

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

W.P.No.4024 of 2019  
Meena Munawar Khan

**Versus**

Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>17.08.2020</b>	Mr. Rashid Hanif, Advocate for the petitioner, Ms. Huma Noreen Hassan, Advocate for respondents No.3 and 4, Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

Through the instant writ petition, the petitioner, Meena Munawar Khan, seeks a direction to the respondents to release the vehicle (i.e. used Classic Porsche 912 – Vin No.454347 Model: 1966) imported by the petitioner on the basis of an exemption granted through notification SRO 833(I)/2018, dated 03.07.2018 issued by the Ministry of Finance, Economic Affairs, Statistics and Revenue (Revenue Division), Government of Pakistan.

2. Learned counsel for the petitioner submitted that through the notification dated 03.07.2018, the customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax in excess of the cumulative amount of US Dollars 5,000 was exempt on the import of each unit of vintage or classic cars and jeeps meant for the transport of persons; that in reliance on the representations in the said notification, the petitioner imported used Classic Porsche 912 – Vin No.454347 Model: 1966; that the said vehicle arrived at the Islamabad Dry Port on 20.03.2019, but the Customs Authorities refused to release the same on the pretext that the Weboc System does not allow the import of such vehicles; that due to this

refusal, the petitioner was unable to file the Goods Declaration; that the petitioner is ready and willing to pay an amount of US Dollar 5,000 under the notification dated 03.07.2018 for the release of the said vehicle; and that the refusal by the respondents to release the said vehicle is a violation of the petitioner's fundamental rights under Articles 18 and 24 of the Constitution. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondents No.3 and 4 submitted that the instant petition had been filed with *"bad intentions and ulterior motives;"* that the notification dated 03.07.2018 is silent about the importability criteria i.e. who can import the vintage car; that the Ministry of Commerce has not given a proper direction regarding the imports made under the said notification; that if the Ministry of Commerce frames a proper procedure for imports under the said notification, respondents No.3 and 4 will not have any issue regarding its implementation; and that the provisions of the Import Policy Order, 2016 have not been changed pursuant to the said notification. Learned counsel for respondents No.3 and 4 prayed for the writ petition to be dismissed. Learned Assistant Attorney-General adopted the arguments of the learned counsel for respondents No.3 and 4.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Through the notification dated 03.07.2018, the customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax in excess of the cumulative

amount of US Dollars 5,000 was exempt on the import of each unit of vintage or classic cars and jeeps meant for the transport of persons. The said notification was issued by the Federal Government in exercise of the powers conferred by (i) Section 19 of the Customs Act, 1969, (ii) Section 16 of the Federal Excise Act, 2005, (iii) Section 13(2)(a) of the Sales Tax Act, 1990 and (iv) Sections 53 and 148 read with the Second Schedule of the Income Tax Ordinance, 2001.

6. The explanation to the said notification clarifies that for the purposes of the said notification, vintage or classic cars and jeeps mean old and used automotive vehicles falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 manufactured prior to 01.01.1968.

7. PCT Code 87.03 reads thus:-

*“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.”*

8. PCT Code 87.02 reads thus:-

*“Motor vehicles for the transport of ten or more persons, including the driver.”*

9. After the said notification was issued, the petitioner imported a used Classic Porsche 912 – Vin No.454347 Model: 1966. The said vehicle has been at the Islamabad Dry Port ever since 20.03.2019.

10. The primary ground taken by the respondents in their written comments for not releasing the said vehicle is that the Import Policy Order, 2016 does not allow import of cars older than three years under any scheme.

11. There is no denying the fact that the notification dated 03.07.2018 has been issued by the Federal Government in exercise of the powers

specifically conferred by the statutes referred to therein. The said notification is in the public domain. The Bill of Lading with respect to the import of the vehicle clearly shows that the import was made pursuant to the said notification dated 03.07.2018. The Good Declaration clearly mentions the PCT Code of the imported vehicle to be 87.03. Therefore, I am of the view that respondents No.3 and 4 could not deprive the petitioner from the release of the vehicle by simply ignoring the said notification dated 03.07.2018.

