THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

Existing Manufactures

C.P. No. D – 6167 of 2019:	M/s. Indus Motor Company Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6291 of 2019:	M/s. Thal Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6351 of 2019:	M/s. Pak Suzuki Motor Co. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6422 of 2019:	M/s. Master Motor Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6425 of 2019:	M/s. Master Motor Corp. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6506 of 2019:	M/s. Procon Engineering Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6941 of 2019:	M/s. Atlas Honda Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6942 of 2019:	M/s. Atlas Autos (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6943 of 2019:	M/s. Atlas Hitec (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 6952 of 2019:	M/s. Hinopak Motor Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7095 of 2019:	M/s. Honda Atlas Cars Pakistan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7211 of 2019:	M/s. Indus Motor Company Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7234 of 2019:	M/s. PCI Automotive (Pvt) Ltd. and others versus Federation of Pakistan and others.
C.P. No. D – 7310 of 2019:	M/s. Master Motor Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7346 of 2019:	M/s. Pak Suzuki Motor Co. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7498 of 2019:	M/s. Atlas Honda Ltd. versus Federation of Pakistan and others.

C.P. No. D – 7499 of 2019:	M/s. Atlas Autos Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7500 of 2019:	M/s. Atlas Hitec Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7510 of 2019:	M/s. Al-Haj Faw Motors versus Federation of Pakistan and others.
C.P. No. D – 7529 of 2019:	M/s. Thal Ltd and others versus Federation of Pakistan and others.
C.P. No. D – 7673 of 2019:	M/s. Honda Atlas Cards Pakistan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7818 of 2019:	M/s. Procon Engineering (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 7882 of 2019:	M/s. Hinopak Motors Ltd. versus Federation of Pakistan and others.
C.P. No. D – 8207 of 2019:	M/s. Ghandhara Ind Ltd. versus Federation of Pakistan and others.
C.P. No. D – 8332 of 2019:	M/s. Ghandhara DF (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 8333 of 2019:	M/s. Ghandhara Nissan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 8484 of 2019:	M/s. Ghandhara Ind Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1118 of 2020:	M/s. Excide Pakistan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1119 of 2020:	M/s. Excide Pakistan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1246 of 2020:	M/s. S.A.A. Industries (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1247 of 2020:	M/s. S.A.A. Industries (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1515 of 2020:	M/s. Al-Haj Automotive Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 21 of 2020:	M/s. Ghandhara DF Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 22 of 2020:	M/s. Ghandhara Nissan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 2525 of 2020:	M/s. Kansai Paint Pvt. Ltd. versus Federation of Pakistan and others.

C.P. No. D – 2807 of 2020:	M/s. Al-Haj Bus Co. versus Federation of Pakistan and others.
C.P. No. D – 2808 of 2020:	M/s. Al-Haj Bus Co. versus Federation of Pakistan and others.
C.P. No. D – 3273 of 2020:	M/s. Al-Haj Bus Co., Pvt. Ltd. and others versus Federation of Pakistan and others.
C.P. No. D – 3519 of 2020:	M/s. Indus Motors Company Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3520 of 2020:	M/s. Thal Ltd. & others versus Federation of Pakistan and others.
C.P. No. D – 3599 of 2020:	M/s. Fuso Master Motors Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3609 of 2020:	M/s. Procon Engineering Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3654 of 2020:	M/s. Atlas Honda Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3655 of 2020:	M/s. Atlas Auto (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3656 of 2020:	M/s. Atlas Hitech (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3657 of 2020:	M/s. Atlas D.I.D. (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3682 of 2020:	M/s. Pak Suzuki Motors Co. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3709 of 2020:	M/s. Agri Auto Industries Ltd. & another versus Federation of Pakistan and others.
C.P. No. D – 3710 of 2020:	M/s. PCI Automobile Pvt. Ltd. & Others versus Federation of Pakistan and others.
C.P. No. D – 3825 of 2020:	M/s. Honda Atlas Car Pakistan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3860 of 2020:	M/s. Kansai Pzaint (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3879 of 2020:	M/s. Ghandharo Nissan Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3955 of 2020:	M/s. Ghandharo Industries Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4679 of 2020:	M/s. Techno Auto Glass Ltd. versus Federation of Pakistan and others.

C.P. No. D – 4707 of 2020:	M/s. Techno Pak Telecom (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4787 of 2020:	M/s. Master Motor Corp. (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4957 of 2020:	M/s. Chawala Enterprises versus Federation of Pakistan and others.
C.P. No. D – 4959 of 2020:	M/s. Siwa Ind (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4960 of 2020:	M/s. Eiffel Ind Ltd. versus Federation of Pakistan and others.
C.P. No. D – 5084 of 2020:	M/s. Hinopak Motors Ltd. versus Federation of Pakistan and others.
C.P. No. D – 5295 of 2020:	M/s. Rubatech Manufacturing Co. Pvt. versus Federation of Pakistan and others.
C.P. No. D – 5428 of 2020:	M/s. Ghandhara DF Ltd. versus Federation of Pakistan and others.
C.P. No. D – 5910 of 2020:	M/s. Synthetic Products Enterprises versus Federation of Pakistan and others.
C.P. No. D – 5933 of 2020:	M/s. Millennium Engineering Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 5934 of 2020:	M/s. Pakistan Leakless Ind. Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 861 of 2020:	M/s. Century Engineering Ind Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 862 of 2020:	M/s. Century Engineering Ind Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 2486 of 2021:	M/s. United Motors Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 2724 of 2021:	M/s. Waleed Trading Co. versus Federation of Pakistan and others.
C.P. No. D – 3436 of 2021:	M/s. Madina Glass Manufacturing versus Federation of Pakistan and others.
C.P. No. D – 3518 of 2021:	M/s. Jolta Electric Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3610 of 2021:	M/s. Millennium Engineering Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 414 of 2021:	M/s. Millennium Engineering Pvt. Ltd. versus Federation of Pakistan and others.

C.P. No. D – 424 of 2021: M/s. Excide Pakistan Ltd. and others versus Federation of Pakistan and others.

C.P. No. D – 716 of 2021: M/s. Duro Engineering Ind. versus Federation of Pakistan and others.

C.P. No. D – 954 of 2021: M/s. Pakistan Leakless Ind. Pvt. Ltd. versus Federation of Pakistan and others.

Greenfield Investors

C.P. No. D – 4851 of 2019: M/s. KIA Lucky Motors Pakistan Ltd. versus Federation of Pakistan and others.

C.P. No. D – 6906 of 2019: M/s. Hyundai Nishat Motor (Pvt) Ltd. versus Federation of Pakistan and others.

C.P. No. D – 7391 of 2019: M/s. KIA Lucky Motors Pakistan Ltd. versus Federation of Pakistan and others.

C.P. No. D – 2245 of 2020: M/s. Foton JW Auto Park versus Federation of Pakistan and others.

C.P. No. D – 3518 of 2020: M/s. KIA Lucky Motors Pakistan Ltd. and others versus Federation of Pakistan and others.

C.P. No. D – 3521 of 2020: M/s. Hyundai Nishat Motors Pvt. Ltd. versus Federation of Pakistan and others.

C.P. No. D – 3598 of 2020: M/s. Master Motors Ltd. versus Federation of Pakistan and others.

C.P. No. D – 3690 of 2020: M/s. Regal Auto Mobile Industries versus Federation of Pakistan and others.

C.P. No. D – 4191 of 2020: M/s. Foton JW Auto Park (Pvt) Ltd. versus Federation of Pakistan and others.

C.P. No. D – 4958 of 2020: M/s. Sara Automobile Ind (SMC-Pvt) Ltd. versus Federation of Pakistan and others.

C.P. No. D – 5232 of 2020: M/s. Al-Haj Faw Motors (Pvt) Ltd. versus Federation of Pakistan and others.

C.P. No. D – 5484 of 2020: M/s. Dysin Automobile Ltd. versus Federation of Pakistan and others.

C.P. No. D – 6595 of 2020: M/s. Dysin Automobile Ltd. versus Federation of Pakistan and others.

C.P. No. D – 776 of 2020: M/s. Regal Automobile Industires Ltd. versus Federation of Pakistan and others.

C.P. No. D – 2352 of 2021: M/s. Sazgar Engineering Works Ltd. versus Federation of Pakistan and others.

