JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2518 of 2021
Shah Zaman
Versus
Federation of Pakistan and others

Dates of Hearing:	08.04.2022, 21.04.2022 and 13.05.2022.
Petitioner by:	Mr. Badar Iqbal Ch., Advocate.
Respondents by:	Ch. Muhammad Tahir Mehmood, Assistant Attorney General. Mr. Waqar A. Sheikh and Rana Muhammad Mehtab, Advocates for respondents No.3 to 5.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Shah Zaman, impugns the order dated 16.04.2020 passed by the worthy Secretary, Ministry of Commerce whereby his application for allowing the release of the imported vintage vehicle (Rolls Royce, Model 1967, Chassis No.SRH23870) was turned down on the ground that under the Import Policy Order, 2016, only the import of used cars less than three years old was allowed.

2. The record shows that through the notification (SRO 833(I)/2018), dated 03.07.2018 issued by the Government of Pakistan, Ministry of Finance, Economic Affairs, Statistics & Revenue (Revenue Division), the customs duty, regulatory duty, additional customs duty, Federal excise duty, sales tax and withholding tax in excess of the cumulative amount of US Dollars 5,000 was exempted on the import of each unit of vintage or classic cars and jeeps meant for the transport of persons. The said notification was issued by the Revenue Division in exercise of the powers conferred by (i) Section 19 of the Customs Act, 1969, (ii) Section 16 of the Federal Excise Act, 2005, (iii) Section 13(2)(a) of the Sales Tax Act, 1990 and (iv) Sections 53 and 148 read with the Second Schedule of the Income Tax Ordinance, 2001.

3. The explanation to the said notification clarifies that for the purposes of the said notification, vintage or classic cars and jeeps mean old and used automotive vehicles falling under Pakistan

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Customs Tariff (**"PCT"**) Code 87.03 of the First Schedule to the Customs Act, 1969 manufactured prior to 01.01.1968.

4. PCT Code 87.03 reads thus:-

> *"Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars."*

5. PCT Code 87.02 reads thus:-

> *"Motor vehicles for the transport of ten or more persons, including the driver."*

6. After the said notification was issued, the petitioner imported a vintage Rolls Royce, Model 1967, Chassis No.SRH23870 (**"the vintage vehicle"**) from the United Kingdom and filed a goods declaration form on 12.11.2018. The Customs Collectorate, Mughalpura Dry Port, Lahore refused to release the said vehicle. This caused the petitioner to file writ petition No.2062/2019 before the Hon'ble Lahore High Court. The said petition was disposed of vide order dated 27.06.2019 with the direction to the Member (Customs), Federal Board of Revenue (**"F.B.R."**) to hear the petitioner and the concerned parties and thereafter resolve the controversy through a speaking order. In compliance with the direction of the Hon'ble Lahore High Court, the Member (Customs), F.B.R. passed a speaking order dated 01.08.2019 which is *inter alia* reproduced herein below:-

> *"The under reference notification SRO 833(I)/2018 dated 03.07.2018, issued in pursuance of Cabinet decision dated 27.04.2018 to levy cumulative amount of duty and taxes at a concessionary rate on import of vintage / classic cars as defined in the SRO. However, the aforementioned Cabinet decision was not given effect by the Ministry of Commerce and Textile by amending the Import Policy Order 2016, to allow import of such classic/ / vintage cars, for reasons best known to the Ministry. Under the afore-stated position, the subject classic car imported by the petitioner underwent the dispute regarding its importability. From the facts of the case, it transpires that the petitioner of the writ petition effected import after the Cabinet decision dated 27.04.2018 as well as issuance of SRO 833(I)/2018 dated 03.07.2018. At the time of import, Cabinet's decision regarding the importability of vintage cars was not given effect in the Import Policy Order, 2016."*

7. The petitioner had also filed writ petition No.61431/2019 before the Hon'ble Lahore High Court. This petition was disposed of vide order dated 10.02.2020 with the direction to the Secretary, Ministry of Commerce to decide the matter. The petitioner had also

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filed intra Court appeal No.7152/2021 which was dismissed as withdrawn on 18.02.2021.

8. It was pursuant to the order dated 10.02.2020 passed by the Hon'ble Lahore High Court in writ petition No.61431/2019 that the Secretary, Ministry of Commerce decided the matter through impugned order dated 16.04.2020.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that it was on the basis of the Revenue Division's notification (SRO 833(I)/2018), dated 03.07.2018, that the petitioner imported a vintage vehicle into Pakistan; that the vintage vehicle imported by the petitioner has been detained ever since July 2018 by the Customs Collectorate, Mughalpura Dry Port, Lahore; that the petitioner's imported vintage vehicle ought to have been released on payment of taxes and duties amounting to US Dollars 5,000 in terms of the said notification dated 03.07.2018 as well as the law laid down by this Court in the case of Meena Munawar Khan Vs. Federation of Pakistan (2021 PTD 407) and the Hon'ble High Court of Sindh's judgment in the case of Moin Jamal Abbasi Vs. The Federation of Pakistan (2020 PTD 660); that on the basis of the said notification dated 03.07.2018, the petitioner altered his position to his detriment by entering into a contract for the import of the vintage vehicle; that the petitioner had the legitimate expectation for his imported vintage vehicle to be released; and that the Customs Authorities were estopped from detaining the petitioner's imported vintage vehicle. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. On the other hand, learned counsel for respondents No.3 to 5 submitted that judgments in the cases of Meena Munawar Khan Vs. Federation of Pakistan *(supra)* and Moin Jamal Abbasi Vs. The Federation of Pakistan *(supra),* cannot be read in isolation but with the subsequent judgment dated 10.09.2021 passed by the Full Bench of the Hon'ble High Court of Sindh in C.P.Nos.D5430 and 5536/2020 as well as the Cabinet's decisions dated 24.01.2019 and 02.11.2021; that since the Import Policy Orders, 2016 and 2020 do not permit import of vintage / used cars more than three years old,

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this Court cannot issue a writ directing the respondents to release the petitioner's imported vintage vehicle which is more than three years old; that this Court cannot issue a writ which would amount to undoing a prohibition in the Import Policy Orders; that the disparity, if any, between the Revenue Division's notification dated 03.07.2018 and the Import Policy Orders has been clearly resolved by the Federal Government (i.e., the Cabinet) through its decision dated 02.11.2021; and that the Federal Government has decided not to grant any relaxation in the prohibition on the import of vintage / used vehicles more than three years old. Learned counsel for the respondents prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 and need not be recapitulated.

12. The essential ground on which the petitioner's request for the release of the vintage vehicle has been turned down was that the Import Policy Order, 2016 does not allow import of cars older than three years under any scheme.

13. A somewhat similar issue came up for consideration before the Hon'ble High Court of Sindh in the case of Moin Jamal Abbasi Vs. The Federation of Pakistan (2020 PTD 660). Through the said judgment, a Constitution Petition filed by an importer of a vintage vehicle was allowed and the Customs Department was directed to release the imported vintage vehicle within a period of seven days on payment of US Dollars 5,000 in terms of the notification dated 03.07.2018. For the purposes of the clarity, paragraph 5 of the said judgment is reproduced herein below:-

> *"5. Perusal of hereinabove provision of Section 19 of the Customs Act, 1969, shows that the Federal Government has been authorized to exempt from payment of customs duty notwithstanding any provision either contained under Customs Act, 1969 or under any other law for the time being in force including Income Tax Ordinance, 2001 and Sales Tax Act, 1990 etc. From perusal of provision of Import Policy Order, 2016, it can be seen that certain restrictions and prohibitions have been imposed in terms of Para. 5 of the Import Policy Order, 2016, therefore, regulating the import and export of the goods into or outside Pakistan, however, subject to prohibitions and restrictions.*

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Whereas, in terms of Para. 20 of the Import Policy Order, 2016, the Federal Government is empowered to allow imports in relaxation of any prohibition or restriction under this Order. It is pertinent to note that Para. 20 of the Import Policy Order, 2016 allows the Federal Government to relax any prohibition or restriction relating to import, and there seems no restriction upon the Federal Government to even to allow complete exemption from payment of custom duty and taxes or to reduce the amount of customs duty in appropriate cases as per policy SRO (I)/2018 dated 03.07.2018 has been admittedly issued by the Federal Government through Ministry of Finance, Economic Affairs, Statistics & Revenue, (Revenue Division), Government of Pakistan, whereby the Federal Government has been pleased to exempt the vintage or classic cars, jeeps meant for transport of persons on the import, from payment of customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax as are in excess of cumulative amount of US Dollars Five Thousand (US $ 5000) per unit, and has also been pleased to define the "vintage or classic cars and jeeps as "old and used automotive vehicles" falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 and manufactured prior to January 01, 1968, whereas, there has been no reference to any other restriction or prohibition as may be attracted in terms of Import Policy Order, 2016 in respect of other imported vehicles, which shows the clear intention of the Federal Government, not only to exempt a vintage or classic cars from payment of duty and taxes in excess of cumulative amount of US $ 5000/- per unit, but also to relax other prohibitions or restriction, if any, in respect of other vehicles as per Import Policy Order, 2016."

