

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petitions No. 500-K and 501-K of 2025

[Against judgment dated 21.01.2025 of the High Court of Sindh, Karachi passed in SCRA No.930 & 932 of 2017]

M/s. Burki & Co.
[in CP. 500-K/25]

M/s. Ameer Muhammad Association.
[in CP. 501-K/25]

... *Petitioners*

Versus

Director, Intelligence & Investigation
(Customs), Karachi and another.
[in both cases]

... *Respondents*

For the Petitioners:
[in both cases]

Mr. Salahuddin Ahmed, ASC.

For the Respondents:
[in both cases]

Syed Talha Salman,
Deputy Director.
[through video-link from Karachi]

Date of Hearing:

15.10.2025.

ORDER

Muhammad Shafi Siddiqui, J. In these two petitions the substantive issue is with regard to the import and disposal of the subject vehicle (Hino Prime Movers), wherein violation of the terms and conditions of para-9(ii) (1) and (5) of the Import Policy Order, 2013 (hereinafter referred to as '**IPO, 2013**') was observed. The petitioners proposed the following questions of law in both the petitions:

I. Whether dismissal of earlier petitions challenging the validity of detention/seizure notices issued by Customs authorities would render statutory adjudication proceedings mandated (prior to confiscation/imposition of penalty/recovery of duties and taxes) under section 179 and 180 of the Customs Act, 1969 unnecessary?

II. Whether the Petitioner was free, in the subsequent adjudicatory proceedings, to take any legal or factual defence (or even pleas of mitigation) not already adjudicated in the earlier round of litigation?

III. Whether the Impugned Judgment deprived the Petitioner of its lawful right to mandatory adjudication under the Customs Act, 1969, thereby violating the fundamental rights guaranteed under Article 4 and Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973?

2. On the aforesaid questions, we have heard the learned counsel and perused the material available on record. It all started when respondent No. 1-Director, Intelligence and Investigation detained and seized the prime movers in question and notice under section 17 of the Customs Act, 1969 was issued.

3. Aggrieved of it, the petitioners filed a constitution petition, seeking declaration, as under:

i. Declare that twenty six Prime Movers 380HP and above falling under PCT heading 8701.2040, having been lawfully imported into Pakistan in accordance with Clause 9(ii)(5) of the Import Policy Order, 2013 and, therefore, these could not be lawfully detained, seized, confiscated or subjected to any adverse action or proceedings.

ii. Declare that the detention and seizure of twenty six Prime Movers 380 Hp and above by the officers of Respondent No.2 vide the impugned notices is arbitrary, illegal, mala fide and in violation of the provisions of Customs Act, 1969, including Sections 168 and 171 thereof.

iii. Quash the impugned notices of detention and seizure of twenty six Prime Movers 380 HP and above issued by the officers or Respondent No.2.

iv. Restrain the Respondents and their officers from taking any action or initiating any proceedings or passing any order against the Petitioners or in respect of twenty six Prime Movers 380 HP and above, and/or from interfering with the lawful ownership, sale or use thereof by the respective Petitioners in any manner whatsoever.

v. Grant costs of the petition.

vi. Grant any other order deemed fit in the circumstances.

The petitioners in the aforesaid petition in order to seek the aforesaid declaration had not only pleaded that no violation of the IPO, 2013 was observed in the import and disposal of the vehicle but also took a specific plea that respondent No. 1 (which was arrayed as respondent No.2 in the

aforesaid petition) had no jurisdiction where the imported goods were released by customs after being subjected to proper scrutiny and treatment in accordance with law. Thus, with reference to accusations raised at the time of seizure, all possible defences which were available, were taken.

The High Court in response to the said constitution petition passed a comprehensive judgment discussing the terms and conditions of the IPO, 2013 specially 9(ii)(1) & (5), on the basis of which the import of the prime movers was occasioned and facilitated. The High Court declared that the prime movers imported under the garb of clause 9(ii) of the IPO, 2013 were found, for onward sale, in the showrooms of the petitioners (which fact is admitted) and (goods) were not utilized for which the IPO, 2013 was introduced; thus were rightly detained and seized and the petition was dismissed with cost.

4. As against it, civil petitions were filed before this Court and the same were then dismissed and the order of the High Court was maintained. The observation made by this Court is very material and goes to the root of present claim of petitioner and thus is necessary to be reproduced:

