

**IN THE HIGH COURT OF SINDH, KARACHI**

*Before: Muhammad Junaid Ghaffar &  
Mohammad Abdur Rahman, JJ*

**C.P. No.D-882 of 2025**

Abdul Rauf

Vs.

Federation of Pakistan &amp; others

**AND****C.P. No.D-883 of 2025**

Muhammad Javed Khosa

Vs.

Federation of Pakistan &amp; others

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Petitioner : Mr. Umer Ilyas Khan, Advocate

Date of hearing : 3 March 2025

Date of Short Order : 3 March 2025

Date when Reasons were  
Given For the Short Order : 4 March 2025

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**ORDER**

**MOHAMMAD ABDUR RAHMAN,J:** This common order will decide C.P. No.D-882 of 2025 and C.P. No.D-883 of 2025, each maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, impugning two separate notices issued by the Deputy Collector AIB/R&D dated 25 February 2025 each seeking the recovery of penalties under Entry no. (9) of Sub-Section (1) of Section 156 of the Customs Act, 1969.

2. Each of the Petitioners imported into Pakistan old auto parts and in respect of which goods declarations were presented under section 79 of the Customs Act, 1969. The import of old auto parts is regulated by the Import Policy Order, 2022 and which only made such goods importable in terms of

SRO 499(I)/2009 dated 13 June 2009 and which were hence adjudicated and released against a Redemption Fine of 20% of value of the goods and a penalty of Rs. 20,000.00 in terms of the order in original passed in respect of each consignment.

3. After the release of consignments, the Impugned Notices have been issued by the Respondent No.3 to each of the Petitioners in the following terms:

(i) **Impugned Notice in CP No.D-882 of 2025**

" ...

GOVERNMENT OF PAKISTAN

COLLECTORATE OF CUSTOMS APPRAISEMENT-WEST  
CUSTOMS HOUSE, KARACHI

NO. SI/Misc/09/2025-AIB-(AW)

Dated 25 02-2025

HEARING NOTICE

Subject: HEARING NOTICE FOR PENDING RECOVERY AMOUNTING TO RS.4747580/- W.R.T. NON-PAYMENT OF PENALTY AS PER AMENDED SECTION 156 OF THE CUSTOMS ACT, 1969

During the course of post-release verification (PRV), it has been observed that M/s. ABDUL RAUF & SONS (NTN NO.1214680) was liable to pay a penalty at the rate of 100% of the offending value as per the amendment in Section 156 of the Customs Act, 1969, vide the Finance Act 2023-24, in respect of the following list of Goods Declarations (GDs)

GD NO	Paid Amount Rs.	Payable Amount Rs.	Differential Amount to be Paid
KAPW-HC- 20691-10-08- 2023	20,000	1,541,746	1,521,746
KAPW-HC- 1973-06-07-2023	20,000	3,245,834	3,225,834
<b>TOTAL</b>	<b>40,000</b>	<b>4787580</b>	<b>4787580</b>

2. However, it has been noted that only Rs.40,000/- was paid. This resulted in a short realization of Rs.4,747,580/- of penalty amount.

In view of the above, you are hereby provide with the opportunity of hearing on dated 04.03.2025 at 12:00 noon before Deputy Collector, AIB/R&D to explain your position and also pay the short paid tax liability to prove your bonafides. Your timely cooperation and response will be indicative that you are a bonafide business that takes its legal obligation seriously, while, unjustified delays will be reflective of otherwise. In case of no response within 07 days from the issuance of this letter, this office will be constrained to initiate proceeding under the relevant provision of law

(Deputy Collector)  
AIB/R&D"

**(ii) Impugned Notice in CP No.D-883 of 2025**

“ ...

GOVERNMENT OF PAKISTAN

COLLECTORATE OF CUSTOMS APPRAISEMENT-WEST  
CUSTOMS HOUSE, KARACHI

NO. SI/Misc/09/2025-AIB-(AW)

Dated 25 02-2025

**HEARING NOTICE**

Subject: HEARING NOTICE FOR PENDING RECOVERY AMOUNTING TO RS.7,635,382/- W.R.T. NON-PAYMENT OF PENALTY AS PER AMENDED SECTION 156 OF THE CUSTOMS ACT, 1969

During the course of post-release verification (PRV), it has been observed that M/s. BATOOL ENTERPRISES (NTN NO.3357741) was liable to pay a penalty at the rate of 100% of the offending value as per the amendment in Section 156 of the Customs Act, 1969, vide the Finance Act 2023-24, in respect of the following list of Goods Declarations (GDs)

GD NO	Paid Amount Rs.	Payable Amount Rs.	Differential Amount to be Paid
KAPW-HC-15968-02-08-2023	15,000	2,870,424	2,855,424
KAPW-HC-17427-04-08-2023	15,000	2,734,679	2,719,679
KAPW-HC-7437-15-07-2023	15,000	2,075,279	2,060,279
<b>TOTAL</b>	<b>45,000</b>	<b>7,680,382</b>	<b>7,635,382</b>

2. However, it has been noted that only Rs.45,000/- was paid. This resulted in a short realization of Rs.7,635,382/- of penalty amount.