C.P. No. D – 258 of 2021:	M/s. MG JW Automobiles Pakistan Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4469 of 2021:	M/s. Lucky Motors Corp. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4488 of 2021:	M/s. Hyundai Nishat Motor (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4547 of 2021:	M/s. Master Changan Motors Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4587 of 2022:	M/s. Sazgar Engineering Works Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4717 of 2021:	M/s. Al-Haj Automotive (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 1402 of 2022:	M/s. Sazgar Engineering Works Ltd. versus Federation of Pakistan and others.
C.P. No. D – 29 of 2022:	M/s. Al-Haj Bus Co. (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 4393 of 2022:	M/s. Al-Haj Automotive (Pvt) Ltd. versus Federation of Pakistan and others.
C.P. No. D – 02 of 2023:	M/s. MGJW Automobile Pakistan versus Federation of Pakistan and others.
C.P. No. D – 3835 of 2024:	M/s. Lucky Motors Corp. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3974 of 2024:	M/s. Sazgar Engineering Works Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3469 of 2025:	M/s. Sazgar Engineering Works Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3470 of 2025:	M/s. Master Changan Motors Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3654 of 2025:	M/s. United Motors Private Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3695 of 2025:	M/s. Lucky Motors Corporation Limited versus Federation of Pakistan and others.
C.P. No. D – 3696 of 2025:	M/s. Hyundai Nishat Motor Pvt. Ltd. versus Federation of Pakistan and others.
C.P. No. D – 3741 of 2025:	M/s. Regal Automobile Industries Ltd. versus Federation of Pakistan and others.
For the Petitioners:	M/s. Khalid Jawed Khan, Ali Almani, Uzair Qadir Shoro, Qazi Umair Ali, Muhammad

		Hanif Faisal Alam, Imran Ali Abro, Mukesh Kumar G. Karara, Sajid Ali Channa, Sami-ur-Rehman, Ghulam Hussain Shah, Hamza Waheed, Imran Iqbal Khan, Sunder Lal Lohana, Muhammad Ali, Muhammad Baqar Raza, Arbaz Ahmed Yar Khan, Jam Asif Mehmood, Gohar Mehmood, Mehmood Ali, Nadir Hussain Abro, Ajeet Kumar, Tariq Rashid, Muhammad Inzimam Shareef, Muhammad Salman Khan, Mahmood Ahmed, Junaid Ahmed, Syed Kawish Hussain Naqvi, Salman Aziz, Muhammad Shahmeer Memon, Wasiq Bin Aqeel, Muhammad Younus Awais, Arif Ali, Bilawal Solangi, Darvesh K. Mandhan, Faisal Aziz, Zulfiqar Ali, Sadia Ashraf, Zulfiqar Ali, M. Nadeem Qureshi, Anwar Kashif Mumtaz, Usman Alam, Vivaik Kumar Madhudas, Muhammad Adeel Awan, Jwaid Farooqi, Muhammad Abbas, Rana Sakhavat Ali, Danish Ali, Irfan Ali Shaikh.
For the Respondents:		M/s. Zahid F. Ebrahim, Barrister S. Ahsan Ali Shah, Agha Shahid Majeed Khan, Khalid Mehmood Rajpar, Furkan Ali, Ms. Masooda Siraj, Sardar Zafar Hussain, Muhammad Zakir, Muhabat Hussain Awan, Muhammad Ishaque Pirzada, Aamir Raza, Khalid Iqbal Khan, Zafar Imam, Aamir Ali Shaikh, Muhammad Siddique, Syed Mohsin Ali Shah, Faheem Raza along with M/s. Nayyar Shafiq, Collector of Customs, Jahanzeb Abbasi, Additional Collector of Customs and Tariq Aziz, Assistant Director of Customs, and Arsalan, Assistant Collector.
For Federation:		Ms. Mehreen Ibrahim, Deputy Attorney General for Pakistan
For Province of Sindh:		Mr. Imran Ahmed Khan Abro, Assistant Advocate General, Sindh.
Dates of hearing	:	07.10.2025, 29.10.2025, 06.11.2025, 10.11.2025, 18.11.2025, 02.12.2025 & 10.12.2025 & Re-hearing on 17.08.2026
Date of decision	:	16.11.2026

J U D G M E N T

Muhammad Jaffer Raza J. – The Petitioners are importers and manufactures engaged in the automotive industry. Some Petitioners import components, sub-assemblies and raw material for manufacturing auto parts; some Petitioners

import components, including components in kit form ("**CKD**") for assembly/manufacture of vehicles; whereas some Petitioners also import complete built-up units ("**CBU**") of vehicles. The imports relate to vehicles classified under Chapter 87 of the Pakistan Customs Tariff ("**PCT**"). The Petitioners before us fall within two broad categories, namely; (a) Greenfield Investors; (b) Existing Manufacturers of vehicles and auto-parts.

2. By virtue of the aforesaid petitions, the Petitioners have impugned Additional Customs Duty ("**ACD**") levied by the Federal Government under section 18(5) of the Customs Act, 1969, ("**Act, 1969**") effected through a series of Statutory Regulatory Orders ("**SROs**"), on the import of material, components etc. used in the manufacture of vehicles and auto-parts. The impugned SROs, the list whereof, as challenged by both categories of Petitioners cumulatively, are tabulated hereinunder ("**Impugned SROs**"): -

SROs	Date	Effect
SRO 630(I)/2018	24.05.2018	Superseded SRO 1178/2015. ACD levied @ 2%, excluding goods imported under SRO 693/2006.
SRO 670(I)/2019	28.06.2019	Superseded SRO 630/2018. ACD levied on tariff slabs @ 2% to 7%, excluding goods imported under SRO 693/2006.
SRO 572(I)/2020	30.06.2020	Superseded SRO 670/2019. New slabs for ACD created, excluding goods imported under SRO 693/2006.
SRO 845(I)/2021	30.06.2021	Superseded SRO 572/2020. New slabs for ACD created, excluding goods imported under SRO 693/2006.
SRO 967(I)/2022	30.06.2022	Superseded SRO 845/2021. New slabs for ACD created, excluding goods imported under SRO 693/2006. No change in duty for Petitioners.
SRO 929(I)/2024	30.06.2024	Superseded SRO 967/2022, excluding goods imported under SRO 693/2006. No change in duty for Petitioners.
SRO 1151(I)/2025	30.06.2025	Supersedes SRO 929, excluding goods imported under SRO 693/2006. No change in duty for Petitioners.

3. Prior to recording the submissions advanced by the learned counsels, it will be prudent to briefly elucidate the undisputed background of the present

challenge. Pursuant to a decision of the Economic Coordination Committee ("**ECC**"), the Federal Government introduced the Automotive Development Policy 2016-21 ("**ADP**") on 21.03.2016. Through the said policy, automobile industry was incentivized to invest in the automotive sector. These commitments were subsequently implemented and given effect through various notifications, SROs and Investment Agreements, details of which shall be elucidated below.

4. For context, it is imperative to note that prior to the introduction of the ADP, the customs duties prevailing in the automotive sector were levied by the following SROs: -

(i) SRO 655(I)/2006 dated 22.06.2006.

The noted SRO, under section 19 of the Act,1969 provided partial exemption from customs duty payable under the First Schedule. The exemption was in respect of *"raw materials, sub-components, components and sub-assemblies, as are not manufactured locally, imported for the manufacture of components and assemblies as specified in Table-I"*. The noted SRO benefitted auto-parts manufacturers.

(ii) SRO 656(I)/2006 dated 22.06.2006.

The noted SRO, under section 19 of the Act,1969 provided partial exemption from customs duty specified in the First Schedule. The exemption was in respect of *"components (which include sub-components, components, sub-assemblies and assemblies but exclude consumables), imported in any kit form, and direct materials for assembly or manufacture of vehicles falling under Chapter 87 of the First Schedule"*. The noted SRO benefitted assemblers and/or manufacturers of vehicles.

(iii) SRO 1178 of 2015 dated 30.11.2015.

The noted SRO, under section 18(5) of the Act,1969 levied ACD. Clause (a) levied ACD on goods listed in Appendix I, which were components/parts for vehicles. Clause (b) levied ACD on sub-components and components *"imported as part of any kit form for the assembly or manufacturing of"* certain types of vehicles. The SRO clarified that: *"the additional customs duty shall be levied on the sub-components and components which become indigenized by the New Entrant assembler or manufacturers, in accordance with the said plan for progressive manufacturing."*

Succintly, components listed in this SRO were those that were required by auto policies to be *'indigenized'* or *'localized'* i.e. required to be manufactured in Pakistan. Thus, ACD imposed by this SRO was only on *localized* components in order to discourage their import and not on *'non-localized'* components.

For clarity, the levy was on the import of all goods specified in the First Schedule @ 1%, but goods imported under SRO 693/2006 were expressly excluded. By implication, goods imported under SRO 656/2006 were subjected to ACD.

