

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**W.P. NO. 1260/2021**

**Gul Zameer Shah, etc**  
**Vs.**  
**Collector of Customs, etc**

**Petitioner by       :**       **Mr. Sikandar Naeem Qazi, Advocate.**

**Respondents by   :**       **Mr. Huma Noreen Hassan, Advocate.**

**Date of hearing   :**       **15.04.2021**

**LUBNA SALEEM PERVEZ, J.** Through instant writ petition, the petitioner is seeking the implementation of judgment of the Customs Appellate Tribunal Bench-II, Lahore (hereinafter referred to as the Tribunal) passed in C.A Nos. 178/IB/2020 and 179/IB/2020, both dated 17.11.2020, whereby direction regarding unconditional release of petitioners' vehicle has been issued, whereas, the Respondents No.1 & 2 have refused to release the petitioners' vehicles despite being the lawful owners.

2. Necessary facts are that the staff of Customs Preventive MCC, Islamabad intercepted the trucks bearing No. TKY-696 and TKW-833 carrying Iranian Origin Cermix Tiles on 27.07.2020 and when the drivers of the vehicle could not produce the import documents of the consignments, both the vehicles were seized u/s 168 & 157 on the charges of smuggling u/s 2(s), 16 & 18 of the Customs Act, 1969 (hereinafter referred to as the Act, 1969) read with Section 3 of the Import and Exports (Control) Act, 1950. The case was referred for adjudication to Collectorate of Customs Adjudication, who after compliance of the procedure passed Order-in-Original Nos. 115 & 116/2020 both dated 06.10.2020 and outrightly ordered confiscation of the Cermics Tiles along with the subject trucks. The petitioners challenged the Orders in Original before the Tribunal whereby following order has been passed:-

*“We have considered the contentions of the appellants as well as of the respondents. The relevant documents submitted and placed on record have been perused. The vehicle has been used in the normal course of transportation. It cannot be expected of the driver of a transport vehicle to inquire into the details and propriety of the import documents of the goods, commonly and freely available in the market. No mense rea or any incriminating evidence has been found against the driver/owner of the vehicle. Reliance is placed on “case of Haji Abdul Razzak vs. The State” reported as “PLD 1974 Supreme Court 5”. The honourable Supreme Court in the said case held that “..... the persons sought to be deprived of the property must be given notice to show cause, they must be furnished with adequate opportunity of putting forward their point of view and the same must receive due consideration. Furthermore... no person should be deprived of his property by way of penalty unless It is clear that he is in some measure responsible for assisting or furthering the commission of the offence committed.”... No innocent person should be unjustly punished or deprived of his property.” The ratio of the aforesaid judgment is fairly attracted in the instant case too. The vehicle bearing registration No. TKW-833 warrants unconditional release.*

*In view of the foregoing position, we accordingly order as follows:*

*“The confiscation of the seized vehicle Hino Truck (bearing registration No. TKW-833), being unreasonable, is annulled”.*

Similar order has been passed for release of petitioner’s vehicle bearing No. TKY-696.

3. Learned counsel for the petitioners submitted that the trucks of the petitioners have been detained unlawfully despite the fact that the Respondent Nos.1 & 2 failed to prove that the owners of the vehicle were unlawfully transporting the goods through subject trucks which constitutes smuggling under section 2(s). He submitted that the petitioners are in the business of renting out the trucks in the normal course to various persons to transport their goods within the country; that the goods allegedly charged with smuggling under section 2(s) of the Act are Cermics Tiles which are not a contraband or restricted item recovered in the cavities of the truck but conspicuously adjusted in the truck for transportation from Quetta to Rawalpindi. That therefore, the Respondents No.1 & 2 have no lawful ground to withhold the truck in violation of the judgment of the Tribunal.

5. On the other hand, learned counsel for the respondents submitted that the department has filed a Custom Reference Applications before this Court, against the impugned orders for unconditional release of the seized vehicles passed by the Tribunal and the same are pending adjudication before Hon'ble Division Bench-I, and therefore, the vehicles have not been released to the petitioners.

6. Argument heard, record perused.

7. During the course of arguments learned counsel has admitted that, no restraining order has been passed by this Court in the Customs Reference Applications filed by Respondents No.1 & 2. Moreover, in my humble view the scope of reference under Section 196 of the Act, 1969 is limited to the extent of deciding the questions of law arising out of the judgment of the Tribunal and confined to the determination of legal controversy by interpreting of the statutory provisions. The questions proposed in the reference application before the Tribunal are since based on admitted findings of facts of the case and therefore the High Court in reference jurisdiction is not supposed to probe and re-determine the facts already taken into consideration by the Tribunal while deciding the case. Thus, the pending reference against the judgment dated 17.11.2020 would decide the questions of law and presently through instant petition the issue regarding the ownership of the vehicles determined by the Tribunal on the basis of facts substantiated by the petitioner has been raised which has nothing to do with the legality or illegality of the goods being transported through the vehicles in the normal course of business. It has been noted that the respondents have failed to put forth any incriminating material of the involvement of the drivers and the vehicles in support of allegation of unauthorized transportation of goods. It has also been admitted by the learned counsel for the Respondents No.1 & 2 that the case was fixed for 03.03.2021 but was adjourned to other date while no order, suspending operation of judgment dated 17.11.2020, was passed.

8. In view of the above, and the principle settled by the Hon'ble Supreme Court in judgment titled as *Abdul Razzak versus Pakistan through Secretary, Ministry of Finance, Islamabad and another (PLD*

W.P. No.1260/2021

*1974 SC 5*) the instant petition is **allowed**. Consequently, the respondents are directed to implement the judgment of the Tribunal dated 17.11.2020 passed in C.A Nos. 178/IB/2020 and 179/IB/2020, in its true letter and spirit.

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

**Announced in open Court on \_\_\_\_\_**

**JUDGE**