

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-2753 of 2016

Present: Mr. Justice Sajjad Ali Shah, the Chief Justice  
Mr. Justice Zulfiqar Ahmad Khan

Petitioner: M/s Faisal Motors, through  
Mr. Khwaja Shamsul Islam, Advocate

Respondents: Model Collector of Customs (East) and Ors  
Mr. Iqbal Khurram, Advocate  
Mr. Asim Mansoor Khan, D.A.G.  
Mr. Ilyas Ahsan, Principal Appraiser (Legal)

Date of Hearing: 26.05.2016

**ORDER**

**ZULFIQAR AHMAD KHAN, J.:-** The grievance of the Petitioner finds its roots from the alleged misinterpretation of sub-clause 2(l) of the Import Policy Order, 2013 (the Import Policy), where definition of “new vehicles” is provided for.

Brief facts of the case are that the Petitioner imported a Honda Vezel, Model 2016 Car from Japan and filed all the relevant documents including Bill of Lading, Proforma Invoice, Commercial Invoice together with Goods Declaration (GD) under the Customs Act, 1969. Upon examination, an appropriate report was issued, which is annexed on page 63 of the petition, which described that the car has completed 72 Kilometers before it was exported from Japan. However, upon further examination it was found that the said car was one of the Japanese domestic model and was registered in Japan before it was exported to the Petitioner in Pakistan. While in

examination report it was provided that the manufacturing year of the said vehicle was 2016 and the car having only done 72 kilometers, the Respondent No.2 declined to release the said vehicle allegedly for the reason that import of registered cars do not fall within the meaning of *new vehicles* under sub-clause 2(l) of the Import Policy.

The Petitioner being aggrieved on account of the vehicle had only done 72 Kilometers and it was manufactured only in this (2016) year, how it could not amount to a new vehicle under the said import policy and has therefore approached this Court for interpretation of the said clause. The learned counsel appearing on behalf of the Petitioner vehemently argued that it is a brand new car and, as per the admission of the Respondent, has only done 72 kilometers as well as it was manufactured in the year 2016, thus it should rightly be held as a new vehicle under sub-clause 2(l) and be declared importable under the relevant provisions of the import policy. With regards to the earlier registration of the vehicle in Japan, the counsel admitted that since it was a domestic model car and under the Japanese law it was required to be immediately registered under the Japanese motors registration rules, which is more of a proforma requirement, therefore such registration in Japan, should not come in the way of having this car imported as a new vehicle under sub-clause 2(l) of the said Import Policy.

These contentions of the counsel for the Petitioner were vehemently challenged by the counsel appearing for the Respondents, who also filed a Counter Affidavit, which primarily corresponds to the earlier version of the Principal Appraiser where he held that once a vehicle is registered (in the country of export),

this act disqualifies the vehicle to be declared as a new vehicle under the said policy in Pakistan, thus bared from import as such.

Since the matter pertains to interpretation of clause 2(l) of the import policy, we find it prudent to reproduce the same in the following:

2(l). “New vehicles” means vehicles manufactured during twelve months preceding the date of importation and not registered or used prior to importation”

As it could be noted from the above definition that only those vehicle would qualify as ‘new vehicles’ which (a) have been manufactured during the twelve months preceding the dated of importation **and** (b) not registered **or** (c) used prior to importation. As per the rule of interpretation, the dispute seemingly is whether the said definition be read conjunctively or disjunctively. If it is read conjunctively the said sub-clause, with slight consequent rearrangement and parenthesis keeping in mind that in both the cases it is a must for bringing the vehicle within its purview that the vehicle has to have a manufacturing date of past twelve months preceding the dated of importation into Pakistan, would read like that such a vehicle have to be (a) not registered in the country of export, or (b) not used in the country of export prior to its importation in Pakistan. If however the definition is to be read disjunctively, the mere proof of registration of the vehicle prior to its importation in the foreign country alone OR alternatively its prior use would be conclusive to remove the vehicle from importability as a new vehicle under the said sub-clause 2(l).

