

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Jawad Akbar Sarwana

1.	Spl. Cus. Ref. A. 1140/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Amjad Khan Leghari Petroleum Service & another
2.	Spl. Cus. Ref. A. 1141/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Soomra Petroleum Service & another
3.	Spl. Cus. Ref. A. 1142/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Khanzada Petroleum Service & another
4.	Spl. Cus. Ref. A. 1143/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Syed Muqem Shah Bukhari Petroleum Service & another
5.	Spl. Cus. Ref. A. 1144/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Liaquat Petroleum Service & another
6.	Spl. Cus. Ref. A. 1145/2023	The Collector, Collectorate of Customs, Hyderabad VS M/s. Noonhani Petroleum & another

For the Applicants: Mr. Zulfiqar Ali Arain, Advocate.

Date of hearing: 06.05.2024

Date of Order: 06.05.2024.

ORDER

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant (department) has impugned Order dated 28.01.2023 passed in Customs Appeal No. H-7159/2021 and other connected matters passed by the Customs Appellate Tribunal at Karachi proposing various Questions of law; however, on perusal of the order of the Tribunal, it appears that no such Questions of law are arising out of the said order, except Question No. 5 which reads as under:-

“5. Whether in the facts and circumstances of the case that the burden of proof as provided under section 187 of the Customs Act, 1969 lie with the respondent. The relevant provision read as under:-

“When any person is 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 lie on him.”

It appears that the Applicant department alleged that the diesel stored by the Respondents was smuggled diesel falling within Section 2(s) of the Customs Act, 1969; however, upon a test carried out through the Hydrocarbon Development Institute of Pakistan by the Applicant department, the report issued states that, *“To the extent of test carried out, the samples conform to the GOP specification for High Speed Diesel (HSD).”* From perusal of the aforesaid report, it reflects that insofar as the diesel in question is concerned, it was found to be in conformity with the Government of Pakistan specification for High Speed Diesel and as soon as this report was issued, the onus stands discharged by the Respondents in terms of Section 187 *ibid.* Notwithstanding this, even otherwise, this is a question of fact finally determined by the Tribunal as to the diesel in question being in conformity with Government of Pakistan specification, which we cannot interfere with in our Reference jurisdiction.

Accordingly, no question of law arises out of the order except as above, which is answered against the Applicant and in favour of the Respondents; as a consequence, thereof, all these Reference Applications are ***dismissed in limine*** with pending applications.

Let copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office shall place copy of this order in connected files.

J U D G E

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Arshad/