

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1300 of 2019
Saeen Ullah and others

Versus

Federation of Pakistan through Secretary, Ministry of Commerce and
Textile 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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| 23.09.2020 | Mr. Tofeeq-ul-Irfan Raja and Syed Sardar Hussain, Advocates for the petitioners, Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General, Ms. Huma Noreen Hassan, Advocate for respondents No.2 and 3. |
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Through the instant writ petition, the petitioners impugn SRO No.52(I)/2019, dated 15.01.2019 issued by the Federal Government in exercise of the powers conferred by Section 3(1) of the Imports and Exports (Control) Act, 1950. Furthermore, the petitioners seek a direction to the respondents to extend the time period within which import of vehicles could take place under the previous import policy.

2. Learned counsel for the petitioners submitted that in January 2019 (i.e. prior to the issuance of the impugned notification dated 15.01.2019), the petitioners had purchased vehicles in the United Kingdom for import into Pakistan by taking the benefit of the Import Policy Order, 2016 (“the 2016 Policy”); that under the 2016 Policy, the duties and taxes payable on the vehicles imported under the transfer of residence, personal baggage or gift scheme could be paid out of the account of any person; that by virtue of the impugned order dated 15.01.2019 issued by the Commerce Division, the 2016 Policy was amended; that as the result of the said amendment, the duties and taxes payable on the import of all vehicles to be imported under the transfer of residence, personal baggage or gift

scheme were to be paid out of foreign exchange arranged by Pakistan Nationals themselves or local recipient supported by bank encashment certificate showing conversion of foreign remittance to local currency in the manner provided in the said order; that the Bills of Lading for the import of the vehicles in question were issued on 20.01.2019 and 23.01.2019; that the petitioners live abroad and do not have a bank account in Pakistan; and that an unreasonable restriction as to the purchaser/importer to have paid for the imported goods through a bank account in Pakistan is unlawful. Learned counsel for the petitioners 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.2 and 3 submitted that the requirement for the transfer of money from the bank account of the person who imports the vehicle in the bank account of the same person in Pakistan or his relative was imposed by the Ministry of Commerce; that prior to the issuance of the impugned order, in most cases, the purchaser's name used to be different from the person from whose account the clearance of the duties and taxes was made; that as a result of this practice, the bank accounts of other persons had been used as tool for turning black money into white; that recently a scam surfaced in the shape of fake bank accounts which caused the Commerce Division to issue the impugned order; that the impugned order is not in contravention of any provision of the Constitution or even the statute; that the vehicles imported by the petitioners would be released on the submission of a certificate showing that the remittance for the payment of duties and taxes originate from the account of the

Pakistan National sending the vehicle from abroad and that the remittance is received in the account of a Pakistani National sending the vehicle abroad or in case he does not have an account or his account is inoperative or in the account of his family members; that the mere fact that the petitioners purchased the vehicles in question prior to the issuance of the impugned order dated 15.01.2019 is immaterial since it is an admitted position that the Bills of Lading with respect to the import of the said vehicles was issued after the issuance of the said impugned order; and that according to 2016 Policy issued through notification dated 18.04.2016 (SRO 345(I)/2016), the import of all goods is allowed from worldwide sources unless specified to be banned, prohibited or restricted by the said order, provided that the amendments brought in the said order from time to time shall not be applicable to such import where the Bill of Lading or Letters of Credit were issued or established prior to the issuance of the amending order. Learned counsel for respondents No.2 and 3 prayed for the writ petition to be dismissed.

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

5. The petitioners have brought on record documents/invoices to show that the vehicles in question were purchased prior to the issuance of the impugned order dated 15.01.2019. The petitioners rely on these documents in furtherance of their case that they had a legitimate expectation to import the said vehicles into Pakistan and to have them released on the payment of duties and taxes regardless of the source for the payment of such duties or taxes.

6. The petitioners have also brought on record the Bills of Lading with respect to the vehicles in question. All these Bills of Lading were issued after the issuance of the impugned order dated 15.01.2019. The petitioners knew or ought to have known about the said impugned order prior to the issuance of the Bills of Lading. Since the issuance of the said impugned order was prior in time to the issuance of the Bills of Lading, the release of the imported vehicles was to be in accordance with the requirements and the procedure laid down in the impugned order. The question of making the provisions of the impugned order applicable with retrospective effect to the release of the vehicles imported by the petitioners does not arise since the said amendment was made before the issuance of the Bills of Lading.

7. The 2016 Policy issued through notification dated 18.04.2016 (SRO 345(I)/2016) makes it clear that the import of all goods is allowed from worldwide sources unless specified to be banned, prohibited or restricted by the said order, provided that the amendments brought in the said order from time to time shall not be applicable to such import where the Bills of Lading or Letters of Credit were issued or established prior to the issuance of the amending order. Bearing in mind the said provision in the 2016 Policy, I am of the view that the respondents did not commit any illegality by requiring the petitioners to require payment of duties and taxes for the release of the said vehicles in accordance with the requirements stipulated in the impugned order dated 15.01.2019.

8. As regards the challenge by the petitioners to the *vires* of the amendment in the 2016 Policy made through the impugned order dated 15.01.2019, the

procedural requirement introduced through the said amendment is for the release of the vehicles imported under the transfer of residence, personal baggage or gift scheme to be made on payment of duties and taxes out of the foreign exchange arranged by the Pakistan Nationals themselves or the local recipient supported by bank encashment certificate showing the conversion of foreign remittance to local currency as under:-

- “a) the remittance for payment of duties and taxes shall originate from the account of Pakistani national sending the vehicle from abroad; and*
- b) the remittance shall either be received in the account of the Pakistani national sending the vehicle from abroad or, in case, his account is nonexistent or inoperative, in the account of his Family.”*

9. The said amendment was introduced to ensure that the person sending the vehicles from abroad pays for the duties and taxes by remitting the amount from abroad through banking channels. If the person sending the vehicles from abroad does not have a bank account in Pakistan, the impugned order makes it possible for the funds to be remitted to the bank account of his family member. I do not find any illegality or irrationality or much less a Constitutional violation in the said requirement. It is a step in the positive direction and would make the purpose behind the import of vehicles under the transfer of residence, personal baggage and gift scheme purposeful and meaningful.

10. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan