

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Custom Reference No.17 of 2019**

**The Directorate General, Intelligence and Investigation-FBR**

*Versus*

**Muhammad Waqas, etc.**

**Custom Reference No.18 of 2019**

**The Directorate General, Intelligence and Investigation-FBR**

*Versus*

**Sarfraz Ahmed, etc.**

**Custom Reference No.19 of 2019**

**The Directorate General, Intelligence and Investigation-FBR**

*Versus*

**Naseer Ahmed, etc.**

Applicant by:	Ms. Naziran Malik, Advocate.
Respondents by:	Nemo.
Date of decision:	04.03.2020.

**LUBNA SALEEM PERVEZ, J.**

Through this judgment we intend to dispose of above mentioned custom reference applications filed against the combined judgment of the Customs Appellate Tribunal (hereinafter referred to as the Appellate Tribunal) bearing No. 14/CU/IB/2019 dated 03.06.2019. Following common questions have been proposed in all the 03 reference applications considering to be questions of law arising out of the impugned order of the Customs Appellate Tribunal, Islamabad.

- i. *Whether considering the facts and circumstances of the case, the impugned judgment is not against the law and clear violation of mandatory provisions of law and the learned Tribunal was justified to allow the appeal?*
- ii. *Whether the impugned order is not based on misreading and non-reading of evidence available on record?*
- iii. *Whether import of second hand or used trucks was not prohibited in terms of Para-9(4) of the Import Policy Order, 2013?*

- iv. *Whether conversion of an imported second hand and used Concrete Transit Mixer into a truck was not subversion of Import Policy Order, 2013?*
- v. *Whether purchase of a truck converted from imported second hand and used Concrete Transit Mixer was bonafide?*
- vi. *Whether it was lawful for Respondents to do indirectly what they were prohibited to do directly?*
- vii. *Whether indirect acquisition of the second hand/used truck, import of which was prohibited has not rendered the truck liable to confiscation in terms of section 156(1) (89) of the Customs Act, 1969?*
- viii. *Whether the impugned judgment dated 11.06.2019 is sustainable in the eyes of law when it is in conflict with the provisions of the Import Export (Control) Act, 1950, Import Policy Order, 2013 and Customs Act, 1969?*
- ix. *Whether the impugned order is not against the judgment of the Honourable Supreme Court of Pakistan passed in C.P. No. 452-K/2016 and C.P. No. 456-K/2016?*
- x. *Whether the impugned order is not against the judgment dated 08.10.2018 of the Honourable Supreme Court of Pakistan in Civil Petition No.1623/2018?*

2. Facts, in brief, are that the staff of Special Car Cell, on 19.10.2018 intercepted Hino 10 wheeler truck (Model 1998) bearing registration No. HNR-3787-Hunza chasis No. FD1JLA50214 (195 HP) from near Kock Bridge, G.T. Road, Islamabad, whereas, on 01.11.2018 two other Hino 10 wheeler trucks (model 1998), bearing Registration Nos. HNR-2045-Hunza chasis No. FD2JLB1664 (195 HP) & HNR-3045-Hunza chasis No. FD1JLC-11432 (195 HP) were also intercepted near police line, Islamabad, all allegedly non duty paid trucks, and detained the same under section 17 of the Customs Act, 1969 for verification of its import status, payment of duty and taxes and forensic laboratory test. On 05.11.2018, Respondents drivers in C.R.Nos. 17 & 18, produced GD bearing Nos. KEAP-HC-10186 & KEAP-HC-12618 dated 10.01.2014 & 01.02.2014, respectively, concerning respective trucks according to which said trucks were imported by M/s Rehman Construction, Quetta and M/s Baig Enterprises & Engineering, Islamabad, respectively, who imported the specialized vehicles as “used Nissan Concrete Mixer Truck” and “used Nissan Concrete Transite Mixer Truck” under HS code 8705.4000 & PCT heading 8705.4000, respectively and after removal of specialized equipment and accessories converted into goods