No matter how one prefers, true meaning of sub-clause 2(l) has to comport with reason, commonsense, realities, the tenor of

new vehicle's definition and the main purpose if we keep in mind the fact that registration will always supersede with the earlier use conditionality (in the foreign country) since there is no legal possibility that a vehicle could have been used in a foreign country without first having it registered under the laws of the exporting country. To us, the very intent of the legislature as read by the respondent is that as soon as the first conditionality of "registration" in the foreign country is successfully met, one is not even required to read this definition any further, and following the established practice of strict interpretation of tax statutes, having been registered in the foreign country, the vehicle falls short of the requirement of being termed as a new vehicle under sub-clause 2(l). However in doing so it seems that one has missed out the words 'or used prior to importation' present in the said sub-clause, which is against the fundamental principles of statutory interpretation which requires that every part of a statute is presumed to be of some effect and is not to be treated as meaningless unless absolutely necessary.

According to the fundamental approach to statute reading one may break the statute into "elements," and examine the key effects that will trigger different legal result when the statute is read in parts, and eventually join all the parts for the conclusive meaning. Therefore we can divide sub-clause 2(l) into these three elements and read them one at a time in the following:

Element-1 New vehicles means vehicles manufactured during twelve months preceding the date of importation.

If sub-clause 2(l) had only the above referred text, it would be very clear to interpret its meaning. It would mean that all the

vehicles which have been manufactured in the last 12 months (preceding the date of importation) would be regarded as 'new vehicles' and they can be imported as such. However, the legislature wanted to include a caveat or disqualification in the above general condition and added the words 'and not registered' to it. So, element 2 of the said text would read as under:

Element-2 New vehicles means vehicles manufactured during twelve months preceding the date of importation **and** not registered.

As mentioned above, now only those vehicles will be regarded as 'new vehicles' which have been manufactured within last 12 months (preceding the date of importation) as well as they have to be unregistered to be termed as a 'new vehicle'. With the addition of this caveat, now the entire set of vehicles envisaged by Element-1 has been reduced to a smaller set of those vehicles which have not been already registered in the country of export prior to those vehicles' import in Pakistan. If the definition would have concluded here, the petitioner's case would have been put to rest. Since mere registration would have put a full-stop to the importability of the vehicle under sub-clause 2(l) even if it was though manufactured within the last 12 months from the date of importation.

But there are additional words in the said sub-clause which are 'or used prior to importation' which seemingly are not read by the respondents. Now when we read the entire text of sub-clause 2(l) we see that while the first element of 12 months prior manufacturing date is vital for all the vehicles 'and not registered' element removes all registered vehicles from the definition of new vehicles, this disqualification is healed by the words 'or used prior to importation'.

Giving meaning to the effect even if the vehicle (having manufactured in the last 12 months) is registered, such registration will not disqualify the vehicle to be treated as a new vehicle, as long as, post registration, the said vehicle is not used in the country of export.

Since there is no legal possibility of using a vehicle (unless it is registered in the country of export) one could go an extra mile to safely say that words 'not registered' in the presence of the words 'used prior to importation' appear superfluous in the above definition. Thus even if the sub-clause 2(l) definition was as under, it would mean the same thing and would have given the same results:

“New vehicles means vehicles manufactured during twelve months preceding the date of importation and not used prior to importation”

Now if we look at the Petitioner's case we see that though the (within 12 months old) vehicle was registered, but it was not used in the country of export, therefore it fits the criteria set under sub-clause 2(l). Since registration (no matter in which country it is granted) is a license to use the vehicle on the road and if a person has registered a vehicle in his name and not used it, the vehicle though may have lost its *statutory luster* (if we can call it so) can now only be re-registered in the name of a second person, but it has not lost its newness under sub-clause 2(l).