In view of the above, you are hereby provide with the opportunity of hearing on dated 04.03.2025 at 12:00 noon before Deputy Collector, AIB/R&D to explain your position and also pay the short paid tax liability to prove your bonafides. Your timely cooperation and response will be indicative that you are a bonafide business that takes its legal obligation seriously, while, unjustified delays will be reflective of otherwise. In case of no response within 07 days from the issuance of this letter, this office will be constrained to initiate proceeding under the relevant provision of law

(Deputy Collector)  
AIB/R&D

3. The notices have been issued in terms of an amendment made by the Finance Act, 2023 in Entry No. 9 of Sub-Section (1) of Section 156 of the Customs Act, 1969 and which is reproduced hereinunder:

S No.	Offences	Penalties	Section of this Act to which the offence has reference
...			
9.	<p>(i) If any goods, not being goods referred to in clause 8, are imported into or exported from Pakistan evading payment of leviable customs-duties or in violation of any prohibition or restriction on the importation or exportation of such goods imposed by or under this Act or any other law; or</p> <p>(ii) If any attempt be made so to import or export any such goods; or</p> <p>(iii) If any such goods be found in any package produced before any officer of customs as containing no such goods; or</p> <p>(iv) If any such goods be found either before or after landing or shipment to have been concealed in any manner on board any conveyance within the limits of any seaport, airport, railway station or other place where conveyances are ordinarily loaded or unloaded; or</p> <p>(v) If any such goods, the exportation of which is prohibited or restricted as aforesaid be brought within a customs area or to a wharf, with the intention of loading them on a conveyance for exportation in violation of such prohibition or restriction</p>	Such goods shall be liable to confiscation; and any person concerned in the offence shall also be liable to a penalty not exceeding two times <b>but not less than</b> the value of the goods.	15 & 16

4. At the time when goods declaration was presented it is apparent that through Clause (c) of Sub-Section (9) of Section 4 of the Finance Act, 2023 the words “but not less than” were inserted into the second column of entry No 9 of the table contained in Sub-Section (1) of Section 156 of the Customs

Act, 1969 meaning thereby that at the minimum a penalty of 100% of the value of the goods could be imposed thereunder.

5. The vires of Clause (c) of Sub-Section (9) of Section 4 of the Finance Act, 2023 were impugned before this Court in numerous unreported petitions, the leading of which was C.P. No. D-4301 of 2023 entitled **Muhammad Bilal and others vs. Federation of Pakistan and others** and which was dismissed on 12 February 2025 in the following terms:

“ ... *Petitioners counsel was asked to identify the touchstone whereupon the vires of the impugned provision was challenged. It was never the petitioners case that the impugned amendment offended any provision or scheme of the Customs Act. The only argument articulated was that it offended Articles 4, 18 and 25 of the Constitution.*

*Respectfully, the said argument cannot be sustained as under no stretch of imagination could the provision be demonstrated to offend any right to be dealt in accordance with the law and / or freedom or trade. The sanction placed to discourage dealing in restricted items could also not be shown to be discriminatory.*

*Irrespective hereof, the comments filed by the department denote that the petitioners have concealed from this Court that adjudication has already been undertaken, vide issuance of show cause notices and orders in original etc., however, enforcement has been stayed in the garb of the present petitions. The learned counsel for the petitioners did not dispute the adjudication process having taken place. Regretfully appears an attempt has been made to render the entire statutory scheme otiose on the pretext of an unjustified challenge to the vires.*

*In view hereof, these petitions are found to be misconceived even otherwise devoid of merit. The concealment of material facts from the Court is also noted with much regret. Therefore, these petitions all pending applications, are dismissed with costs of Rs.100,000/- per petitioner to be deposited with the Sindh High Court Clinic within a week hereof. In the event that the costs are not deposited as aforesaid, the same may be recovered as arrears of land revenue, inter alia per Chapter VIII of the Land Revenue Act 1967.*

*Office is instructed to place copy hereof in each connected file.”*

6. Mr. Umer Illyas Khan entered appearance on behalf of the Petitioner and contended that the words “but not less than” as had been inserted in column No. 2 of entry No. 9 of Sub-section (1) of Section 156 of the Customs Act, 1990 has been omitted by the Finance Act, 2024 and as such the exercise of discretion by the Respondent No.3 in particular circumstances was not restricted by such language and hence the action of the Respondent No. 3 warranted intervention. He further added that such a discretion should be exercised in terms of intent and which was lacking on the part of each of the Petitioners. On this basis he contended that the Impugned Notices were illegal and liable to be set aside.

7. We have perused the Impugned Notices, the relevant law and have considered the arguments addressed by Mr. Umer Ilyas Khan. A reading of column No. 2 of entry No. 9 of Sub-section (1) of Section 156 of the Customs Act, 1990 clarifies that at a minimum penalty of 100% of the value of the goods was mandatorily to be imposed in respect of the goods that were imported and which fell within the purview of that entry during that period when the insertion existed and the vires of which has been upheld by this Court. It has not been disputed by the Counsel for the Petitioner that each of the goods were imported during the period when such amendment was in force and as such to our mind, the provisions of that entry as existing at the relevant time of import could be imposed by the Respondent No. 3. The language of the entry clearly states that the discretion which has been given to Respondent No.3 to impose a penalty must at the least, be equivalent to the value of the goods and which the Respondent No.3 had correctly levied in the Impugned Notice. That being the case we cannot see how the discretion given has been incorrectly exercised by the Respondent No. 3 and who has imposed the minimum penalty as prescribe therein. The Petitions are therefore clearly misconceived.

8. For the foregoing reasons, these Petitions were dismissed by us *in limine* through a short order and the and these are the reasons for the same.

JUDGE

ACTING CHIEF JUSTICE

Karachi dated 4 March 2025