transportation trucks were sold in the market and converted into a goods transportation truck. However, Respondents drivers produced GDs and other import documents according to which the truck were imported by above named importers as "used Hino adopted Concrete Transit Mixer Truck". Respondents drivers also produced lab reports in respect of the detained trucks which showed no tempering with the numbers. Respondent drivers also produced document of payment of duty and taxes leviable at the time of import. The applicant department issued show-cause notice dated 03.12.2018 requiring explanation regarding purchase of trucks. The show cause notices were responded by the Respondents while contending that the respondents drivers have not made any violation of Customs Act, 1969 and no valid provision has been invoked while seizing the vehicles which restrained further sale or modification of the legally imported specialized vehicles. Further, in written reply dated 10.12.2018, submitted on behalf of the respondents drivers it was mentioned that the respondent driver has purchased the truck in present condition from M/s Saeed Farheen who purchased it from M/s Rehman Constructions, the actual importer. However, the justifications and submissions of the respondents were rejected by the respondents who passed Order-in-Original No. 10 of 2019 (hereinafter referred to as the ONO) considering the respondents drivers to be not the lawful owners of the seized vehicles by relying on the unreported judgment bearing Custom Reference No. 26912/2017 of Hon'ble Lahore High Court, Lahore, wherein, the Hon'ble High Court while deciding the reference placed reliance on the unreported decisions of the Hon'ble Supreme Court of Pakistan given in CP No. 452-K/2016. Against the said ONO the respondents drivers filed appeals before the Customs Appellate Tribunal who accepted the appeals of the respondents while observing that:-

*"6. Perusal of record reveals that the vehicle is not smuggled one and legally imported after payment of duty/taxes. As per contents of show cause notice the import of second hand used Concrete Transit Mixer was prohibited in terms of para-5(A)(vii) of the Import Policy Order 2013, however construction companies were exempted from prohibitions in terms of Para-9(ii)(5) read with Appendix-I of the Import Policy Order 2013. The Arguments of the learned counsel for the respondents has no substance that "Concrete Transit Mixer" is not permissible under provision of Import Policy Order 2013, as it is older than five year and by now it is past and closed transaction."*

3. Learned counsel for the applicant department submitted that the sale of the seized imported vehicles was in contravention of Import Policy Order 2013, because the permission of import of second hand specialized vehicle i.e. concrete

transmit mixer trucks was only granted to the construction companies in terms of para-9 (ii) of Import Policy Order, 2013. Learned counsel further submitted that the drivers failed to produce the documentary evidence showing lawful excuse of possession and use of the said vehicles, thus, the vehicles were validly seized and detained under section 2(s) 16, 19 of Customs Act, 1969 read with section 3(1) (3) of the Imports & Exports (Control) Act, 1950. Learned counsel contended that the learned Appellate Tribunal has failed to appreciate the relevant provisions of the Import Policy Order, 2013, according to which the import of second hand or used Concrete Transit Mixers were prohibited in terms of para-5 (A) (iii). She in this regard relied on the extracts recorded in the show cause notice and Order in Original No. 10 of 2019, passed by the adjudicating Officer. Learned counsel was specifically asked to submit the complete copy of unreported judgment cited in the order, however, neither she was able to provide the same to the Court nor address on the facts and circumstances of these unreported cases relied on by her as well as by the Adjudication Officer.

4. Arguments heard, record perused.

5. The show cause notice, the ONO and the impugned order of the Appellate Tribunal have carefully been perused and it transpired that the seizure case No. 37/2018 dated 31.10.2018 was initiated on the information of special car cell, Director Intelligence, Customs Islamabad, whereas, case No. 38/2018 and 39/2018 dated 06.11.2018 were initiated on the basis of letter dated 12.06.2018 received from the Excise & Taxation Officer, Hunza Nagar. After receipt of this information the 10-wheeler trucks were intercepted and seized/detained under section 17 of the Customs Act, 1969 and the documents of the detained vehicles were requisitioned from the above named respondent drivers. The information along with the documentary evidence was provided to the officers which showed that the vehicles were imported by the following construction companies vide valid GDs in 2014:-

- i. M/s Rehman Construction GD No. KEAP-HC-10186 dated 10.01.2014.
- ii. M/s Baig Brothers GD No. KEAP-HC-10692 dated 16.01.2014.
- iii. M/s Baig Brothers GD No. KEAP-HC-12618 dated 01.02.2014.

The respondents drivers in response, provided all the relevant document of valid import, payment of duties and taxes and purchase documents to prove the genuineness and legality of the possession of the vehicle. However, the

adjudicating officer on the basis of show cause notices all dated 03.12.2018, proceeded to pass the ONO No. 10 of 2019 dated 10.02.2019 to confirm the confiscation of seized 10-wheeler, Hino trucks.

6. As per contents of the show cause notice the Adjudication Officer has based the action on the ground that import of second hand or used concrete transit mixer was prohibited in terms of para 5(A) (iii) of the Import Policy Order 2013, however, construction companies were exempted from prohibition under para 9 (ii)(5) read with appendix-I of the Import Policy Order 2013. Therefore, the above paras of Import Policy Order, 2013 were perused and for convenience are also reproduced as under:-

**5. Prohibitions and restrictions.-**

**(A). Prohibitions:**

(i) .....

(ii) .....

(iii) *Live animals i.e. cattle, buffalo, sheep and goats, meat and bone meal, tallow containing protein and feed ingredients animal origin from BSE infected countries, such as U.K, Ireland, Belgium, Denmark, Falkland, France, Germany, Italy, Luxembourg, Holland, Spain, Brazil, Czech Republic, Austria, Poland, Slovakia, Slovenia, USA and Alberta Region of Canada, provided import of meat and meat products from other parts of Canada shall however be allowed subject to certifying additional animal quarantine requirements. This ban shall however not apply on the import of feed ingredients, namely-milk enhancers, concentrates, growth promoters, enzymes, fish meal replacers, transmuted into premixes and growth promoters, feather meal and poultry meal which have originated from vegetable, poultry, mineral and sea sources from the aforesaid BSE infected countries:*

**9. Import of used plant, machinery and equipment.-**

(1) .....

(2) .....

(3) .....

(4) .....

(5) *Construction companies, mining, oil, gas and petroleum sector companies are also allowed to import specialized vehicle-mounted machinery and transport equipment such as mobile transit mixture, concrete pumps, crane lorries, concrete placing trucks, dumpers designed for off highway use, cement bulkers and prime movers 380 HP and above, etc. specified in Appendix-I. However, import of such items will be subject to certification by the competent authority of exporting country or a recognized pre-shipment inspection company listed in Appendix-H to the effect that the said machinery or transport equipment (a) is compliant with Euro-II emission standards (b) is in good working condition and has a remaining productive life of five years.*

Thus, the reliance of the applicant department on sub para 3 of para 5 of IPO 2013 is totally irrelevant for the purposes of alleging illegality in respect of the detained vehicles. Perusal of the record further revealed that the detained vehicles were imported by construction companies and it was nowhere held in the ONO that the

copies of GDs produced by the respondents drivers during the course of adjudication proceedings, were fake and bogus, thus, legality of the imports by the respective construction companies in the year 2014 and the payment of duties and taxes at the time of import in respect of the trucks since, were not challenged by the applicant department, thus considered to be admitted. As such considering the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the imported vehicles were not smuggled in terms of section 2(s) of the Customs Act, 1969.

7. The arguments of the learned counsel for the respondent has no substance that import of "concrete transit mixer" is not permissible under the provisions of Import Policy Order 2013 and by now it has become a past and closed transaction at the time the vehicles were seized. As the GDs and import documents including the duty & taxes were produced by the respondents meaning thereby the requirements and conditions of import were fulfilled. The Appellate Tribunal was very much justified in observing that if the import of vehicles was restricted and prohibited by that time then how the same was allowed and released and that this is not the responsibility of the importer but was the responsibility of Customs authorities to examine the goods physically and thereafter allowed the gate pass.

8. In view of the above, the questions proposed by the applicant department have been examined with reference to the findings mentioned in the impugned order dated 03.06.2019, passed by the Appellate Tribunal. After due consideration we are of the view that question Nos.1& 6 are vague and misconceived as no provision of law has been referred requiring interpretation. Through question No.2 the applicant department desired reappraisal of evidence, which is outside the scope of the reference jurisdiction. Question No.3 is misconceived as it does not relate to facts and circumstances of the present case. So far as question No. 4 is concerned, the record revealed that the Respondents purchased the subject vehicles in the present form, therefore, admittedly the respondents were not the importer, hence, the question to the facts and circumstances of the case is not relevant. The answer to question No.5 is in **affirmative** as the purchasers/respondents drivers purchased the vehicles in the present form from the previous owner and therefore, malafide conversion of vehicles cannot be attributed to them. Question No.7 is misconceived as firstly the imports were not made by the present purchaser/respondents drivers and secondly the import of the vehicles was made by the construction companies in terms of para 9 (ii)(5) of the IPO 2013 duly

verified by the Custom Authorities before allowing the gate pass. The answer to question No.8 is in **affirmative**.

9. In view of the above, out of the questions referred by the applicant department question Nos. 7 & 8 since, are relevant and answered in **affirmative**. All the three Custom Reference Applications are decided against the applicant department and in favour of the respondents.

10. Copy of this order be sent to Customs Appellate Tribunal, Islamabad.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**Announced in the Open Court on : 30.03.2020.**

**JUDGE**

**CHIEF JUSTICE**

Adnan