

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

ICA No.1197 of 2021

The Collector of Customs, Dry Port, V/S Bilal Akbar etc.
Lahore.

JUDGMENT

Date of Hearing:	05.04.2023
Appellant by:	M/S Waqar A. Sheikh and Rana Mehtab, Advocates for Appellant-department.
Respondents by:	M/S Ali Sibtain Fazli, Abad-ur-Rehman and Hasham Ahmad Khan, Advocates for the Respondent No.1.

JAWAD HASSAN, J. This Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972 has been filed against the impugned order dated 16.12.2020, passed by the learned Single Judge whereby Writ Petition bearing No.68810 of 2019 filed by the Respondent No.1 was allowed.

2. Brief facts giving rise to filing of this Appeal are that the Respondent No.1 purchased a vehicle/Mercedes 300 SE Coupe, Chassis No.11202122009480, Model 1967 from one Raza Hussain and claimed it to be a “Vintage Car” duly covered under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 and pursuant to SRO 833(I)/2018, dated 03.07.2018 (the “SRO”) and other relevant rules and regulations on the subject imported in Pakistan which makes the vehicle exempted from Customs, Regulatory Excise duties, Sales Tax and Withholding Income tax. He submitted all the necessary documents for its release but the same was refused by the Appellant-department on the ground that the aforementioned SRO was in violation of Paragraph No.20 of the Import Policy Order 2016 and unless the concerned Ministry amends the Policy of 2016 to bring it in conformity with the SRO 833(I)/2018, dated 03.07.2018, such vintage vehicle could not be released. This very situation was confronted to the Appellant-department who

through its Report, Parawise comments and Arguments rebutted stance of the Respondent No.1 with the submissions that exemption claimed by the Writ Petitioner was admissible only if corresponding amendment regarding import of vintage or classic cars is made in the Import Policy Order, 2016, by the Ministry of Commerce/the Competent Authority.

3. Mr. Waqar A. Sheikh, ASC contended that while passing the impugned order, the learned Single Judge did not take into account that under Appendix-C of the Policy Order, 2016, the vehicle in question was included in the list of items not importable in used/second-hand condition, similarly, in accordance with the Appendix-E of the said Policy Order more than three years old cars are not allowed to be imported in Pakistan while the vehicle in question pertains to Model-1967. Moreover, the vintage/classic cars are not included in regulating provision of the Import Policy Order; that Serial No.10 of Appendix-C has been inserted in the Import Policy Order only to give import cover to certain types of vehicles and, therefore, has a very limited scope and that the regulating provisions for import of vehicles into Pakistan is prescribed under Appendix-E of the IPO; that the Ministry of Commerce in terms of Serial No.5 Schedule-II of the Rules of Business, 1973 has the exclusive domain to regulate imports and exports and, therefore, the Ministry of Finance, Economic Affairs, Statistics and Revenue Division has no jurisdiction to regulate it by issuing the SRO 833(I)/2018, dated 03.07.2018, thus, no benefit can be given to the Respondent No.1 qua the said SRO and that even otherwise, Board's SRO 833(I)/2018, dated 03.07.2018, is meant for to regulate the calculations, duties and taxes only; that the Writ Petitioner/Importer of the vehicle in question mis-declared the HS Code of the vehicle as 8703.5059 to avail undue exception from the negative list of HS Code provided in Appendix-C while the declared HS Code is specified in the Pakistan Customs Tariff for Hybrid Electric Vehicles (HEVs) only whereas the vehicle in question is a vintage/classic car which is correctly classifiable under HS Code 8703.3390 which is included in the list of HS Codes not importable as per Serial No.10 of Appendix-C of the Import Policy Order, 2016; that it was the Paragraph No.8 of the Import Policy according to which

any dispute or clarification regarding import status of any item which cannot be resolved by the Customs Authorities shall be referred to Ministry of Commerce for final decision. Reiterating that Import Policy 2016 allows only the import of used cars less than three years old; that the Ministry of Commerce has the exclusive domain to regulate imports and exports; that the Ministry of Finance, Economic Affairs, Statistics and Revenue Division has jurisdiction only qua Tax Policy, Tax administration and its ancillary matters and thus has no concern with the regulation of imports and exports and that application of the SRO 833(I)/2018, dated 03.07.2018 has wrongly been construed while passing the impugned order and the learned counsel, therefore, seeks setting aside of the same placing reliance on **2020 PTD 660 Sindh High Court and 2021 PTD 407 Sindh High Court**.