6. *As regards the submission of Mr. Khalid Javed Khan that clause 9(ii)(5) of the IPO, 2013 did not require the construction company to import Prime Movers for its actual use in projects in Pakistan, we have considered the impugned judgment of High Court and are in agreement with it that clause 9(ii)(5) of the IPO, 2013 had allowed the construction company for importing the Prime Movers etc for their own use in their own projects and it will be totally absurd to construe that a construction company was allowed to import these Prime Movers not for their own construction projects but for their commercial exploitation that is selling them in the market. Had this been the meaning of above provision of the IPO, 2013, then why the import of Prime Movers etc. was only allowed to be made by the construction companies, mining, oil, gas and petroleum sector companies. The apparent meaning of this is that these Prime Movers were not allowed to be imported by everyone but only by the companies noted above and this clearly shows that they were to be imported only for use by the construction company. No other meaning or interpretation can be put to this provision of IPO 2013. The High Court has dealt with all the aspects of the matter. The petitioners counsel were unable to point out any defect, illegality, impropriety or perversity in the impugned judgment. The same is, therefore, maintained. Consequently, we find no merits in these petitions. The same are dismissed.*

5. We have noted that Sindh High Court passed a judgment on 26.04.2016 whereas this Court maintained the judgment with an observation on 23.06.2016. Having exhausted the remedy upto Supreme Court, *vide* order dated 23.06.2016, the petitioners then underwent a second recourse to contest the adjudication proceeding on account of a show cause notice issued whereon order-in-original dated 05.01.2017 was passed with clear findings that this Court has already set the controversy of violation of IPO, 2013 at rest. Petitioners may plead that it started in pursuance of a show cause notice but petitioner, despite conclusion of controversy approached the Customs Appellate Tribunal, Bench-II, Karachi (hereinafter referred to as '**the Tribunal**'), which then, to our surprise, reversed the findings of the order-in-original and allowed the appeals of the petitioners being contemptuous in all respect. The petitioner's primary defence in this regard, before the Tribunal, was with regard to the jurisdiction of the respondent-department when the goods have already been released by the Customs. The order of Tribunal was then impugned before the High Court in a reference jurisdiction. In the reference jurisdiction the impugned judgment was passed, allowing the reference in favour of the respondents and restored the judgment passed in order-in-original.

6. It is to be seen that the intent of the IPO, 2013 enabling certain categories of industries/units to import the prime movers was for their own object and benefit which is certainly not to sell them in the market for monetary gain. This is obviously not the intent of legislature otherwise there was no reason to allow only restricted number of industries to import such vehicles. It would be appropriate to refer the "**Prohibition and Restriction**" under para 5 (vii) of the IPO, 2013 which stipulates that "**goods specified in Appendix-C are banned for import in secondhand or used condition**

except those specifically exempted therein". By virtue of Appendix-C of IPO, 2013 it is clear that the vehicles of PCT heading 8701.2040 are not freely importable and there are certain restriction and prohibition on its import as envisaged under para 9(ii) (1) and (5) of the IPO, 2013. On reaching such understanding of the IPO, 2013 the questions were decided up to this Court.

7. Thus, the Tribunal travelled beyond the interpretation provided by this Court which was binding on the Tribunal. It is also inconceivable that after release of the vehicles the respondent-department had no jurisdiction to overview the implementation of IPO, 2013, whether or not violated. The petitioners thus by their own design prevented themselves to undergo statutory adjudication which has now concluded. The subsequent adjudication by Tribunal, as preferred by petitioners, is also hit by the doctrine of election.

8. The legal doctrine of election rooted in fundamental principles of jurisprudence is the act of choosing between two or more remedies or "legal option" available to address a particular issue or dispute. The exercise of choice, particularly, the act of selecting from among various available rights or remedies in a manner that prohibits the utilization of their alternatives. The scope of such doctrine is extended to remedies, forum and pleadings. In the instant case, not only the election of remedies but the forum and pleadings are also applicable.

9. Once a dispute via judgment reached finality between the involved parties, it cannot be re-visited and that too by a lower forum. The prime aim of this principle of law is to uphold the administration of justice and prevent the misuse of legal procedures by ensuring that outcome of litigation remain conclusive. It aims to prevent the multiplicity of legal proceeding stemming

from the same cause of action. In the present case the dispute has effectively reached finality and even under the doctrine of past and closed transactions the matter should not have been reopened in a subsequent round of litigation by the Tribunal. Doing so would constitute an abuse of the court's process.¹

10. Under the doctrine of election, the petitioners surrendered themselves to seek such declaration while challenging the detention and seizure before the High Court and ended up getting a conclusive observation with regard to the relief claimed in Constitution Petition No.D-7925 of 2015 and same questions were thus came before Tribunal. Thus, the petitioners cannot have a second bite at the cherry by yet again seeking a declaration from the adjudicating authority, including but not limited to the Tribunal on whom the interpretation of relevant provision of IPO, 2013 was binding. The findings of the Tribunal are otherwise not sustainable under the law.

11. In view of the above and on the proposed questions, these petitions are converted into appeals, however, since the questions have been answered against the petitioners in the above terms and in favour of the respondents, the appeals fail and are hereby dismissed.

Chief Justice

Judge

Judge

Announced in open Court at Islamabad on 27/10/25.

Judge

Approved for Reporting
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¹ Muhammad Raqeeb v. Government of KPK (2023 SCMR 992)