

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

**CUSTOM REFERENCE NO.28 OF 2015**

**Syed Waqas Ali Shah**  
**VS**  
**Collector Adjudication the Model Customs Collectorate, etc**

**Applicant by : Ms. Komal Malik Rizwan, Advocate.**

**Respondents by : Ch. Mohammad Nawaz, Advocate.**  
**Mr. Ghulam Jaffar, I.O.**

**Date of hearing : 27.08.2020**

**LUBNA SALEEM PERVEZ, J.** The captioned reference application has been filed on behalf of the applicant Syed Waqas Ali Shah assailing the judgment of Customs Appellate Tribunal, passed in Appeal No. 40/CU/IB/2014, dated 01.12.2014.

2. Perusal of the memo reveals that the present case has been instituted as appeal u/s 196 of the Customs Act, 1969 (hereinafter referred to as Act of 1969), however, treated and numbered as Customs Reference by the office. The provision of section 196 of the Act of 1969, up to year 1997 provided for appeal before the Hon'ble High Court against the order passed by the Appellate Tribunal, issued under section 194(B) of the Customs Act, 1969, however, vide Finance Act, 2005, section 196 was substituted by providing filing of reference before the High Court against the order of the Appellate Tribunal. Section 196 of the Act of 1969, before and after amendment, vide Finance Act, 1997, are reproduced as under:-

**“Appeal to High Court: (inserted vide Finance Act, 1997):**

*196. Appeal to High Court.—(1) An aggrieved person or the Collector may file an appeal in the High Court in respect of any question of law arising out of an order under section 194B.*

*(2) The appeal under this section shall be filed within sixty days of the date upon which an aggrieved person or the Collector is served with notice of an order under section 194 B.*

*Provided that the High Court may, upon being approached by an aggrieved person, if satisfied that the delay was beyond the control of the applicant and that by not granting such extension, there is a possibility of some loss or hardship to the applicant being mitigated or prevented, extend the time limit laid down under sub-section (2) by not more than thirty days.*

(3) *Where an appeal is filed under sub-section (1) by the aggrieved person, it shall be accompanied by a fee of one thousand rupees.*

(4) *An appeal under this section shall be heard by a Bench of not less than two Judges of the High Court.*

*Provided that where an appeal is preferred against an order passed by a Bench comprising of a single member, it may be heard by a Bench consisting of one Judge of the High Court.*

(5) *The High Court upon hearing the appeal under this section shall decide the question of law raised therein and deliver decision under the seal of the Court of the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such decision.*

(6) *Subject to sub-section (7), notwithstanding that an appeal has been filed under this section, sums due to the Government as the result of an order passed under section 194B shall be payable in accordance with the said order.*

(7) *Where recovery of any sum has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is made unless the appeal is decided, or such order is withdrawn, by the High Court earlier.*

(8) *The cost of appeal shall be in the discretion of the High Court."*

### **Reference to High Court: (inserted vide Finance Act, 2005)**

*196. Reference to High Court. – (1) Within ninety days of the date on which the aggrieved person or Collector 44a[or Director of Intelligence and Investigation, as the case may be, was served with order of the Appellate Tribunal under subsection (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector 44a[or Additional Director, authorized by the Collector or Director in writing], may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.*

*(2) The statement to the High Court, referred to in sub-section (1), shall set out the facts, the determination of the Appellate Tribunal and the question of law, which arises out of such order.*

*(3) Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order, referred to in sub-section (1), may proceed to hear the cases.*

*(4) A reference to the High Court under this section shall be heard by a Bench of not less than two judges of the High Court and, in respect of the reference, the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply so far as may be, notwithstanding anything contained in any other law for the time being in force*

*(5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.*

*(6) Notwithstanding that a reference has been made to the High Court, the duty shall be payable in accordance with the order of the Appellate Tribunal:*

*Provided that, the amount of duty is reduced as a result of the judgment in the reference by 45[such officer as authorized by the Collector or] the High Court, and any amount of duty is found refundable, the High Court may, on application submitted by the Collector, within thirty days of the receipt of the judgment of the High Court, that he wants to prefer petition for leave to appeal to the Supreme Court, make an order authorizing the Collector to postpone the refund until the disposal of the appeal by the Supreme Court.*

*(7) Where recovery of duty has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is made unless the reference is decided, or such order is withdrawn by the High Court earlier.*

*(8) Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to an application made to the High Court under sub-section (1).*

*(9) An application under sub-section (1) by a person other than such officer as authorized by the Collector] the Collector shall be accompanied by a fee of one hundred rupees. ”.*

3. It is pertinent to note that appeal in comparison with reference has wider scope to challenge the order on facts as well as on law, however, the scope of reference is confined to the interpretation of provision of law on the proposition submitted by the aggrieved party in the shape of question of law based on the admitted findings of facts of the case, arising out of the impugned order. Perusal of the above sections show that even appeal before High Court, vide old section 196, as amended vide Finance Act, 1997, required that aggrieved person or Collector may file appeal in respect of question of law arising out of the impugned order. It appears that since, the nature of provision of un-amended section 196 was that of a Reference, wherein the High Court is required to answer any question of law said to be arising out of the impugned order, therefore, vide Finance

Act, 2005, section 196 was substituted by providing reference to High Court instead of an Appeal. The comparison of the section before and after its amendment in 2005 shows that proposed question of law which arises out of the impugned order is essential requirement of reference for decision by the High Court.

4. It transpired from the perusal of the memo of appeal filed by the learned counsel that no questions of law, arising out of the findings recorded in the impugned judgment of the Appellate Tribunal, have been proposed, for consideration/decision of the High Court rather the grounds of appeal submitted for examination shows that same are based on factual controversies which even do not arise out of the impugned orders/judgment passed by the forums below. Therefore, we are of the considered view that the present appeal filed under section 196, of the Act of 1969 (entertained by the office as reference), as amended through Finance Act, 2005, is not maintainable.

5. The appeal is accordingly **dismissed**.

6. Copy of this order is also to be sent to the Registrar, Customs Appellate Tribunal, Islamabad.

**(MIANGUL HASSAN AURANGZEB) (LUBNA SALEEM PERVEZ)**  
**JUDGE JUDGE**

Announced in the open Court on 09-09-2020.

**JUDGE**

**JUDGE**

JUNAID.