manufacturer of Hino Pak Truck, the age of imported Hino Truck can be ascertained. Moreover, record shows that respondent has discharged the initial burden to prove that the subject vehicles were imported in conformity with paragraph 9(ii)(5) of the Import Policy Order, 2016, whereas, applicant has failed to produce any evidence or material which could otherwise support the allegations of violation of para 9(ii)(5) of the Import Policy Order, 2016. The ratio of the case relied upon by learned

counsel for respondent as referred to hereinabove is also squarely attracted to the facts of the instant case.

8. Accordingly, we do not find any substance in the instant Reference Application, whereas, the finding as recorded by the Appellate Tribunal in the instant case is predominately based on the findings of facts which does not suffer from any factual error or legal infirmity, hence does not require any interference by this Court. Reference in this regard can be made to the case of *Irum Ghee Mills v. Commissioner Income Tax 2000 SCMR 1871*. Accordingly, the proposed questions are answered in **negative** against the applicant and in favour of the respondent.”

10. To be more specific about the brief facts and the legal issues involved in all these cases, we deem it appropriate to mention the same in following terms so that there remains no ambiguity regarding the facts and the legal controversies involved in all these cases. In C.P. No.D-5230 of 2014, the description of subject vehicle has been given as Toyota Land Cruiser, bearing registration No.BD-6648, Model 1998, Chassis No.HDT-101-0004534 and Engine No.015719. The petitioner has attached registration book, issued by Excise & Taxation Department, Government of Sindh along with customs auction documents issued by Director General, Intelligence and Investigation (Customs & Excise), Government of Pakistan, including Certificate under Rule 72, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P. No.D-7527/2017, the description of subject vehicle has been given as Toyota Hilux Surf, bearing registration No.BF-6328, Model 2001, Chassis No.VZN185-9056058, Engine No.5VZFE-1269447, whereas, petitioner has attached registration book, issued by Excise & Taxation Department, Government of Sindh along with customs auction documents issued by Collectorate of Customs Appraisalment, AICT, Mauripur Road, Karachi, including Certificate under Rule 72, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P.No.D-3351/2017, the description of subject vehicle has been given as BMW Sports Car, bearing registration No.BEE-924, Model 2005, Chassis No.WBAEK3205OB740093, Engine No.N25B3000, whereas, petitioner has attached registration book, issued by Excise & Taxation Department,

Government of Sindh along with customs auction documents issued by Model Collectorate of Customs Appraisalment, Karachi, including Copy of Order-in-Original whereby the petitioner has been given an option to redeem in terms of SRO 172(I)2013 dated 05.03.2013, paid bank challan of additional duties and taxes, CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P. No.D-5163/2018, the description of subject vehicle has been given as Toyota Land Cruiser (Jeep), bearing registration No.BE-0563, Model 2000, Chassis No.HDT101-00076362UZ-9002918, Engine No.T58857, whereas, petitioner has attached registration book, issued by Excise & Taxation Department, Government of Sindh along with customs auction documents through approved Government auctioneer, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In HCA No.334/2017, the description of subject vehicle has been given as Toyota Hilux Surf (Jeep), bearing registration No.BF-8588, Model 2004, Chassis No.VZN215-0006060, Engine No.5VZ-1828615, whereas, the appellants have attached Registration Book, issued by Excise & Taxation Department, Government of Sindh along with customs auction documents issued by Collectorate of Customs Appraisalment and Directorate of Intelligence and Investigation, Customs House, Karachi, including Certificate under Rule 72, paid bank challans of the bidding amount, Addl. duty and taxes, CVT, Registration charges, transfer charges etc., and Form of Transfer Order. In all these cases, the owners have claimed to be owners/subsequent purchasers, and have produced the aforesaid documents to the customs authorities to discharge the initial burden of proof regarding their lawful possession of the subject vehicles in terms of Section 187 of the Customs Act, 1969, however, customs authorities, without adopting legal course of adjudications or to establish that the documents produced by the owners/subsequent purchasers are forged or bogus, and the subject vehicles are otherwise smuggled, detained the same in violation of law, merely on the unlawful presumption that since the owners could not produce the import documents of the subject vehicles, which are admittedly manufactured beyond the period of five years, whereas, there is no material or even allegation that these

vehicles have been smuggled within five years from the date of their manufacture. If such authority is given to the public functionaries to charge the owners of the vehicles of a criminal offence of smuggling in the absence of any evidence or material to this effect, would amount to giving them unbridled powers to act arbitrarily and to abuse the process of law, which is neither the intent of law nor could be approved by Courts under any circumstances.

11. We have also observed that in some of the cases, there have been allegations by the Customs Authorities that the chassis numbers of the vehicles are found tempered, however, such allegations have been seriously disputed, whereas, there has been no specific FSL Report to show as to whether chassis numbers of the vehicles were erased for the purpose of theft or for any other purpose. Mere allegation of tempering of chassis numbers and such sketchy stereotype FSL Report, cannot be considered as conclusive proof to establish a charge of smuggling, particularly, when the **make, model, engine number and other particulars of the vehicles in question are found to be the same as mentioned in the documents**, including import documents, customs Auction and bidding documents, paid bank challans and the original Registration Books issued by the Motor Vehicle Registration Authority. The Hon'ble Supreme Court in the case of *Federation of Pakistan through Director-General of Intelligence and Investigation FBR, Karachi v. Muhammad Jamal Rizvi and others* [2012 PTD 90], while examining the fate of similar allegation regarding tempered chassis number and the FSL Reports has been pleased to hold as under:-

“5. Perusal of the impugned judgment reflects that the FSL Report was not found specific and various queries made by the Investigating Agency remained unanswered. In this behalf learned Division Bench of the High Court observed that, “The FSL report shows that the chassis numbers on the vehicle were tampered. The FSL report is not specific and creates doubts as to whether the chassis numbers of the vehicle were erased for the purpose of theft and or for any other purpose. This issue is not answered in the FSL report though the Directorate of Customs, Intelligence and Investigation had sought report through a

letter calling upon FSL to specifically mention the status of chassis numbers. The FSL report is silent on queries made by the investigating agency, except that chassis numbers were tampered. The report of the FSL was insufficient to authorize the Directorate of Customs, Intelligence and Investigation, to detain and or seize the vehicle, inter alia, on the ground that it was smuggled vehicle.” When asked, learned counsel had no reply to furnish on the observation so made, however, he admitted that the make, model, Engine number and other material about the vehicle in question were same as were in the documents noted hereinabove.”

12. Accordingly, we do not find any substance in all the aforesaid References filed by the Customs department, as the findings as recorded by the Customs Appellate Tribunal in the impugned orders are based on correct appraisal of the facts and proper application of law, which does not suffer from any factual error or legal infirmity, therefore, requires no interference by this Court under Section 196 of the Customs Act, 1969. Consequently, the reframed question Nos. (i) & (ii) as proposed in Para 4 above are answered “NEGATIVE”, whereas, questions (iii) and (iv) are answered in “AFFIRMATIVE” all against the applicant department and in favour of the respondents.”

6. Accordingly, we do not find any substance in all the aforesaid References filed by the Customs department, as the findings as recorded by the Customs Appellate Tribunal in the impugned orders are based on correct appraisal of the facts and proper application of law, which does not suffer from any factual error or legal infirmity, therefore, requires no interference by this Court under Section 196 of the Customs Act, 1969. Consequently, the reframed question Nos. (i) & (ii) as proposed in Para 4 above are answered “NEGATIVE”, whereas, questions (iii) and (iv) are answered in “AFFIRMATIVE” all against the applicant department and in favour of the respondents.

7. For the reasons disclosed hereinabove while dismissing the above reference, the aforesaid Constitutional Petitions are allowed along with listed application, whereas, High Court Appeal filed by the department is hereby dismissed. The interim orders for the provisional release of the vehicles passed in these cases would be given effect accordingly.

8. All the above cases stand disposed of in the above terms alongwith listed applications.

JUDGE

JUDGE

Nadeem/A.S.