14. On the basis of the law laid down by the Hon'ble Sindh High Court in the said judgment, this Court in the case of Meena Munawar Khan Vs. Federation of Pakistan *(supra)*, allowed a writ petition filed by an importer of a vintage vehicle and directed the Customs Department to release the said vehicle on payment of US Dollars 5,000 in terms of the Federal Government notification dated 03.07.2018. For the purposes of clarity, paragraphs 11 and 13 of the said judgment are reproduced herein below:-

"11. There is no denying the fact that the notification dated 03.07.2018 has been issued by the Federal Government in exercise of the powers specifically conferred by the statutes referred to therein. The said notification is in the public domain. The Bill of Lading with respect to the import of the vehicle clearly shows that the import was made pursuant to the said notification dated 03.07.2018. The Good Declaration clearly mentions the PCT Code of the imported vehicle to be 87.03. Therefore, I am of the view that respondents No.3 and 4 could not deprive the petitioner from the release of the vehicle by simply ignoring the said notification dated 03.07.2018."

12. ....

13. It is not denied that the vehicle imported by the petitioner is of 1966 Model i.e. manufactured prior to 01.01.1968. It is also an admitted position that the vehicle imported by the petitioner is designed for the transport of persons and cannot transport ten or

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more persons including the driver. Since it is also not denied that on the basis of the said notification dated 03.07.2018, the import of the said vehicle would not entail any customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax in excess of the cumulative amount of US Dollars 5,000, the petitioner cannot be deprived any further from the release of the said vehicle upon payment of US Dollars 5,000. As regards the contention of the learned counsel for respondents No.3 and 4 regarding the Import Policy Order, 2016 not being amended, this was adequately dealt with by the Hon'ble High Court of Sindh in paragraph 5 of the said judgment dated 11.09.2019."

15. Additionally, this Court vide orders dated 28.09.2020 allowed five writ petitions filed by the importers of vintage vehicles with the same directions to the Customs Department as were given by this Court in the case of Meena Munawar Khan Vs. Federation of Pakistan *(supra)*.

16. A summary dated 11.01.2019 was submitted by the Ministry of Commerce and Textile Industry to the Economic Coordination Committee of the Cabinet. In the said summary, it is mentioned that the import of used cars is not allowed with the objective of protecting the domestic car manufacturing industry and the vintage cars, mainly imported by enthusiasts, do not directly compete with the locally manufactured cars. In the said summary, it was proposed that the import of vintage cars, which are over fifty years old, may be allowed subject to other customs procedures. It was also proposed that in order to develop the industry for restoration of vintage cars in Pakistan for subsequent re-export, the import duty and taxes paid at the time of import may be refunded in case the imported vintage car is re-exported within twelve months of the import. This proposal was considered by the Economic Coordination Committee of the Cabinet in its meeting dated 15.01.2019 but the same was not approved. The Economic Coordination Committee's decisions taken in its meeting dated 15.01.2019 were ratified by the Cabinet on 24.01.2019. The said summary dated 11.01.2019, the Economic Coordination Committee's decision dated 15.01.2019, and the Cabinet's decision dated 24.01.2019 were not before this Court when the case of Meena Munawar Khan Vs. Federation of Pakistan *(supra)* was decided.

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17. Now, the question whether used vehicles more than three years old could be imported and released on the basis of the notification dated 03.07.2018 when the Import Policy Order, 2016 did not permit the import of such vehicles came to be considered by the Full Bench of the Hon'ble High Court of Sindh. The precise question framed for consideration by the Full Bench was *"whether the subject SRO No.833(I)/2018 issued in terms of Section 19 of Customs Act, 1969, can also be treated as SRO issued by the Ministry of Commerce in terms of Section 3 of the Import & Export Control Act, 1950, permitting import of vintage cars which are otherwise not importable as being old and used in terms of the Import Policy Order of both 2016 and 2020."*

18. The Full Bench of the Hon'ble High Court of Sindh held vide judgment dated 10.09.2021 that no writ can be issued to the Customs Department for the release of vintage car when the Import Policy Order issued under Section 3(1) of the Imports and Exports (Control) Act, 1950 ("the 1950 Act"**) does not expressly permit import of such vehicles. The writ petitions filed by the importers of vintage vehicles were disposed of by the Full Bench of the Hon'ble High Court of Sindh with the direction to the Federal Government to consider the cases of the petitioners for one-time relaxation under clause 21 of the Import Policy Order, 2020. It is pertinent to reproduce herein below the observations in the majority judgment:-**

