

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Customs Reference No.45 of 2017

Syed Fazal Akbar

**Versus**

**The Customs Appellate Tribunal and others**

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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25.04.2022	<b>Mr. Sikandar Naeem Qazi, Advocate for the applicant, Mr. M.D. Shahzad, and Ch. Talib Hussain, Advocates for the respondents.</b>	
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The questions of law proposed for our consideration are as follows:-

- "1. Whether in the light of facts and circumstances of the case, the learned Appellate Tribunal erred in law by not taking into consideration the assertions put forth by the applicant in the appeal?*
- 2. Whether in the light of facts and circumstances of the case, the learned Appellate Tribunal erred in law by discriminating against the applicant?*
- 3. Whether in the light of facts and circumstances of the case, the learned Appellate Tribunal erred in law to hold that raw material imported by the applicant could be termed as fully built up articles of a definite shape, size and description?*
- 4. Whether in the light of facts and circumstances of the case, the learned Appellate Tribunal erred in law by upholding an order which is clearly discriminatory and violative of the provisions of Article 25 of the Constitution of Pakistan?*
- 5. Whether in light of facts and circumstances of the case, the learned Appellate Tribunal erred in law to hold that vehicle in question was more than 5 years old without seeking assistance an export opinion?"*

2. The facts essential for the disposal of the instant petition are that on 13.07.2016, the Directorate General of Intelligence and Investigation, Federal Board of Revenue ("F.B.R.") intercepted Toyota Coaster bearing registration No.LES-15-5335 having Chassis No.JTGFN518303000038 (4100 CC) Model-2004 near the Motorway Toll Plaza, Islamabad. Other than the registration book, the driver of the vehicle

was not able to provide any documentary evidence regarding the import of the said vehicle. The registration book shows the year of manufacture of the said vehicle to be 2010.

3. The Department's case is that the said vehicle had been imported by misdeclaring its correct year of manufacture and that fake documents had been submitted in order to have the vehicle cleared through customs through Goods Declaration ("GD") No.LTNB-2551 dated 16.04.2015. It was also asserted that the said vehicle was imported contrary to paragraph 3 of the *"procedure for import of vehicles under the personal baggage, transfer of residence and gift schemes"* set out in Appendix-E of the Import Policy Order, 2013 which reads as follows:-

*"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 the vehicle shall be determined from the 1<sup>st</sup> January of the year subsequent to the year of manufacture till the date of shipment as per bill of Lading."*

4. The Additional Collector (Adjudication), Islamabad, after issuing show cause notice dated 22.09.2016 to the petitioner, conducted proceedings which culminated in the order-in-original dated 06.02.2017. Vide the said order, it was held that the said vehicle was liable to confiscation under Section 156(1)89 of the Customs Act, 1969 ("the 1969 Act") read with notification (SRO 499(I)/2009). The petitioner's appeal against the said order was dismissed by the learned Customs Appellate Tribunal, Islamabad vide judgment dated 14.06.2017.

Learned counsel for the petitioner drew the attention of the Court to the judgment dated 27.06.2018 passed by the Division Bench of this Court in Customs Reference No.42/2017, which also entailed the confiscation of vehicles pursuant to notification (SRO 499(I)/2009) and failure to declare the correct year of manufacture at the time of customs clearance and alleged violation of the Import Policy Order, 2013. The said judgment was passed after report dated 11.05.2018 had been filed by the F.B.R. acknowledging that in similar cases, the vehicles had been allowed to be released on payment of redemption fine despite the cases having been covered under the said notification. The F.B.R. had however suggested that the cases be remanded to the adjudication authorities so that the same are re-examined and treated at par with the owners of vehicles who were given the option to redeem the same under Section 181 of the 1969 Act. This Court had set-aside the orders passed by the Adjudicating Officers and the learned Customs Appellate Tribunal and remanded the cases to Adjudicating Officers who were to afford an opportunity of hearing to the owners of the vehicles and to give them the option of paying the redemption fine in *lieu* of confiscation of the vehicles.

5. If we are to answer this reference in the negative or to dismiss the same, it would result in a discriminatory treatment being given to the petitioner especially in view of the fact that similarly placed owners of the vehicles, who had been confiscated under the same provisions of law as the petitioner's vehicle had been confiscated, had been given the option of paying the redemption fine in *lieu* of the confiscation of the vehicle.

6. In view of the above, the order in original dated 06.02.2017 passed by the Additional Collector (Adjudication) as well as the order dated 14.06.2017 passed by the Customs Appellate Tribunal are set-aside and the matter is remanded to the Additional Collector (Adjudication) for decision afresh bearing in mind the law laid down by the Division Bench of this Court in the judgment dated 27.06.2018 passed in Customs Reference No.42/2017.

**(ARBAB MÚHAMMAD TAHIR)**  
**JUDGE**

**(MIANGUL HASSÂN AURANGZEB)**  
**JUDGE**

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