5. As noted above, the ADP 2016-2021 was issued on 21.03.2016 with the primary object to lower the entry threshold for new investment in the auto-sector and to create an enabling tariff structure for development of the automotive sector. To encourage new investment, the ADP introduced investment categories of Greenfield[1] and Brownfield with different incentives.

6. To give effect to the various aspects of the ADP, the Ministry of Industries and Production issued several notifications dated 02.06.2016, all bearing No. 2(9)/2013-LED-II. The two notifications that are germane to these petitions are:

i. SRO 2(9)/2013-LED-II dated 02.06.2016 which provided the *"Five Year Tariff Plan of customs duties"*, hereinafter "**ADP Tariff Notification**"*;*
ii. SRO 2(9)/2013-LED-II dated 02.06.2016 which notified the investor categories of *Greenfield Investment* and *Brownfield Investment* along with the offered incentives, hereinafter "**ADP Investor Notification**".

7. The latter envisaged a *"New Entrant Agreement"* between the Federal Government and the new investor. Pursuant thereto, the Petitioners who were eligible as Greenfield Investors, entered into Investment Agreements with the Federal Government.

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[1] Category A defined "Greenfield Investment" as: -
"The installation of new and independent automotive assembly and manufacturing facilities by an investor for the production of vehicles of a make not already being assembled/manufactured in Pakistan."
For the purpose of clarity, the other category i.e. Category B pertained to "Brownfield Investment", which is not relevant for the purposes of the instant adjudication as none of the Petitioners fall into the said classification.

8. In furtherance of the ADP Tariff Notification and the ADP Investor Notification, the Federal Government issued the following SROs under the Act,1969:

SRO 482(I)/2016 dated 29.06.2016 ("**SRO 482/2016**")

SRO 483(I)/2016 dated 29.06.2016 ("**SRO 483/2016**")

SRO 484(I)/2016 dated 29.06.2016 ("**SRO 484/2016**")

9. The ADP Tariff Notification, the ADP Investor Notification, the Investment Agreements, SROs 482, 483 and 484 of 2016 shall cumulatively be referred to as "**ADP Implementing Instruments**". The following paragraphs shall encompass the salient features of the listed SROs.

SRO 482/2016.

10. The noted SRO was issued under section 19 of the Act,1969 to amend SRO 655/2006 to provide a partial exemption from customs duty levied under the First Schedule on *"raw materials, sub-components, components and sub-assemblies, as are not manufactured locally, imported for the manufacture of components and assemblies as specified in Table-I"*. This SRO benefitted auto-parts manufacturers.

SRO 483/2016.

11. The noted SRO was also issued under section 19 of the Act,1969 amending SRO 656/2006. Clause (a) of the noted SRO exempted certain components imported in any kit form and direct materials for assembly or manufacture of vehicles mentioned in Table-I, from so much of customs duty as specified in the First Schedule as is in excess of the rates specified in Table-I. Clause (a) of this SRO benefitted Existing Manufacturers of vehicles.

12. Clause (b) of the noted SRO exempted certain goods imported by a Greenfield Investor or Brownfield Investor for assembly or manufacture of certain vehicles, from customs duty specified in the First Schedule as is in excess of the rates specified in Table-II. The goods listed in Table-II were components in kit form, both localized and non-localized. Table-II also specified the duration of the exemption. To illustrate, for passenger cars

classifiable under PCT heading 87.03, customs duty on CKD non-localized was fixed @ 10% for 5 years for a Greenfield Investor, and 3 years for a Brownfield Investor; whereas customs duty on CKD localized was fixed @ 25% for both investors for 5 and 3 years respectively.

13. Clause (c) of this SRO exempted vehicles in CBU and plant and machinery imported by a Greenfield Investor, from customs duty specified in the First Schedule to the extent mentioned in Table-III. The Explanation clause of the SRO clarified that "non-localized" components were those that were not listed in the Appendices to SRO 693/2006, whereas localized component were those that were listed in SRO 693/2006.

SRO 484/2016.

14. The noted SRO was issued under section 18(5) of the Act,1969 to amend SRO 693/2006 whereby ACD had been previously levied. Clause (a) of the SRO reduced ACD on goods listed in Appendix I, which were components/parts for vehicles. Clause (b) changed the rate of ACD on components specified in the Table, imported as part of any kit form for assembly or manufacture of vehicles mentioned in the Table.

15. As noted for SRO 693/2006 *supra*, the ACD levied under the noted SRO was only on localized components. For this reason, the components or sub-assemblies imported by auto-parts manufacturers under SRO 482/2016 were not affected because that exemption was available only if components were not manufactured locally.

16. What is relevant for the purpose of present adjudication is that the levy of ACD through the noted SRO included the following proviso: -

> *"Provided further that in line with Auto Development Policy (ADP) 2016-21 the 18th March, 2016 notified by Ministry of Industries and Production vide Notification No. 2(9)/2013-LED-II dated 2nd June, 2016, the additional customs-duty leviable under this notification shall not be charged on sub-components and components, imported in any kit form, by an assembler or manufacturer declared to be an investor under Category-A "Greenfield Investment" for a period of five years and under Category-B "Brownfield Investment" for a period of three years, for*

> *assembly or manufacturing of the vehicles, excluding vehicles at Sr. No. 1, 7, 9, 11 and 12, specified in the above Table".*

17. With the promulgation of SRO 482, 483 and 484 of 2016, the rate of customs duties applicable to the Petitioners are summarised as follows: -

(a) for Existing Manufacturers of passenger cars classifiable under PCT heading 87.03: customs duty on CKD under SRO 483/2016 (both on localized and non-localized) became 30%; plus ACD under clause (b) of SRO 484/2016 on any localized component imported as part of a CKD became 16% (total 46%).

(b) for auto-parts manufacturers related to vehicles classifiable under PCT heading 87.03: customs duty under SRO 482/2016 became 1% on raw material, 10% on sub-components and components, and 20% on sub-assemblies i.e. if those were not manufactured locally.

(c) for Greenfield Investors who manufactured passenger cars classifiable under PCT heading 87.03: customs duty on CKD non-localized under SRO 483/2016 became 10% for 5 years; customs duty on CKD localized under SRO 483/2016 became 25% for 5 years; there was no ACD as per the proviso to SRO 484/2016.

18. It is also imperative to highlight that SRO 656/2006 was further amended by SRO 837/2021 dated 30.06.2021. The amendment stipulated *inter alia* that 30.06.2026 would be the expiry date of concessions given to new investors under the ADP as follows:

> *"xiva) The concessionary custom duty for various models of new entrants under ADP 2016-21 to continue for five years from date of first manufacturing certificate of respective variant issued by Engineering Development Board or upto 30th June 2026, whichever is earlier;"*

19. It is undisputed that the effect of the Impugned SROs was to increase the rate of ACD beyond the rate stipulated in SRO 484/2016, as noted above.

20. Succinctly stated, the case of the Petitioners is that the imposition of ACD through the Impugned SROs was in violation of the commitments made by the Federal Government in the ADP Implementing Instruments.

21. On behalf of the Petitioners, arguments were led by M/s. Ali Hussain Almani and Khalid Javed Khan Advocates. Learned counsel representing other Petitioners adopted the same, with M/s. Qazi Umair Ali and Nadeem Qureshi Advocates making additional submissions. For the Respondents, arguments were led by Mr. Zahid F. Ebrahim, learned counsel representing the FBR, with M/s. Agha Shahid Majeed Khan, Syed Ahsan Ali Shah and Khalid Rajpar Advocates for the customs department making additional submissions. The learned DAG representing the Federal Government adopted those submissions.

22. Mr. Ali Almani, learned counsel for Petitioners, submitted that the ADP issued by the Federal Government made a commitment to both Existing Manufacturers and new investors such as Greenfield Investors, that the rate of customs duties would remain unchanged for 5 years. Such commitment, according to the learned counsel, was also reflected in the Investment Agreements between the Federal Government and Greenfield Investors. He further contended that the words *"customs duties"* used in the ADP Tariff Notification signified that ACD too would not be increased in the prescribed/protected period and upon such commitment, the Petitioners made investments in the auto industry and acquired a vested right in those instruments for the said period, which rights cannot be abridged and are protected by the doctrine of promissory estoppel. Reliance was also placed on Section 6 of the Protection of Economic Reforms Act, 1992 (**"Act,1992"**). It was submitted that the ADP Implementing Instruments had impliedly overridden SRO 1178/2015 whereby 1% ACD was previously levied; resultantly, further levy of ACD by the Impugned SROs which started by superseding SRO 1178/2015, was of no legal effect. It was pointed out by the learned counsel that while the Impugned SROs categorically excluded ACD on goods imported under SRO 693/2006, same was not done for goods imported

under SRO 656/2006, thereby levying ACD on those goods which led to the instant controversy.