> ***"3. It is not the case that SRO 833(I)/2018 was issued by the Revenue Division without lawful authority or that it was issued with any malafides. It is accepted both by the learned Assistant Attorney General and learned counsel for the Customs that SRO 833 was to follow in consequence of a SRO under section 3(1) of the Imports and Exports (Control) Act, 1950, also by the Federal Government albeit through the Commerce Division, which was to be issued prior to or at least simultaneously with SRO 833 to expressly permit the import of vintage cars, but that was not so done, nor was SRO 833 recalled. The comments on behalf of the Federal Government concede that "This anomaly in the policies lead to confusion and litigation". We are therefore of the view that in issuing the consequent SRO 833 to fix duty and taxes on import of vintage cars, the Federal Government held out and represented to citizens that the requisite SRO permitting the import of vintage cars had also been issued, or at least that import of vintage cars is not forbidden any more. After all, otherwise, there was no point in fixing duty and taxes on the import of vintage cars if the import remained prohibited. Therefore, the Petitioners acted, to their detriment, on an act / representation made by the Federal Government. The argument of the Customs amounts to saying that***

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before acting upon SRO 833 to import a vintage car, a citizen should have first verified whether the representation in SRO 833 that a vintage car was importable, was in fact correct or not. That argument if accepted would be catastrophic to the presumption of correctness attached to the official acts. Conversely, it is not difficult to imagine the chaos that would ensue if executive orders requiring action are not implemented on unwarranted excuses of verifying the underlying competency. There is another aspect of the matter. It is apparent that SRO 833 was issued for lack of coordination between the Revenue Division and the Commerce Division of the Federal Government resulting from a failure to adhere to the "Inter-Division Procedure' set-out in Rule 8 of the Rules of Business, 1973. The consequence of such failure cannot be permitted to turn prejudicial to the case of the Petitioners.

4. ...

5. Thus the Import Policy Order vests a certain discretion in the Federal Government to allow an import in relaxation of a prohibition therein. Mr. Shahab Imam, learned counsel for the Customs had also disclosed during the course of arguments that the Federal Government had in the past exercised such discretion to issue a one-time import permit for a vintage car. Regardless of that, in our view, clause 21 of the Import Policy Order does cater to an import made bonafide with unintended consequences, as is the case of these Petitioners. Therefore, we dispose of these petitions with a direction to the Federal Government to consider the case of these Petitioners for a one-time relaxation / permit of import under clause 21 of the Import Policy Order, 2020 in respect of vintage cars falling under SRO 833(I)/2018 already imported by them, and to decide the same with 10 days keeping in mind the observations above. For said purposes, a copy of these petitions shall be forwarded by the learned Assistant Attorney General to the Commerce Division of the Federal Government, which shall be treated as application under clause 21of the Import Policy Order."

19. In compliance with the directions of the Hon'ble High Court of Sindh in the judgment dated 10.09.2021, the matter regarding one-time relaxation in prohibition of import of vintage cars was placed before the Cabinet. On 02.11.2021, the Cabinet did not approve the proposal for the grant of one-time relaxation. For the purposes of clarity, the said decision of the Cabinet is reproduced herein below:-

"The Cabinet considered the summary titled ***'One-Time Relaxation in Prohibition of Import of Vintage Cars or Otherwise in Light of Decision of the Sindh High Court dated 10.09.2021 Passed in CP No.5430/2020 and Connected CPS'*** *dated 27th October, 2021, submitted by the Commerce Division, and* ***did not*** *approve the one-time relaxation in prohibition of import of vintage cars, proposed in para 10 of the summary."*

(Emphasis added)

20. After the said decision, the Ministry of Commerce vide office memorandum dated 10.11.2021 requested the F.B.R. (Revenue Division) to rescind the notification (SRO 833(I)/2018), dated

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03.07.2018 for uniformity of the taxation policies. In the said letter, it was mentioned that there was a conflict in the taxation and import policies which had created confusion and ambiguity in the minds of importers. This state of affairs had led to litigation before different High Courts.

21. It is an admitted position that till date the said notification dated 03.07.2018 has not been withdrawn. Be that as it may, the fact remains that after the said judgment dated 10.09.2021 passed by the Full Bench of the Hon'ble High Court of Sindh, the Cabinet would be assumed to be cognizant of the disparity between the said notification dated 03.07.2018 (which exempts the import of vintage or classic cars and jeeps meant for the transport of persons from such of customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax as are in excess of the cumulative value of US Dollars 5,000 per unit), and the Import Policy Orders, 2016 and 2020 (which do not permit import of used vehicles that are more than three years old). Being cognizant of this disparity, the Cabinet has taken an informed decision not to grant a one-time relaxation in the prohibition of import of vintage cars. In other words, the Cabinet has decided not to amend the Import Policy Orders so as to make the import of vintage cars more than three years old permissible. The petitioner has not been able to demonstrate as to how the Import Policy Orders violate any provision of the 1950 Act or his fundamental rights under the Constitution.

22. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20.05.2022.

(JUDGE)

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