4. Mr. Ali Sibtain Fazli, ASC contended that the Respondent No.1 purchased a vintage Mercedes 300 SE Coupe, Chassis No.11202122009480, Model 1967 from one Raza Hussain and imported in Pakistan under the SRO 833(I)/2018, dated 03.07.2018 thereby exemption from Customs duty, Regulatory duty, Additional Customs duty, Federal Excise duty, Sales Tax and Withholding Tax in excess of the cumulative of US\$5000 per unit has been allowed. Moreover, he submitted all the relevant documents for its release along with G.D. before the Deputy Collector Customs, Dry port, Lahore, who refused to do so on the ground that despite the fact that, the SRO 833(I)/2018, dated 03.07.2018 is still in field, yet a corresponding Notification under the Import Policy Order, 2016 is essential for release of the vehicle which is to be done by the Ministry of Commerce. The Respondent No.1 being aggrieved of this observation of Deputy Collector Customs filed the aforementioned Writ Petition asserting that the vehicle fell under PCT Heading 8703.5059 and that in terms of the SRO 833(I)/2018, dated 03.07.2018; the Appellant-department has no authority to refuse to release the vehicle. Maintains that learned counsel for the Appellant-department failed to establish that the vintage vehicle imported by the Respondent No.1 fell under the banned items; Further maintains that the Principle of Judicial Estoppel is fully applicable, as on the one hand the Appellant-department did not dispute

the PCT Code of the vehicle in their Parawise comments while on the other hand asserted that imported vehicle fell within the banned category, therefore, the Appellant is estopped by its conduct to take divergent stance before the Court. It is further contended by learned counsel for the Respondent No.1 that the judgment relied upon by the Appellant is not applicable because the issue before the Sindh High Court and Islamabad High Court was different from the case in hand, as admittedly, the PCT Code 8703.5050 does not fall within the category of banned items. Adds that admittedly the SRO dated 03.07.2018 has still not been withdrawn thereby Ministry of Finance, Economic Affairs, Statistics and Revenue (Revenue Division) Government of Pakistan has exempted vintage or classic cars and jeeps meant for transport of persons. Placing reliance on a case reported as **Federal Board of Revenue etc. versus Kh. Saad Saleem and another (PTCL 2015 CL 313)** submitted that even smuggled vehicles have been released in past on payment of duties and taxes while his case is based on legal norms in all respects, as the learned Single Judge noted in the order being impugned through this Appeal. Thus prays for dismissal of this Appeal with a direction to the Appellant department to release the vehicle on the carpet in terms of the SRO 833(I)/2018, dated 03.07.2018, which is still in field.

5. Heard. Record perused.

6. As per contention of learned counsel for the Appellant the learned Single Judge while passing the impugned order dated 16.12.2020 should have taken into account that it was/is not the Appellant who has the jurisdiction to release the vehicle in question rather it was/is the Ministry of Commerce having exclusive jurisdiction to regulate the Import and Export of the vehicles and that as per Clause 5(A)(vii) the goods as specified in Appendix-C are banned upon import in secondhand or used condition and that as the vehicle is of Model 1967, therefore, it was not included in the category of vehicles importable under Appendix-E of the Import Policy Order, 2016 because more than three years' old cars are not allowed to be imported in Pakistan. Furthermore, HS Code of the impugned vehicle has also been misconstrued by the learned Single Judge.

7. The Vehicle imported by the Respondent No.1 is claimed to be covered under PCT Code 87.03 of First Schedule to the Customs Act, 1969 and pursuant to SRO 833(I)/2018 dated 03.07.2018. Language of said Code pertains to Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02) including station wagons and racing cars while as per the SRO dated 03.7.2018, the Federal Government, Ministry of Finance, Economic Affairs, Statistics and Revenue has exempted vintage or classic cars from duties and taxes mentioned above.

8. A minute perusal of the SRO 833(I)/2018, dated 03.07.2018 and Paragraph No.20 of the Import Policy Order 2016 make it crystal clear that only afore-referred Taxes and Duties have been exempted on an importable item i.e. the vehicle in this case. Now the second question would be; ‘what is the impediment in importing the vehicle in question in Pakistan by the Respondent No.1’. To answer this, we have to go back to the claim of the Respondent No.1 that the vehicle pertains to year 1967 and putting in juxtaposition with The Gazette of Pakistan, Extra, April 18, 2016 [Part-II] we shall come to know about **“Eligibility and Condition” for Pakistan Nationals to import or gift a vehicle**, which reads as under:-

“3. Conditions of Import---(1) Vehicles more than five years old shall not be allowed to be imported under gift, personal baggage and transfer of residence schemes, but this condition shall not apply to secondhand or used bullet proof vehicles, if imported under these schemes:

(2) Cars older than three years shall not be allowed to be imported under gift, personal baggage and transfer of residence schemes.

Explanation----the age of vehicle shall be determined from the 1st January of the year subsequent to the year of manufacture till the date of shipment as per bill of lading.”