23. In the same vein it was submitted by the learned counsel that the argument by Respondents that ACD was not covered under the ADP, was only an afterthought which is apparent from the fact that comments of the Engineering Development Board (**"EDP"**) supported the Petitioners' case, and the Ministry of Industries had acknowledged in its statement dated 20-08-2024 that the Federal Government had to levy ACD despite its commitment due to changed economic environment. It was submitted that SROs 482, 483 and 484 of 2016 were issued to implement the commitment made by the Federal Government under the ADP Tariff Notification, which notification was never withdrawn, and therefore the levy of further ACD by the Impugned SROs was unlawful.

24. Mr. Khalid Jawed Khan, learned counsel for Petitioners further submitted that by virtue of the ADP Tariff Notification read with SROs 482, 483 and 484 of 2016, the rate of all customs duties, including the ACD of 1% levied by SRO 1178/2015, was locked for a period of 5 years. It was further contended that the increase in the rate of ACD by the Impugned SROs was a breach of the ADP Implementing Instruments and that this fact was acknowledged by the Federal Government in issuing SRO 904(I)/2021 to then reduce ACD from 7% to 2%. He further averred that the stance of the FBR that the ADP was not in respect of ACD, is contrary to the stance of the Ministry of Industries and to the ADP itself. He submitted that it is settled law that the Federal Government speaks with once voice; in this case, the ADP was notified by the Federal Government through the Industries and Production Division under Entry No.15 of Second II to the Rules of Business of the Federal Government, 1973 ("**Rules, 1973**"); resultantly, all other Divisions of the Federal Government had to act in aid of the Industries and Production Division and therefore the FBR cannot not take a contrary stance. He clarified

that since the ADP Implementing Instruments were never withdrawn by the Federal Government, the case of the Petitioners does not hinge on the doctrine of promissory estoppel.

25. He further submitted that that economic incentives given as a sovereign commitment by the Government cannot be taken away[2]. It was contended by him that if the Impugned SROs are allowed to remain in field, any incentive scheme introduced by the Government would not have any sanctity and as a natural consequence investors will be reluctant to invest in Pakistan.

26. Conversely, Mr. Zahid F. Ebrahim, learned counsel representing the FBR submitted that the central question in these petitions is whether customs duty includes ACD, whereas everything else is consequential. Whilst highlighting the scheme of customs duties under section 18 of the Act, 1969, learned counsel emphasized that ACD levied under sections 18(5) and 18(6) of the Act,1969 is separate and in addition to custom duty levied under section 18(1) of the Act. He submitted that under section 19 of the Act,1969 the Federal Government can give exemption from *"whole or any part of the customs-duties"*, and therefore the language of the exemption SRO itself would determine whether it was from whole of customs duties or any part thereof.

27. Continuing his submissions, the learned counsel invited our attention to the SROs issued under section 19 of the Act, such as SRO 656/2006 (as amended by SRO 483/2016), to highlight that the exemption was only from *"so much of customs duties"* as specified in the First Schedule, as are in excess of the rates specified in the SRO, and thus not an exemption from ACD which is levied separately from the First Schedule.

28. It was further submitted that under section 18 of the Act, 1969, it is within the competence of the Federal Government to levy customs duties in such form and manner as specified therein. It was also argued that the Petitioners were fully aware of the statutory framework, and that no upper-limit

[2] Federal Board of Revenue v. Dewan Salman Fiber Ltd reported at **2023 SCMR 1871.**

tariff plan was ever contemplated. It was further contended that no vested rights ever accrued in favour of the Petitioners and the imposition of ACD was always within the competence of the Federal Government.

29. Heard learned counsels and perused the record.

30. For clarity, it is specified that the instant judgment need not specifically delineate upon all the Impugned SROs. As noted above, the premise of the challenge to all such SROs is common and the common thread in all the Impugned SROs is the levy of ACD over and above the ADP Implementing Instruments.

31. Before framing the precise question before us, it will be imperative to first examine the scheme coined under the Act, 1969. Section 18 of the Act, 1969 encompasses various species of duties which can be classified as **customs duty** under Section 18(1) [3], **regulatory duty** under Section 18 (3) [4] and **additional customs duty** [ACD] under Section 18(5)[5].

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[3] 18. Goods dutiable.- (1) Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on,-
(a) goods imported into Pakistan;
(b) goods brought from any foreign country to any customs station, and without payment of duty there, transshipped or transported for, or thence carried to, and imported at any other customs-station; and
(c) goods brought in bond from one customs station to another.
(1A) Notwithstanding anything contained in sub-section (1), customs duties shall be levied at such rates on import of goods or class of goods as are prescribed in the Fifth Schedule, subject to such conditions, limitations and restrictions as prescribed therein.

[4] (3) The 115&120[Federal Government] may, by notification in the official Gazette, levy, subject to such conditions, limitations or restrictions as it may deem fit to impose, a regulatory duty on all or any of the goods imported or exported, as specified in the First Schedule at a rate not exceeding one hundred per cent of the value of such goods as determined under section 25 1b[or, as the case may be, section 25A].
(4) The regulatory duty levied under sub-section (3) shall –
(a) be in addition to any duty imposed under sub-section (1) or under any other law for the time being in force; and
(b) be leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.

[5] (5) The Federal Government may, by notification in the official Gazette, levy an additional customs-duty on such imported goods as are specified in the First Schedule, at a rate not exceeding thirty-five per cent of value of such goods as determined under section 25 2a[or, as the case may be, section 25A:]
[Provided that the cumulative incidence of customs-duties leviable
under sub-sections (1) 120[Omitted] and (5) shall not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements.]
(6) The additional customs-duty levied under sub-section (5) shall be,-
(a) in addition to any duty imposed under sub-sections (1) and (3) or under any other law for the time being in force; and
(b) leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the official Gazette in which such notification appears is published at any time after that day.]

32. The statutory scheme identified above pertaining to Sections 18 and 19(1)[6] of the Act, 1969 was expounded by the Hon'ble Supreme Court in the case of ***Ravi Spinning Ltd***[7]. Since reliance was placed on the noted judgment extensively by all the learned counsels, it will be imperative to examine the noted judgment in detail. The Hon'ble Supreme Court in the noted judgement was seized of appeals arising from judgements rendered by various High Courts in petitions filed by several industrial concerns challenging two types of notifications; first, imposing regulatory duty under Section 18(2) [now, 18(3)] of the Act, 1969 on imported goods, which were otherwise exempted either partially or wholly from the payment of customs duty under Section 18(1) of the Act, 1969; second, notification withdrawing exemption earlier given from payment of customs duty and sales tax on import of certain goods. It was held that statutory duty prescribed under the First Schedule to the Customs Act has nexus only with the duty levied under section 18(1) of the Act; and notification issued under section 19 of the Act granting exemption only from customs duty leviable under section 18(1), does not by implication cover regulatory duty imposed under section 18(2). The distinction between the different species of duties[8] was clearly enunciated by the Hon'ble Supreme Court in the following words: -

> *"The statutory duty prescribed under the First Schedule to the Act has nexus only with the duty levied under section 18(1) of the Act. Therefore, on the language of these SROs, it is not possible to hold that the exemption granted under these notifications also applied to the customs duty levied in addition to the statutory duty under section 18(2) of the Act or under other laws for the time being enforced. We have already*

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[6] 19. General power to exempt from customs-duties.-(1) The [Federal Government], whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests in situations arising out of abnormal fluctuation in international commodity prices, [omitted] [,] implementation of bilateral and multilateral agreements, [and to any international financial institution or foreign government-owned financial institution operating under a memorandum of understanding an agreement or any other arrangement with the Government of Pakistan] [or to implement an agreement of the Government of Pakistan with any entity], subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under this Act.]

[7] Collector of Customs and others versus Ravi Spinning Ltd. and others reported at **1999 SCMR 412**.

[8] It is specified that the noted judgment deliberated primarily upon the imposition of regulatory duty over and above the customs duty under Section 18(1) of the Act,1969. The same principles, however shall apply to imposition of Additional Customs Duty, as the same is only another species of duty specified under the Act,1969.

