

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D- 1345 of 2023

Date Order with signature of Judge

Priority.

1. For Order on Office Objection.
 2. For hearing of Misc. No. 6549/23.
 3. For hearing main case.
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12.06.2023.

Mr. Muhammad Nadeem Qureshi along with Mr. Muhammad Salman,
Advocate for Petitioner.
Mr. Mirza Nadeem Taqi, Advocate for Respondent.
Dr. Huma Sodher, Advocate for Respondent.
Mr. Qazi Ayazuddin Qureshi, Assistant Attorney General.

MUHAMMAD JUNAID GHAFAR J.- Through this petition, The
Petitioner has sought the following prayers: -

- A) To allow the release of subject vehicles with all standard accessories & Attachments (detail mentioned in Bill of Lading and GD No. KEWB-HC-5326-24-01-2023) on payment of leviable duty and taxes (which are already been paid).
- B) Direct the respondent No. 5 & 6 to grant the permission for the post shipment examination of subject impugned vehicles by the customs authorized PSI companies M/s. Bureau- Veritas Pvt. Ltd., Pakistan or SGS Pak. Pvt. Ltd., for PSI Certificates before the clearance and release of the subject impugned specialized vehicles.
- C) Restrain the Respondents, including their officers from taking any coercive/adverse action against the subject property of the petitioner and also against the petitioner.
- D) Grant any other relief deem just and appropriate under the circumstances of the case.
- E) Grant cost of the Petition."

Learned Counsel for the Petitioner has contended that specialized vehicle in question, fulfills the condition as defined in Section 2(h) of the Import Policy Order, 2022 as it is a new vehicle except that mileage is more than 500 kilometers; that even otherwise in terms of Section 10(2)(d) of the said Order, old and used specialized machinery for construction and specialized vehicles are permissible for import subject to a pre-shipment inspection by approved Companies and this being a matter relating to government contract and CPEC, inspection be ordered locally and the vehicles in question be ordered to be released upon payment of duty and taxes. He has also referred to order dated

05.10.2022 passed in C.P No. D-5769 of 2022 available at page-95 of the file.

On the other hand, Respondents' Counsel submits that the prayer and request so made through this petition already stands adjudicated by this Court vide Order dated 17.05.2023 passed in C.P No. D- 2144 of 2023 (*Mi Tingbin Vs. Federation of Pakistan and others*), and therefore, no case for indulgence is made out and the petition is liable to be dismissed.

We have heard both the learned Counsel and perused the record. At the very outset after a brief hearing and before we had heard the Respondents Counsel, an option was given to the Petitioners Counsel not to press this Petition, and we will direct the Customs Authorities to consider the request of the Petitioner and decide the same in accordance with law; however, it was contended that it is a case of interpretation of law; hence this Court must exercise its discretion.

Nonetheless, after going through the Order passed in the case of *Mi Tingbin (Supra)* by a learned Division Bench of this Court, we are of the view that since the issue already stands adjudicated against the Importer / petitioner in that case; even no such directions can be given by us now. While confronted, learned Counsel has made his best efforts to distinguish the said order; however, we are not inclined to agree.

We have also summoned file of the said case and it appears that the prayer in the said petition was identically worded; therefore, even otherwise it is not even a case of distinguishing it, as the issue and the prayer before the Court is identical. We have not been able to persuade ourselves to even remotely suggest for a reference to a larger bench. The said order dated 17.05.2023 reads as under: -

“17.05.2023

Mr. Muhammad Nadeem Qureshi, advocate for the petitioner

The petitioner has imported vehicles and upon their arrival at port has filed the relevant goods declaration/s with the department for assessment and clearance. Vide an assessment alert¹, the petitioner has been intimated that the model number discovered has been found to be totally inconsistent with model number declared and in addition thereto, per the odometer readings, the goods / vehicle/s are found to not be new. The petitioner was then called upon to justify / address the aforesaid queries and upload the *pre shipment inspection certificate* for verification.

Instead of satisfying the departmental queries and while the assessment proceedings remain incomplete / pending, the present petition has been preferred essentially seeking directions for release of the vehicle/s. An interim application has also been preferred seeking orders for a *post shipment inspection* of the imported vehicle/s.

¹ Available at page 101 of the file.

The Customs Act 1969 provides a comprehensive mechanism for clearance of imports and the primary determination in such regard is the assessment order. While a person aggrieved by an assessment order may escalate the matter in appeal, per the statutory hierarchy, however, no case is made out to abjure the entire process and for the matter to be determined in the writ jurisdiction of this Court; even otherwise factual controversies are not amenable for adjudication in writ jurisdiction².

The assessment proceedings are demonstrably underway and it is appropriate for the petitioner to provide the justifications / documentation sought, so that an appropriate assessment order may be rendered. While the petitioner remains at liberty to seek appellate recourse there against, if aggrieved, however, no occasion has arisen for this Court to be encumbered with the jurisdiction of the assessment officer. Even otherwise such matters eventually come before this Court in its reference jurisdiction, if required, however, adjudication by this Court at such a nascent stage would render the entire statutory hierarchy otiose.

Without prejudice to the foregoing, the prayer seeking orders for *post shipment inspection* is also unmerited before us, *inter alia*, as the requirement manifest from the assessment alert is a *pre shipment inspection certificate*.

In view hereof, this petition is found to be *prima facie* misconceived and even otherwise devoid of merit, hence, the same, along with pending application/s, is hereby dismissed in *limine*.”

In view of hereinabove facts and circumstances, no case for any indulgence is made out; since the matter in respect of directing any post-shipment inspection has been declined in the above case to another Petitioner / Importer, this petition also does not merit any consideration and was dismissed in the earlier part of the day by means of a short order and these are the reasons thereof.

JUDGE

JUDGE

Avaz

² 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.