From this, it is established that one of the main barriers in import of the vehicle in question is the above elucidation, according to which import of 1967 Model vehicle cannot be allowed, however, it can only be allowed to be imported when the Federal Government through the Ministry of Commerce (the Regulatory Authority) relaxes the prohibition on import of above category of vehicles. As for application of the SRO is concerned, as stated above, it does not provide importability of the vehicle in question but exemption of levy of aforesaid taxes and duties only.

9. There is no denial that earlier in some identical cases titled **Moin Jamal Abbasi** Versus **The Federation of Pakistan** (2020 PTD 660) and **Meena Munawar Khan** Versus **Federation of Pakistan** (2021 PTD 407) Sindh and Islamabad High Courts respectively had directed the Customs Department to release the vintage vehicles on payment of US\$5000/- in terms of said SRO dated 03.07.2018 to the writ petitioners in said cases. However, the matter in hand requires deeper appreciation and analysis.

10. The most important issue is the question of domain/jurisdiction of the Ministry of Commerce and Trade and Ministry of Finance, Economic Affairs, Statistics and Revenue Division, Government of Pakistan regarding the import of vintage vehicle. It is pertinent to mention here that subsequent to the passing of supra judgment in **Meena Munwar case**, a Summary dated 11.01.2019 was submitted by the Ministry of Commerce and Textile Industry to the Economic Coordination Committee of the Cabinet for permission to import of vintage cars. Although the proposal was considered by the Economic Coordination Committee of the Cabinet in its meeting held on 15.01.2019, yet the same was not approved. The Economic Coordination Committee's decisions taken in its meeting was ratified by the Cabinet on 24.01.2019. Thus it is the Ministry of Commerce which is to allow importability or relaxation in Import Policy 2016. In this regard, the report submitted on behalf of Secretary, Ministry of Commerce in compliance of this Court's order makes this issue more clear, which reads as under:-

“.....the SRO No.833(I)/2018 has been issued by the Revenue Division which stipulates conditions of levy of tax/duty of US\$5000 per unit. Import

Policy Order 2016 does not allow import of cars older than three years under any scheme. The said SRO being issued under the Customs Act 1969 has nothing to do with Import and Export Control Act, 1950 which is the law regulating imports and exports.”

Before summing the matter, we would like to refer the judgment passed in **Imad Samad and others Versus Federation of Pakistan through Secretary Commerce and 3 others (2021 PTD 2063)** by the Full Bench of Sindh High Court wherein the precise question framed was as under:-

“Whether the subject SRO No. 833(I)/2018 issued in terms of Section 19 of Customs Act, 1969, can also be treated as SRO issued by the Ministry of Commerce in terms of Section of the Import & Export Control Act, 1950, permitting import of vintage cars which are otherwise not importable as being old and used in terms of the Import Policy Order of both 2016 and 2020.”

The Full Bench held that no writ can be issued to the Customs Department for the release of vintage car when the Import Policy Order issued under Section 3(I) of the Imports and Exports (Control) Act, 1950 (“the 1950 Act”) does not expressly permit import of such vehicles. However, while disposing of the case the Full Bench directed the Federal Government to consider the case of the Petitioners for one-time relaxation/permit of import under Clause 21 of the Import Policy Order, 2020 in respect of vintage cars falling under SRO 833(I)/2018 already imported by them, and to decide the same within 10-days keeping in mind the observations made therein. Subsequently, In compliance with the directions of the High Court of Sindh in the judgment dated 10.09.2021, the matter regarding one-time relaxation in prohibition of import of vintage cars was placed before the Cabinet. On 02.11.2021, the Cabinet did not approve the proposal for the grant of one-time relaxation.

11. Although the said Notification/SRO No.833(I)/2018, dated 03.07.2018 has not been withdrawn, yet the fact remains that after the supra Judgment in **Imad Samad and others case**, the Cabinet would be presumed to be cognizant of the disparity between the said SRO and Import Policy Orders dated 2016 and 2020. Being cognizant of this disparity, the Cabinet has taken an informed decision not to grant one-time relaxation in the prohibition of import of vintage cars. In other words, the Cabinet has decided not to amend the Import Policy orders so as to make the import of vintage cars more than three years old permissible.

12. The upshot of above discussion is that there is nothing in the SRO 833(I)/2018, dated 03.07.2018 which allows the import of vintage cars, therefore, being not in agreement with the observations made by the learned Single Judge qua allowing import of the vehicle in question, this Appeal is **allowed** and **the order dated 16.12.2020 is set aside.**

(Muhammad Sajid Mehmood Sethi)
Judge

(Jawad Hassan)
Judge