> *pointed out earlier in this judgment that in contradiction to the customs duty levied under section 18(1), of the Act, which is prescribed and predetermined, the regulatory duty is neither prescribed nor pre-determined but is levied at a rate which may vary according to the circumstances, Therefore, regulatory duty imposed by the Government under section 18(2) of the Act though a species of customs duty, is a duty in addition to the duty prescribed under the First Schedule to the Act to meet a particular situation, not covered by the statutory duty."* (Emphasis added)

33. Similar distinction was drawn by the Hon'ble Supreme Court in the case of ***Indus Trading***[9] wherein it was held as under: -

> *"5. Under section 18 of the Customs Act, 1969, customs duties are levied under different nomenclatures. Under section 18(1) statutory customs duty is imposed whereas under section 18(2) (after amendment regulatory duty is covered under section 18(3) of the Customs Act) the legislature has empowered the Federal Government to impose regulatory duty through notifications. Therefore, statutory duty under section 18(1) and regulatory duty under section 18(2) are two distinct categories of duties. One should not be taken to be the same as the other. It is by now well settled by the judicial pronouncements of this Court that where import or export of any commodity enjoys exemption from statutory customs duty, even then the Federal Government can impose regulatory duty, within the confines described in section 18(2) of Customs Act through subordinate legislation. Where the legislature grants exemption from the payment of customs duty that falls under section 18(1), the same cannot be made basis to avoid payment of regulator duty imposed subsequently unless there is also a promise that such concession would also be applied to regulatory duty in case it is levied in future. As the exemption in the present case does not contain such a promise it is to be applied only to duty that was chargeable under section 18(2) and not to a duty which can be competently levied under a different nomenclature."* (Emphasis added)

34. The principle that the extent of an exemption or concession is to be construed on the language of the exempting notification, was also enunciated upon in ***Ravi Spinning*** (supra), in the following words: -

> *"We now take up the cases covered by SRO No. 108(I)/95, dated 12.02.1995. These cases/appeals arise from the judgment of Peshawar High Court, dated 23.02.1997. We have already reproduced earlier in this judgment the text of SRO 108(I)/95, dated 12.02.1995. This SRO is valid for a period of 5 years from the date of its issue. The Government while granting exemption from payment of customs duty to the industrialists under this notification firstly, made no reference to the duty of customs prescribed in the 1st Schedule to the Act as was done in other SROs. Secondly, the expression used in this notification is "from whole of the customs duties" which is identical to the language used in the notification which came up for consideration before this Court in the case of Assistant Collector of Customs v. Gadoon Textile Mills (supra). Therefore, keeping in view the tenor of the language of the notification and the fact that the notification was valid for a period of 5 years from the date of its issue, the conclusion arrived at by the learned Judges of Peshawar High Court that the language used in the exemption notification covered the future levy of additional customs duty as well appears to be correct. We, accordingly, hold that in respect of the goods covered by SRO No. 108(I)/95, dated 12.02.1995, the*

[9] Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others reported at **2016 SCMR 842**.

regulatory duty imposed by SRO No. 1050(I)/95, dated 29.10.1995 was not recoverable." (Emphasis supplied)

35. The Hon'ble Supreme Court of Pakistan in the case of ***Saif Textile***[10] further dilated upon this issue and held as under: -

"It may be seen that this Court in the case of Abdur Rahim (ibid) has held that the Regulatory Duty falls within the definition of Customs Duty and is covered by Article 43, Schedule IV of the Constitution of Islamic Republic of Pakistan. Therefore, we are of the opinion that the expression "Exemption from whole of the Customs Duty" includes the Customs Duty as defined under section 18(1) and Regulatory Duty covered under subsections (2) and (3) of section 18 of the Act, 1969. It would be worth to mention here that exactly this proposition came for examination before this Court in the case of Assistant Collector, Customs (ibid), wherein while interpreting the word "whole" it was held that "Customs Duty" includes the "Regulatory Duty". This proposition can be examined from another angle namely if Legislature intended to levy Regulatory Duty, then it would have instead of using the expression "exemption from whole of the Customs Duty" may have use expression "exemption from Customs Duty" as defined under section 18(1) read with First Schedule of the Act, 1969. In this context, it may not be out of place to note that in S.R.O. No. 517(I)/89, dated 3rd June, 1989, exemption was granted from the whole of Customs Duties. Therefore, on its withdrawal, a compensation to the extent of 25 % ought to have been given in respect of the whole of Customs Duty including Regulatory Duty and if the argument so raised by the learned counsel for appellant is accepted that no exemption has been granted on the Regulatory Duty, it would create anomalous position, because on the one hand originally Government granted exemption from whole of the Customs Duty but the 25 % compensation (relief) had been withheld on the Regulatory Duty, which does not appear to be the intention of decision of ECC. As such, we are of the opinion that using the word "Customs Duty" in a singular form, instead of plural form, would not mean that Regulatory Duty is not included in it. It needs no detailed discussion that at a time the word used in a singular form can also construed in a plural sense to achieve the object of the law. It is to be noted that in the instant case the Federal Government in fact has agreed to grant compensation (relief), meaning thereby to share with the losses which the industrialists have suffered on withdrawal of the notification, dated 3rd June, 1989, therefore, such instrument has to be construed strictly and is to be interpreted in favour of the subject in whose favour a right has accrued. Thus, we are of the Opinion that the expression "exemption from whole of the Customs Duty" also includes the Regulatory Duty." (Emphasis added)

36. The primary distinction between the cases cited *supra*, most notably ***Ravi Spinning*** and ***Saif Textile***, is that the SROs upon which the importers succeeded in the noted cases employed the expressions *"from whole of the customs duties"* and *"exemption from whole of Customs Duty"* respectively. Similar language was employed in the case of ***Messrs Marosh***[11]. In the case before us, the exemption SROs issued under section 19 of the Act (SROs 482 and 483 of

[10] Government of Pakistan and others versus Messrs Saif Textile Mills Limited and others, reported at **2003 PTD 335**.

[11] Collector of Customs, Appraisement (west) and others Versus Messrs Marosh and others, reported at **2020 SCMR 579**. The said judgment upheld the judgement of a Division Bench on this Court in the case of Messrs Marosh and 24 others Versus Federation of Pakistan through secretary and 3 others reported at **2018 PTD 1787**.

2016) do not use the term *"whole"*, leading to the argument advanced by learned counsels for the Respondents, that no ceiling was ever applicable for imposing ACD in the case of the Petitioners. According to the learned counsels, the absence of the term *"whole"*[12] indicates the intent of the Federal Government, which according to them, reflects the arrangement between the respective parties.

37. In light of the pronouncements cited above it is evident that the legislature has made a clear distinction between different categories of duties, and exemption from one does not necessarily translate into an exemption from another. Neither is an exemption from one generally a restriction on the government's power to levy any other species of duties[13].

38. However, for the purposes of the present adjudication it is not the Petitioners' case that the exemption granted to them pursuant to the ADP under Section 19 of the Act,1969 was also an exemption from ACD. It is acknowledged by the Petitioners that SROs 482/2016 and 483/2016 (which amended SROs 655/2006 and 656/2006 respectively), had granted exemption only from customs duty payable under the First Schedule i.e. from customs duty levied under section 18(1) of the Act and not from ACD levied under section 18(5) of the Act. It is accepted by the Petitioners that even under the ADP they were liable to pay ACD as per SRO 484/2016 (which had amended SRO 693/2006) issued under section 18(5) of the Act. The case of the Petitioners is that the rate of all customs duties i.e. customs duty levied under section 18(1) of the Act (payable under SROs 482 and 483 of 2016), and ACD levied under section 18(5) of the Act (payable under SRO 484/2016), had been capped for 5 years, and therefore the increase in ACD by the Impugned SROs prior to the expiry of 5 years, was unlawful. Therefore, the contention of the Respondents that SROs issued under section 19 of the Act (i.e. SROs 482 and

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[12] Borrowed from Section 19 of the Act,1969.

[13] Collector of Customs, Appraisement (west) and others Versus Messrs Marosh and others, reported at **2020 SCMR 579**.

483 of 2016) do not give exemption from *"whole"* of customs duties, and the emphasis placed by them in that regard on the case of ***Ravi Spinning*** (supra), is misplaced.