In support of his contention, the learned counsel cited the case of Shazeb Pharmaceutical Industries Ltd. vs Federation of Pakistan (reported as 2006 PTD 2237), where the interpretation of word “and” being conjunctive or disjunctive was determined. The controversy in that case was about the word “and” present in SRO

551(I)/2008 where it was contended that in the said notification the word “and” used in the column heading titled “raw material for the basic manufacture of pharmaceutical active ingredients and for the manufacture of pharmaceutical products” had to be read as “or”, which means to qualify the concession granted under the said SRO, the raw material has to either satisfy the first element of being used for ‘manufacture of pharmaceutical active ingredient’ or the second element that the raw material ought to be used for the ‘manufacture of a pharmaceutical product’. While the defendants were reading it conjunctively, however the plaintiff contended for the disjunctive reading. The fact was however that the raw material was to be used for both i.e. for the basic manufacture of “pharmaceutical active ingredients” and for the manufacture of “pharmaceutical products” for the very basic reason that once the raw material has been used in the manufacture of “pharmaceutical active ingredients”, it ceased to exist and was not available for the manufacture of “pharmaceutical product”, therefore, there was no practical possibility that these two conditions be read as disjunctively as it would result in redundancy. It was for the said reason court held that true condition is that the raw material was to be used either for the basic ‘manufacture of pharmaceutical active ingredients’ or for the ‘manufacture of pharmaceutical products’, therefore, the word “and” was used or read as “or” disjunctively.

The situation in the instant case is also the same since there is no practical possibility that a vehicle that has been imported could have been used in the foreign country without its forehand registration, leading us to interpret that the condition of registration would be read conjunctively with the allowance of prior use thereby leading us to the conclusion that a vehicle that has been registered

but not used prior to importation would be declared as a new vehicle in each of the two scenarios, and if we consider the concept of use without registration it would amount to statutory absurdity. This view finds support from clause 5(vii), which provides that for the goods specified in Appendix-C, a ban for import in second hand or in used conditions applies except for those goods in respect of which specific exemption is provided therein. A review of Appendix "C" shows that for all kind of vehicles of Chapter 87 of PCT Code (in which the instant vehicle falls), import of second-hand or used vehicle is banned (unless specifically exempted). It is also pertinent to mention that as per Appendix-E of the said Import Policy, there is an exemption mechanism established for the import of second-hand or used vehicles through personal baggage, transfer of residence and gifts scheme, whereas the import of the Petitioner's vehicle being a new vehicle does not fall within any of the aforesaid schemes, therefore, any person importing such a prior-registered but unused vehicle cannot be regarded as a person importing a second-hand vehicle.

Now we look at the instant case with the litmus test of reality of our local market and consider a hypothetical case where Mr. A buys a brand new car from a showroom and registers it in his name with the motor registration authority of his jurisdiction anywhere in Pakistan. Now for some odd reasons (may be on a second look when the car was brought to his garage he didn't like the color of his car) he wants to sell it. Will this car be sold as a 'new vehicle' or not? The answer is simple, for all technical and practical purposes the car is a brand new car and will fetch him nearly the same price for which he bought the car. However when the new buyer will go to the registration office, he will be registered as a second owner of the car,



therefor as said earlier, his car may have lost its *statutory luster*, it's still a brand new car for all technical and practical purposes. Therefore we do not see, how a brand new shining 75Km-done car of 2016 model, when brought through a container when arrives at the port will become an old car for the purposes of the customs authorities, unless someone is misreading the definition of 'new vehicle' provided for in the sub-clause 2(l) where there is word "or" in between the condition of registerability and prior use. It seems that the respondents are reading the said clause as if the word "or" was replaced with the word "nor" whereby if the vehicle had registration or prior use, in both the circumstances the vehicle would not have been treated as a new vehicle (assuming it is no more than 12 months old vehicle in both the cases), which is not correct.

For the reasons mentioned hereinabove, we are of the view that the instant vehicle that was manufactured within 12 months from the date of import, though has been registered in the country of export (Japan) but being unused and legitimately showing only 75 Km on its speedometer, does qualify the definition of a 'new vehicle' set in sub-clause 2(l) of the Import Policy 2013, we therefore have no hesitation in allowing this petition and order the respondents to treat the said vehicle as a 'new vehicle' under the said sub-clause.

Karachi: 16.08.2016

Judge

Chief Justice