12. A somewhat similar issue came-up for consideration before the Hon'ble High Court of Sindh in C.P.No.D-4214/2019 titled “Moin Jamal Abbasi Vs. The Federation of Pakistan etc.” The said petition was allowed by the Division Bench of the said High Court vide judgment dated 11.09.2019, and the Customs Department was directed to release the imported vintage vehicle within a period of seven days on payment of US Dollars 5,000 in terms of the notification dated 03.07.2018. For the purposes of the clarity, paragraph 5 of the said judgment is reproduced herein below:-

*“5. Perusal of hereinabove provision of Section 19 of the Customs Act, 1969, shows that the Federal Government has been authorized to exempt from payment of customs duty notwithstanding any provision either contained under customs Act, 1969 or under any other law for the time being in force including Income Tax Ordinance, 2001 and Sales Tax Act, 1990 etc. From perusal of provision of Import Policy Order, 2016, it can be seen that certain restrictions and prohibitions have been imposed in terms of Para. 5 of the Import Policy Order, 2016, therefore, regulating the import and export of the goods into or outside Pakistan, however, subject to prohibitions and restrictions. Whereas, in terms of Para. 20 of the Import Policy Order, 2016, the Federal Government is empowered to allow imports in relaxation of nay prohibition or restriction*

*under this Order. It is pertinent to note that Para. 20 of the Import Policy Order, 2016 allows the Federal Government to relax any prohibition or restriction relating to import, and there seems no restriction upon the Federal Government to even to allow complete exemption from payment of custom duty and taxes or to reduce the amount of customs duty in appropriate cases as per policy SRO (I)/2018 dated 03.07.2018 has been admittedly issued by the Federal Government through Ministry of Finance, Economic Affairs, Statistics & Revenue, (Revenue Division), Government of Pakistan, whereby the Federal Government has been pleased to exempt the vintage or classic cars, jeeps meant for transport of persons on the import, from payment of customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax as are in excess of cumulative amount of US Dollars Five Thousand (US \$ 5000) per unit, and has also been pleased to define the "vintage or classic cars and jeeps as "old and used automotive vehicles" falling under PCT Code 87.03 of the First Schedule to the Customs Act, 1969 and manufactured prior to January 01, 1968, whereas, there has been no reference to any other restriction or prohibition as may be attracted in terms of Import Policy Order, 2016 in respect of other imported vehicles, which shows the clear intention of the Federal Government, not only to exempt a vintage or classic cars from payment of duty and taxes in excess of cumulative amount of US \$ 5000/- per unit, but also to relax other prohibitions or restriction, if any, in respect of other vehicles as per Import Policy Order, 2016."*

13. It is not denied that the vehicle imported by the petitioner is of 1966 Model i.e. manufactured prior to 01.01.1968. It is also an admitted position that the vehicle imported by the petitioner is designed for the transport of persons and cannot transport ten or more persons including the driver. Since it is also not denied that on the basis of the said notification dated 03.07.2018, the import of the said vehicle would not entail any customs duty, regulatory duty, additional customs duty, federal excise duty, sales tax and withholding tax in excess of the cumulative amount of US Dollars 5,000, the petitioner cannot be deprived any further from the release of the

said vehicle upon payment of US Dollars 5,000. As regards the contention of the learned counsel for respondents No.3 and 4 regarding the Import Policy Order, 2016 not being amended, this was adequately dealt with by the Hon'ble High Court of Sindh in paragraph 5 of the said judgment dated 11.09.2019.

14. In view of the above, the instant writ petition is allowed and the respondents are directed to release the vehicle (used Classic Porsche 912 – Vin No.454347 Model: 1966) imported by the petitioner within a period of seven days on payment of US Dollars 5,000 in terms of the notification (SRO 833(I)/2018, dated 03.07.2018). There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Sultan\*

*Uploaded By: Engr. Umer Rasheed Dar*