39. At this juncture it will be imperative to highlight that the oscillating stance adopted by the Federal Government in these petitions was perplexing. The Ministry of Industries and Production (**"MoIP"**) had initially furnished comments advancing the stance taken by the Petitioners[14], relevant excerpts of which are reproduced below: -

> *"Imposition of additional custom duty is against the spirit of the ADP 2016-21. These were the reasons due to which EDB/MoIP has recommended the case of exclusion of SRO 656(I)/2006 and SRO 655(I)/2006 from the ambit of SRO 630(I)/2018 (Now SRO 670(I)/2019).*
> *It is again reiterated that imposition of additional customs duty will adversely impact existing and new/prospective entrants under Automotive Development Policy 2016-21. Therefore it is recommended that SRO656(I)/2006 and SRO 655(I)/2006 may be excluded from the ambit of SRO 630(I)/2018 (Now SRO 670(I)/2019).*
> *So far additional custom duty is concerned, EDB/MoIP is of considered opinion that the increase in the duties will be to the disadvantage of existing and new investors since their sustainability in the market heavily depends upon the tariff regime promised in Automotive Development Policy 2016-21."*

40. However, it was the FBR and the Customs department who took a contrary position, viz. that ACD was not covered in the commitments made by the Federal Government in the ADP. Since divergent positions were taken by two Divisions of the Federal Government, this Court asked the Federal Government to come up with one stance. Apparently, a meeting was then held between the MoIP and Ministry of Finance to reconcile their positions. The instructions then given by the MoIP to the Attorney General on 28.09.2021 was that ACD had to be imposed to *"to tackle issue of foreign currency management"*, but that, in the interest of the auto industry, the Federal Government had decided to reduce the rate of ACD back to 2% as existing in 2018. Subsequently, the MoIP through statement[15] revised the stance reproduced earlier citing *"changed economic conditions"* and the necessity to impose ACD as a *"pragmatic step to address*

[14] Duly reflected in order dated 24.02.2021.
[15] Dated 21.08.2024 filed in CPD 6167/2019. The stance is reflected in the annexed letter of the relevant ministry dated 20th August 2024.

the current economic needs". During the course of arguments, the Federal Government adopted the argument of FBR viz. that in issuing the ADP Implementing Instruments, the Federal Government had only capped the rate of customs duty levied under section 18(1) of the Act read with the First Schedule for a period of 5 years, and no commitment was made to do the same for ACD which could be levied separately under section 18(5) of the Act.

41. The question before us is, therefore, whether in issuing the ADP Implementing Instruments the Federal Government had committed to shield the Petitioners from any further increase in the rate of ACD during the period of the ADP; and if so, whether it was lawful for the Federal Government to increase the rate of ACD vide Impugned SROs before expiry of the ADP ?

42. The ADP Tariff Notification and the ADP Investor Notification were promulgated to implement the decision of the Federal Cabinet dated 18.03.2016 pertaining to the Investment Policy under the ADP 2016-2021. The ADP had stated: -

> *"To encourage new investment in the automobile sector, the respective tariff threshold has been reduced on localized and Non-localized components during the five year period of the ADP. This measure will not only provide an incentive to new players before they achieve the same level of indigenization as existing OEMs but also facilitate existing players to procure non-localized components at reduced rates, thus lowering the cost and prices of indigenously assembled vehicles."*

43. Therefore, it is clear that the ADP offered incentives in the form of concession in customs duties not only to Greenfield Investors in the auto-sector, but also to Existing Manufacturers of vehicles and auto-parts.

44. The categories of New Investors and the concession in customs duty committed to them under the ADP was notified by the Ministry of Industries and Production *vide* ADP Investor Notification as under: -

> *"<u>Investment Categories</u>:*
> *(i) Category-A: Greenfield Investment is defined as the installation of new and independent automotive assembly and manufacturing facilities by an investor for the*

production of vehicles of a make not already being assembled/manufactured in Pakistan

(ii) Category-B: Brownfield Investment is defined as revival of an existing assembly and/or manufacturing facilities, that is non-operational or closed on or before July 01, 2013 and the make is not in production in Pakistan since that date and that the revival is undertaken either independently by original owners or new investors or under joint venture agreement with foreign principal or by foreign principal independently through purchase of unit.

<u>Investment Incentives</u>

(i) Category-A Investor shall be entitled the following incentives:

a. Duty-free import of plant and machinery for setting up the assembly and/or manufacturing facility on a one-time basis.

b. Import of 100 vehicles of the same variant in CBU form at 50% of the prevailing duty for test marketing after ground breaking of the project.

c. Concessional rate of customs duty @ 10% on non-localized parts and @ 25% on localized parts for a period of five years for the manufacturing of Cars and LCVs;

d. Import of all parts (both localized and non-localized) at prevailing customs duty applicable to non-localized parts for manufacturing of trucks, buses and prime-movers for a period of three years, and

e. For Motorcycle industry, existing policy as approved by the Economic Coordination Committee (ECC) of the Cabinet vide decisions in case No. ECC-121/13/2013 dated 22nd August, 2013 and Case No. ECC-129/15/2013 dated 7th September, 2013 and notified by the Ministry of Industries and Production vide Notification No. 4-1/2013/LED-II (Vol-III) dated 26th September, 2013 shall continue.

(ii) Category-B Investor shall be entitled to: ……..

45. In furtherance of the ADP Investor Notification, the Petitioners who were eligible for the status of Greenfield Investor, executed Investment Agreements with the Federal Government. Perusal of the noted agreements reveals that a prerequisite to the concessional rate of custom duty was obtaining a Manufacturing Certificate from the Engineering Development Board (**"EDB"**) as enumerated in clause 2.3[16] of the same. It is admitted between the parties that the Manufacturing Certificate was obtained by all the Petitioners falling within the Greenfield category. It is specified that clause (c)[17] of the

[16] The First Party or New Investor shall formally apply to the Second Party/EDB to get vehicle manufacturing/assembly certificate. The Engineering Development Board's (EDB) Technical Team, after receipt of the formal application and requisite information, shall visit the manufacturing set up of the firm to verify in-house assembly/manufacturing facilities. Subsequent upon the recommendation of Technical Team and fulfilment of criteria, the EDB shall issue the Manufacturing Certificate and afterwards following incentives shall be available to the First Party:
a. Concessional rate of custom duty @10 percent on non-localised parts and @ 25 percent on localized parts for a period of five years for the manufacturing of Cars abd LCVs. All the parts of specific vehicle enlisted in the SRO 693(I)/2006 shall be considered as localized parts;

[17] c. Date of issuance of Manufacturing Certificate shall be the start of five/three year policy period (as the case may be)

noted term stipulated that the policy period was to commence from the date of issuance of the Manufacturing Certificate.

46. The commitment made by the Federal Government to Greenfield Investors *vide* ADP Investor Notification for concession in customs duty for a specific period, was then implemented by issuing SRO 483/2016 under section 19(1) of the Customs Act in respect of customs duty payable under section 18(1) of the Act, as mentioned above. To illustrate the same, it will be seen that the Table under clause (b) of SRO 483/2016 expressly mentioned that for a Greenfield Investor manufacturing passenger cars classifiable under PCT heading 87.03, customs duty on CKD non-localized shall be 10% for 5 years; and customs duty on CKD localized shall be 25% for 5 years. It was contended by the Respondents that a similar commitment was not made for ACD. However, at the same time as SRO 483/2016, the Federal Government had also issued SRO 484/2016, which was to fix the rate of ACD levied under section 18(5) of the Act. The proviso to SRO 484/2016 (reproduced in paragraph number 16 above) categorically stated that in furtherance of the ADP Investor Notification, the ACD levied under said SRO shall not be charged on sub-components and components imported in any kit form by a Greenfield Investor *"for a period of 5 years"* for purposes of assembly or manufacturing of stated vehicles.

47. Therefore, as far as Greenfield Petitioners are concerned, we need not look beyond SRO 484/2016, which itself stipulated that ACD shall not be charged for 5 years on stated components imported by Greenfield Investors. Resultantly, the argument of the Respondents that the Federal Government had not made any commitment with regards to ACD, is negated to the extent of the Petitioners falling in that category.

