

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

**C.P No. D-5094 of 2022**

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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Priority

1. For hearing of CMA No.21745/2022
2. For hearing of Main Case

**17.10.2022**

Mr. Muhammad Ishaque, Advocate for the petitioners  
Mr. G.M Bhutto, AAG  
Mr. Khalid Rajpar, Advocate for Respondent No.2

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**Zulfiqar Ahmad Khan, J:-** Petitioner No.2 claims that he has purchased the consignment of used car (2016 Toyota Rush-1490CC) imported into Pakistan by petitioner No.3 namely Habib Gul Muhtaj S/o Rehman Gul under gift scheme through Bill of lading attached at page 65 dated 30.09.2021, since the need to make a sale arose after issuance of SRO 52(I)/2019 dated 15.01.2019 by the Federal Government, which mandated that all duty and taxes in respect of such imports under the gift scheme have to be made out of foreign exchange by Pakistani nationals (abroad) themselves or through local recipient, who ought to have converted such foreign remittances into local currency, which condition was not fulfilled by the original importer or his local recipients. It is an admitted fact that the consignment landed in Pakistan on 28.10.2021, for which a G.D was filed shortly thereafter, and there being blatant illegality witnessed in the import, proceedings were initiated against the importer/clearing agent, who was allegedly involved in the clearance of vehicles with fake documents being in serious violation of the above SRO readwith the Import Policy Order, 2020.

Mr. Muhammad Ishaque, learned counsel for the petitioners stated that on 20.08.2022 he made an application to the customs authorities for amending consignee's name and address due to "mistake" of shipping company in the manifest as he intended to replace petitioner

No.2's name i.e. Mr. Gul Qadar S/o Khan Rahim with the original consignee Mr. Habib Gul Muhtaj S/o Rehman Gul, while the original importer was resident of Hangu and the amendment was also aimed to change address of the new consignee to Charsada. His grievance was that no action has been taken on the said request and consignee's name has not been replaced despite a fresh BL having been issued in the new name available at page 49 (which has no date). A prayer through the instant petition is made that the respondents be directed to amend the consignee's name and address under section 45(2) of the Customs Act, 1969 and eventually handout the vehicle to the new owner.

Mr. Khalid Rajpar, learned counsel for Respondent No.2 stated that, first of all the application made on 20.08.2022 is after a delay of more than 10 months, as the application (page 35) clearly suggests that the correct IGM is dated 28.10.2021 and section 45(2) of the Customs Act, 1969 is not attracted to the case, as it only aims to rectify "obvious errors" arising out of inadvertence, which is not the case at hand. In the similar circumstances, Mr. Rajpar states that recently an Hon'ble DB of this Court has rendered judgment dated 07.09.2021 in the cases of *M/s Al-Hamd Steel Furnace v. Federation of Pakistan and others* (C.P No.D-4776 of 2021) reported as 2021 PTD 1858, where this Court has held that such sort of changes are not "obvious errors" which could have been rectified under section 45(2) *supra*. Whereas, learned counsel for the petitioners has placed reliance on the cases reported as 2004 PTD 997, SBLR 2009 Sindh 1744, PLD 2001 Lahore 78 and PTCL 2003 CL 723 and the judgment dated 12.09.2014 passed by this Court in CP No.D-361 of 2014, to support the contention that such an amendment was permiciable.

Heard the counsel and perused the record. The fact that the IGM was filed on 28.10.2021 is not denied by both the learned counsel. It is also not denied that the application for amendment allegedly under section 45(2) *supra* is made after a lapse of 10 months when the

proceedings against the importer/clearing agent have already been instituted, as he was unable to supply the requisite documents. To our mind, the present petitioner No.2 Gul Qadar S/o Khan Rahim is stranger to the present proceedings as he claims that he has purchased the gifted vehicle, which was designated to the family of Habib Gul Muhtaj S/o Rehman Gul, *in fact* no document has been attached to prove this transaction even if one at all considers it to be a legit exchange. As rightly pointed out by Mr. Khalid Rajpar, scope of section 45(2) *supra* is limited to “obvious errors”, which in the case at hand are not found, instead a new individual is being transposed and the petitioner No.2 admits that he has purchased the said vehicle from the petitioner No.3. SRO 52(I)/2019 when read with the gift scheme provided under the IPO 2020, makes it clearer that the payment of duties and taxes has to be made by the donor or the local recipient in respect of the vehicle through foreign exchange. By no stretch of imagination, such a gift can be transferred to another person, as admittedly Gul Qadar has not paid a penny in respect of the subject vehicle even at the time of its export either. This sham transaction is utterly mischievous, in our view. We therefore dismiss the instant petition, as all the cases cited by the learned counsel for the petitioners were distinguishable, wherein none of those cases, matter of import through gift scheme of car was under consideration. Nonetheless, even the ratios of those cases do not correspond to the case at hand. Resultantly, respondents are directed to proceed in accordance with law, however, if the petitioner Nos.1 and 2 wish to purchase the said vehicle through auction, they may participate in those proceedings, however, strictly in accordance with law. Possibility of re-export of the said vehicle under paragraph 6 of Appendix-E of IPO 2020 may also be considered if the donor requests.

Judge

Judge