

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

CP No.D-3140 of 2021  
CP No.D-3196 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGES
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Priority

1. For orders on office objection No.10.
2. For hearing of CMA No.13599/21
3. For hearing of main case.

**19.05.2021**

Mr. Darvesh K. Mandhan, advocate for the petitioners.  
Ms. Naima holding brief for Dr. Shahab Imam, advocate for respondents.

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Pursuant to Court notice, Ms. Naima Advocate has shown appearance on behalf of Dr. Shahab Imam, who is reportedly busy before another bench, however, requests for time to file vakalatnama and comments on behalf of the respondents.

Learned counsel for the petitioner, however, submits that instant petition can be disposed of in terms of earlier order already passed by this Court in the case of ***Moin Jamal Abbasi Vs. Federation of Pakistan*** reported in (***2020 PTD 660***), whereby, respondents have been directed to release the vintage cars after compliance of codal formalities and deposit of US\$ 5000 towards duty and taxes by the petitioner before the Nazir of this Court. In support of his contention, learned counsel for the petitioner has referred to order dated 30.03.2021 passed by this Court in the case of ***Faraz Hussain v. Federation of Pakistan and others (C.P.No.D-1719/2021)*** available at pages 33-39 as annexure C-1 with the instant petition.

Learned counsel holds brief for respondents' counsel does not dispute such factual position, however, she submits that respondents have filed CPLA before the Hon'ble Supreme Court, however, above judgment has not been suspended nor any restraining order has been passed.

In view of hereinabove facts and circumstances of the case, while placing reliance in the aforesaid judgment passed by this Court, instant petitions are disposed of in the following terms:-

“ We have heard the learned counsel for the parties and perused the record with their assistance, and also examined the relevant provisions of Import Police Order, 2016 as well as SRO 833(I)/2018 dated 03.07.2018.

From perusal of S.R.O. 833(I)/2018, dated 03.07.2018, it appears that same has been issued under the powers conferred upon the Federal Government in terms of section 19 of the Customs Act, 1969, which reads as follows:-

'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, removal of anomalies in duties, development of backward areas [,] implementation of bilateral and multilateral agreements [and to any international financial institution or foreign government to owned financial institution operating under a memorandum of understanding, an agreement or any other arrangement with the Government of Pakistan], 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.]

(2) A notification issued under subsection (1) shall be effective from the day specified therein, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.

(3) 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 of 1992), 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.]

[(4) The Federal Government shall place before the National Assembly all notifications issued under this section in a financial year.

(5) Any notification issued under subsection (1) after the commencement of the Finance Act, 2015 shall, if not earlier rescinded, stand rescinded on the expiry of the financial year in which it was issued.

[Provided that all such notifications, except those earlier rescinded, shall be deemed to have been in force with effect from first day of July, 2016 and shall continue to be in force till thirtieth day of June, 2018, if not earlier rescinded:

Provided further that all notifications issued on or after the first day of July, 2016, and placed before the National Assembly as required under subsection (4) shall continue to be in force

thirtieth day of June, [2019], if not earlier rescinded by the Federal Government or the National Assembly.]]'

Perusal of hereinabove provision of Section 19 of the Customs Act, 1969, shows that the Federal Government has been authorized to exempt from payment of customs duty notwithstanding any provision either contained under Customs Act, 1969 or under any other law for the time being in force including Income Tax Ordinance, 2001 and Sales Tax Act, 1990 etc. From perusal of provision of Import Policy Order, 2016, it can be seen that certain restrictions and prohibitions have been imposed in terms of Para. 5 of the Import Policy Order, 2016, therefore, regulating the import and export of the goods into or outside Pakistan, however, subject to prohibitions and restrictions. Whereas, in terms of Para. 20 of the Import Policy Order, 2016, the Federal Government is empowered to allow imports in relaxation of any prohibition or restriction under this Order. It is pertinent to note that Para. 20 of the Import Policy Order, 2016 allows the Federal Government to relax any prohibition or restriction relating to import, and there seems no restriction upon the Federal Government to even to allow complete exemption from payment of custom duty and taxes or to reduce the amount of customs duty in appropriate cases as per policy, SRO (I)/2018 dated 03.07.2018 has been admittedly issued by the Federal Government through Ministry of Finance, Economic Affairs, Statistics and Revenue, (Revenue Division), Government of Pakistan, whereby the Federal Government has been pleased to exempt the vintage or classic cars, jeeps meant for transport of persons on the import, from payment of customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax as are in excess of cumulative amount of US Dollars Five Thousand (US \$ 5000) per unit, and has also been pleased to define the "vintage or classic cars and jeeps as "old and used automotive vehicles" falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 and manufactured prior to January 01, 1968, whereas, there has been no reference to any other restriction or prohibition as may be attracted in terms of Import Policy Order, 2016 in respect of other imported vehicles, which shows the clear intention of the Federal Government, not only to exempt a vintage or classic cars from payment of duty and taxes in excess of cumulative amount of US\$ 5000/- per unit, but also to relax other prohibitions or restriction, if any, in respect of other vehicles as per Import Policy Order, 2016.

In view of above facts and circumstances of the case, we are of the opinion that there seems no ambiguity regarding import of vintage or classic cars and jeeps on payment of US \$ 5000/- falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969, provided it is manufactured prior to January, 01, 1968. Accordingly, respondents, under the facts and circumstances of instant case, and in the light of

SRO 833(I)/2018 dated 03.07.2018, issued by the Federal Government, are required under law to release the vehicle(s) of the petitioner(s) on payment of US \$ 5000. Moreover, custom authorities are under legal obligations to abide by all such notifications and SROs, issued by Federal Government under section 223 of the Customs Act, 1969.

Accordingly, above petition(s) are allowed along with listed applications, with the directions to the respondents to release the subject vehicles of the petitioner(s) within seven days on payment of US \$ 5000 in terms of SRO 833(I)/2018 dated 03.07.2018 subject to execution of bond by the petitioner to the effect that in case of any different view taken by the Larger Bench of this Court or by the Hon'ble Supreme Court as the case may be, said release of subject vehicle(s) will be subject to further orders and as per legal position as may be emerged thereafter. The request of the petitioner(s) for issuance of Delay and Detention Certificate shall also be decided in accordance with Law.

Petitions stand allowed along with listed application(s) in the above terms.

Judge

Judge

Nadeem