48. Adverting now to the Petitioners who are Existing Manufacturers of vehicles and auto-parts, the commitment made to them by the Federal

Government for concession in customs duties, was notified by the Ministry of Industries and Production *vide* ADP Tariff Notification as under:

> *"In pursuance of the Economic Coordination Committee (ECC) of the cabinet decision in case No., ECC-33/6/2016 dated 18-03-2016, the Government of Pakistan is pleased to notify the Five Year Tariff Plan of customs duties to be applicable on import of raw materials, sub-components, components and sub-assemblies for the manufacture of components and supplies for automotive vehicles and components in any kit form for assembly/manufacture of automotive vehicles with a view to provide a predictable and transparent policy environment to encourage and facilitate investments under the Automotive Development Policy (ADP) 2016-2021.*
>
> *Accordingly, five year tariff plan is given in the table below: -"* (Emphasis added)

49. The relevant excerpt of the Table of the Notification is reproduced under:-

> ***(D) Passenger Cars & other Motor Vehicles falling under HS Code 87.03***

1	Raw Material	1%	1%	1%	1%	1%
2	Sub Component	10%	10%	10%	10%	10%
3	Component	10%	10%	10%	10%	10%
4	Sub-Assembly	20%	20%	20%	20%	20%
5	CKD (Non-Localized) all Engine Capacities	30%	30%	30%	30%	30%
6	CKD (Localized) All Engine Capacities	45%	45%	45%	45%	45%
7	CBU up to 800 cc	50%	40%	40%	50%	50%
8	CBU 801 to 1000 cc	55%	45%	45%	55%	55%
9	CBU 1001 to 1500 cc	60%	50%	50%	60%	60%
10	CBU 1501 to 1800 cc	75%	65%	65%	75%	75%
11	CBU exceeding 1800 cc	100% + 50% RD	100% + 50% RD	100% + 50% RD	100% + 50% RD	100% + 50% RD
12	CBU Hybrid Electric Vehicles (HEVs)	Up to 1800 cc =50% exemption	Up to 1800 cc =50% exemption	Up to 1800 cc 50% exemption	Up to 1800 cc 50% exemption	Up to 1800 cc 50% exemption
13	CBU Hybrid Electric Vehicles (HEVs)	Exceeding 1800 cc =25%	Exceeding 1800 cc =25%	Exceeding 1800 cc =25%	Exceeding 1800 cc =25%	Exceeding 1800 cc =25%

		exemption	exemption	exemption	exemption	exemption
14	CBU Plugged-in Electric Vehicles (PEVs)	50%	50%	50%	50%	50%

50. Perusal of the ADP Tariff Notification reflects that the five-year tariff plan was applicable on *"customs duties"*, (plural) with the intent to provide a *"predictable"* and *"transparent"* environment to *"encourage"* and *"facilitate"* investments under the ADP. Perusal of the *"Policy Statement"* of the ADP itself reflects that the ADP was introduced to create an *"enabling and conducive environment to consolidate existing investments and to attract new investments"*. The *"preface"* to the said ADP further describes the policy intended to provide *"consistency"* and *"predictability"* for investors. Further, the message from the Minister of Industries and Production states that the ADP addresses issues including a *"predictable and stable tariff environment"* during the period prescribed in the policy and thereafter codifies the Tariff Structure.

51. The Table of the ADP Tariff Notification excerpted above shows that the tariff was also with respect of "CKD localized", which were goods upon which ACD was being levied under section 18(5) of the Act *vide* SRO 693/2006. The ADP itself had highlighted the issue arising out of maintaining different rates for localized and non-localized parts in stating:

> *"Previously, localized auto components were a part of SRO 693(1/2006) and were subject to higher duty vis-a-vis non-localized parts. SRO 693(1)/2006 is a parallel system to Custom General Order-11/2007 (CGO), which contains a list of all locally manufactured engineering goods, other than automotive. This system created unnecessary duality having two different rates for localized and non-localized parts of cars. Henceforth, Completely Knocked Down (CKD) rate of duty of both localized and non-localized shall be unified into a single rate of duty after five years of policy period and kept as prevailing rate of duty of localized CKD at that time. However, the present duty structure shall continue for seven years for new investors."*

52. Therefore, it is apparent that the tariff set-out in the ADP Tariff Notification had covered ACD levied under section 18(5) of the Customs Act which existed at the time under SRO 693/2006. It will be seen that entry No.11 in the Table reproduced above also included *"RD"* i.e. Regulatory Duty, which, like ACD, is levied separately under section 18(3) of the Act. If the tariff was

intended only for customs duty levied under section 18(1) of the Act as contended by Respondents, then the same would not have mentioned *"CKD localized"* and *"RD"*. Therefore, the argument of the Respondents that the ADP Tariff Notification did not include ACD, is without foundation.

53. Further, the usage of the term *"customs duties"* (plural)[18], indicates that the intent was always to place a ceiling/cap on what could be levied upon Existing Manufacturers. The stance of the FBR submitted in compliance of order dated 26.02.2025, maintaining that plural verbiage employed in the ADP Tariff Notification is *"erroneous"*, is unfathomable when that notification is read in its entirety. The same to our mind is deliberate as the notification clearly states that the intent was to provide a *"predictable"* and *"transparent"* environment to *"encourage"* and *"facilitate"* investments under the ADP. Displacement of the ceiling, to our mind, cannot provide a predictable environment enticing and/or encouraging investors to invest heavily in the industry. The fluidity of the tariff regime is the antithesis of what was committed by the Federal Government, as the absence of a steady and predictable tariff regime would only discourage investment.

54. In view of the foregoing, it is apparent that the rate of ACD that was notified vide SRO 484/2016 on components imported by the Existing Manufacturers, was capped by the Federal Government for a period 5 years as per the ADP Tariff Notification.[19]

55. It is correct that in levying ACD on material and components imported by Existing Manufacturers, SRO 484/2016 did not expressly state that the rate of ACD was being fixed for 5 years. However, that SRO manifests that it was issued to implement the ADP Tariff Notification, which was a notification

[18] The same was also observed by this court in order dated 26.02.2025.

[19] We have noted that for some of the components such as CKD localized, there was a difference of 1% in the total rate of customs duties capped by the ADP Tariff Notification @ 45%, and the cumulative rate of customs duties @ 46% under SROs 483 and 484 of 2016. This difference was attributed by learned counsel for the Petitioners to SRO 1178/2015 whereby ACD had been levied @ 1%. It was submitted that though ACD levied by SRO 484/2016 had exceeded the ADP Tariff Notification by 1%, the Petitioners did not consider a challenge worthwhile at that stage until ACD was further increased by the Impugned SROs.

issued by the Federal Government in exercise of executive powers under Article 90 of the Constitution to implement a policy, and therefore had the force of law. Therefore, SRO 484/2016 must be read in the context of the ADB Tariff Notification. Admittedly, the ADP Tariff Notification was never withdrawn by the Federal Government.

56. It is to be noted that after the first of the Impugned SROs was issued to increase the rate of ACD, MoIP's letter dated 28.06.2019 addressed to the FBR, had highlighted the spirit of the ADP, recommending consistency in the tariff regime for growth of the automotive sector and to ensure that the confidence of the investors remains unshaken. The altered stance taken by the MoIP through statement [20] citing *"changed economic conditions"* and the necessity to impose ACD as a *"pragmatic step to address the current economic needs",* is itself an acknowledgement that levy of ACD by the Impugned SROs was a departure from the commitment made vide ADP Tariff Notification. With respect, we find it difficult to appreciate and fathom the stance of pragmatism and changed economic conditions taken by the Federal Government. That cannot to our mind, give it the leverage to resile from the commitments made earlier, after enticing the Petitioners to invest heavily. The ADP clearly indicates that the Petitioners were incentivized to enter into the industry, invest heavily, and as a result were given assurances, which as noted hereinabove were reneged from.

57. We now come to the second part of the question *viz.* whether the Federal Government can renege on its commitment. In that regard, the protection afforded to the Petitioner by the doctrines of vested rights and promissory estoppel are all too well known, so also the statutory protection afforded by the Act, 1992.

[20] Dated 21.08.2024 filed in CPD 6167/2019. The stance is reflected in the annexed letter of the relevant ministry dated 20th August 2024.

58. Expounding on the former the Hon'ble Supreme Court in the case of ***Army Welfare Sugar Mills***[21], enunciated the doctrines of vested rights and promissory estoppel in the following words: -

> *"It may be mentioned that by now, it is well settled proposition of law obtaining in Pakistan that if an exemption from payment of excise duty or any other tax, has been granted for a specified period on certain conditions and if a person fulfills those conditions, he acquires a vested right, he cannot be denied the exemption before the expiry of the specified period, through an executive instrument like a notification, but he can be denied his vested right by a legislative provision ….*
>
> *It is …. evident that the doctrine of promissory estoppel is available in Pakistan against the Government and its functionaries …..*
>
> *The doctrine of promissory estoppel is pressed into service in order to prevent the exercise of legal right where it would be unconscionable for the possessor of those rights to do so …."*

59. The meaning assigned to 'vested rights' by superior courts was more recently embarked upon by the Hon'ble Supreme Court in the case of ***Mekotex***[22] in the following words: -

> *"14. As for vested rights, the legal position is also well settled. A right vests when all the facts required by law to be establish that right have occurred. In other words, when all the facts necessary to create a right have occurred, the right is said to be "vested". A right remains inchoate and contingent when some, but not all, of the investitive facts have occurred. A "vested right" is, therefore, one that is absolute, complete and unconditional, with no obstacles to its exercise. It is immediate and perfect in itself, not dependent upon any contingency. Vested right are thus free from contingencies, but ordinarily there are always specific occasions and circumstances under which such vested rights may be exercised."*

60. A Division Bench of this court in the case of ***Shahnawaz***[23] explained how a *"bare right"*[24] had been transformed into a *"vested right"*[25] as the importer altered his position in reliance of an exemption notification. Whilst the facts may not be entirely analogous, we see no reason to differ from the principles enunciated therein as the Petitioners before us had a bare right upon the issuance of the ADP Implementing Instruments limiting the ACD to be

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[21] Army Welfare Sugar Mills v. Federation of Pakistan reported at **1992 SCMR 1652**.
[22] The Commissioner Inland Revenue and others versus Mekotex (Pvt.) Limited and others reported at **PLD 2024 SC 1168**. The said judgment further dilated upon the distinction between vested rights and past and closed transactions. For the purposes of the instant judgment, it is only the former that is relevant.
[23] Shahnawaz (Pvt.) Ltd. through Director Finance versus Pakistan through Ministry of Finance Government of Pakistan, Islamabad and another reported at **2011 PTD 1558**.
[24] "Bare right" was opined to be the right granted vide the exemption notification under Section 19 of the Act,1969.
[25] The importer altering his position by entering into a contract was a case of "bare right" being transformed into a "vested right".

imposed and subsequently upon heavy investment (and presumably entering into various contracts) had a vested right and legitimate expectation to be dealt with strictly in accordance with the fiscal incentives relied upon by them. The commitments made by the Federal Government to the Petitioners were not mere declarations. The same were given statutory effect through notifications mentioned above, and could not be taken away as long as those notifications held the field.

61. In our view, a greater protection is afforded to the Petitioners under Section 6[26] of the Act, 1992. The protection of the noted Section is available to a statutory order having a term/duration specified therein i.e. it applies to such notifications that contain time-bound incentives, and if a notification came within the scope of section 6, it could not then be altered to the disadvantage of the investor as was held by a learned Division Bench in the case of ***Ibrahim Fibers Ltd***[27] and reiterated by the Hon'ble Supreme Court in the case of ***Dewan Salman Fiber Ltd***[28].

62. Further, section 6 had also came up for deliberation in the case of ***Ravi Spinning***, (supra) where the Court was considering the effect of different notifications issued under the Act,1969. As regards the notification issued under section 19 of the Act, 1969, which provided an exemption only from customs duty levied under section 18(1), the Court held that section 6 of the Act, 1992 did not preclude the Government from levying regulatory duty during the exemption period because such duty was leviable under a separate statutory power viz. section 18(2) of the Act,1969 [now section 18(3)]. However, for the other exemption notification [SRO No.108(I)/95 in that case], which categorically provided exemption from *"whole"* of customs duties for a specified period, the Court held that such exemption covered the future levy of

[26] "Protection of fiscal incentives for setting up of industries. The fiscal incentives for investment provided by the Government through the statutory orders listed in the schedule or otherwise notified shall continue in force for the term specified therein and shall not be altered to the disadvantage of the investor."

[27] Collector of Customs v. Ibrahim Fibers Ltd reported at **2013 PTD 2025**.

[28] Federal Board of Revenue v. Dewan Salman Fiber Ltd reported at **2023 SCMR 1871**.

regulatory duty under section 18(2) of the Act, and therefore the Federal Government could not recover regulatory duty imposed during the period of the given exemption. In other words, as long as the exemption is from all customs duties and for a specified period, same is protected by the noted section.

63. Further, the Hon'ble Supreme Court in the case of ***Gatron (Industries)*** [29] proceeded to examine a similar question i.e. whether an exemption available for a specified term could be withdrawn before expiry of its term in view of the Act, 1992. The Hon'ble Court held as under: -

> *"Here the appellant has heavily relied upon the statutory provision of section 6 of the Act which grants statutory protection against withdrawal of exemption granted under the notification, in question. Thus, visualized, the appellant has acquired a vested/statutory right of exemption from the levy of whole of the custom duty for the goods, in question, imported by them for the relevant period mentioned in the notification dated 13-12-1990. That statutory right could not, therefore, be taken away through the subsequent notification purported to supersede the first notification unless it is taken away through a legislative measure. This is not the case here. The second notification referred above being completely destructive of the right vested in the appellant is, therefore, without lawful authority and of no legal effect in so far as it affects the entitlement of the appellant for exemption from levy of whole of the customs duty for the disputed period.*
>
> *38. The provision of section 6 has not been modified by a legislative provision and without amending the same, the second notification has not achieved the object of defeating the consequences of exemption granted under the first notification.*
>
> *39. It is well-settled principle of interpretation of statutes that vested rights cannot be taken away save by express words and necessary intendment. No doubt that the Legislature, is also competent to amend, vary or repeal the same but the right conferred through statute can only be taken away by legislative enactment and not by an executive authority through notification in exercise of the rule-making power or the power to amend, vary or rescind an earlier order/notification in the purported exercise of powers conferred under section 21 of the General Clauses Act."* (Emphasis added)

64. Clearly, the ADP Tariff Notification, the ADP Investor Notification and SRO 484/2016 came within the scope of section 6 of the Act, 1992 inasmuch as it had incentivized investment in the auto industry, committing to Greenfield Investors that they would not be charged ACD for 5 years, and committed to Existing Manufacturers that customs duties would remain capped for a period

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[29] Gatron (Industries) Limited versus Government of Pakistan and others reported at **1999 SCMR 1072**. The noted judgement was relied upon by division bench of this court in the case of Messrs Gatron and Bhadelia Industries Ltd. and another versus Government of Pakistan and others reported at **1999 MLD 2994**. The latter was followed by a Division Bench of this court in the case of Al-Hamra Industries versus Federation of Pakistan reported at **2005 PTD 2505**.

of 5 years. Though the Federal Government did not withdraw the incentivizing notifications, it breached those notifications by issuing the Impugned SROs. Resultantly, the protection under the noted section was contravened by issuance of the Impugned SROs.

65. Though it was not argued, we are mindful that since the case of ***Gatron (Industries)***, (supra) section 19(3)[30] was inserted in the Act,1969, to override the relevant provisions of the Act,1992 and the doctrine of promissory estoppel. However, that provision is triggered where the incentive or exemption is expressly withdrawn by the Federal Government. As already stated, in the cases before us, none of the incentivizing notifications were ever withdrawn during the validity period of 5 years. In fact, it was not even the case of the Federal Government that the incentivizing notification were withdrawn, rather their case was that the incentivizing notifications did not cover ACD at all, which contention, as discussed above, is a fallacy. Perhaps it is for this reason, that the learned counsels for the Respondents did not place reliance on the noted provision.

66. In light of what has been discussed above, the listed petitions are allowed as follows: -

(i) It is declared that the proviso to SRO 484(I)/2016 had excluded the Petitioners who were declared Greenfield Investors from a further levy of ACD for the period specified in the proviso read with SRO 837/2021 dated 30.06.2021;

(ii) As regards the Petitioners who are Existing Manufactures of vehicles and auto-parts, who imported goods mentioned in the ADP Tariff

[30] Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms 1992 (XII of1992), and notwithstanding any decision or judgment of any forum, authority or court, no person shall, in the absence of a notification by the Federal Government published in the official Gazette expressly granting and affirming exemption from customs duty, be entitled to or have any right to any such exemption from or refund of customs duty on the basis of the doctrine of promissory estoppel or on account of any correspondence or admission or promise or commitment or concessionary order made or understanding given whether in writing or otherwise, by any government department or authority.

Notification, it is declared that the rate of ACD notified vide SRO 484/2016 was capped for the specified period of 5 years;

(iii) Resultantly, the further levy of ACD on the Petitioners by the Impugned SROs is declared to be unlawful. The Respondents are restrained from recovering ACD from the Petitioners under the Impugned SROs. Any security submitted by the Petitioners to secure ACD levied by the Impugned SROs shall be returned to them.

No order as to cost.

JUDGE

JUDGE

Karachi:

Dated 16.11.2026

*PS/SADAM**