

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

**Customs Reference No.31/2017**

Federation of Pakistan through its National Programme Manager, EPI.

*versus*

Customs Appellate Tribunal, Islamabad & 03 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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17.02.2021

Barrister Muhammad Mumtaz Ali, AAG, for applicant.

Ms. Naziran Malik Advocate for respondents No.1 to 3

**MOHSIN AKHTAR KAYANI, J:-** Through the captioned reference, the applicant has called in question judgment of the Customs Appellate Tribunal, Islamabad, dated 22.03.2017, whereby appeals filed by the applicant have been dismissed.

2. Succinctly, the Government of Pakistan started the Expanded Program on Immunization (*EPI*) in the year 1978 for control of nine Vaccines Preventable Diseases (VPDs) namely infant tuberculosis, poliomyelitis, diphtheria, pertussis, neonatal tetanus, hepatitis B, Haemophilus influenza type b (Hib), pneumonia and measles. The programme is working as welfare activity on the part of Government of Pakistan and there is no commercial use of the vaccines, as such, as per SRO No.567(1)/2006, dated 05.06.2006, the Government declared that no duty / tax was payable to customs authorities on the vaccines imported by the Government, but the respondent tax authorities have levied duty / tax upon the vaccines imported by the Federal Government to the tune of Rs.882,094,746/-. Hence, instant custom reference.

3. Learned counsel for applicant contends that there is no custom duty on the import of vaccines by the Government department because the same are being distributed free of cost for

saving the lives of general public and as such, in this regard the Government has also issued SRO No.567(1)/2006, dated 05.06.2006; that the EPI is part and parcel of National Institute of Health, Islamabad under the Ministry of National Health Services, Regulations and Coordination; that the custom authorities are only concerned with customs duty, per se, giving comments about the quality of imported vaccines is beyond its domain; that the entire case has been initiated on a fake and baseless complaint of Dr. Muhammad Arshad Rana, alleged President of Pakistan Medical Association and had no concern with the case.

4. Conversely, learned counsel for respondents No.1 to 3 contends that the Federal Government had not made any request for import of vaccines, rather the Memorandum of Understanding (MoU) for import of vaccines was unauthorizedly and fraudulently signed by the National Manager, EPI with UNICEF, Islamabad, as such, same was not signed between the Federal Government and UNICEF; that the UNICEF was not a donor of the imported vaccines, rather its role was highly dubious and against the interest of Pakistan, as such, the UNICEF has earned millions of dollars for providing sub-standard, un-registered and un-approved vaccines; that a committee under the Chairmanship of Inspector General of Hospitals was constituted by the Government of Pakistan to probe into irregularities committed in import of said vaccines, whereby the National Programme Manager, EPI was declared responsible for the purchase and import of substandard drugs / vaccines and syringes.

5. Arguments heard, record perused.

6. Perusal of record reveals that the National Programme Manager, Expanded Programme Immunization (EPI) / applicant has filed the captioned custom reference praying this Court to

answer the following questions of law arising out of the judgment passed by the Customs Appellate Tribunal, Islamabad:

- I. Whether on the fact and circumstances of the case the learned Custom Tribunal fell in error to look into matter that the appellant has been charged to tax without sanction of law as envisaged in Article 77 of the Constitution of the Islamic Republic of Pakistan, 1973 which say that no tax can be levied except by authority of law.
- II. Whether on the fact and circumstances of the case the Honorable Custom appellate Tribunal was justified in taxing the appellant who is an organization of the Government, and the state is not liable to any taxation.
- III. Whether on the fact and circumstances of the case the learned Custom Appellate Tribunal misdirected itself not considering the SRO 567(1) 2006 dated 05.06.2006 which notification allows import of vaccines without any duty notwithstanding the fact that the said SRO carries the force of law.
- IV. Whether on the fact and circumstances of the case the Honorable Customs Tribunal was justified to hold that goods are cleared by NIH in spite of the fact that the same was cleared by EPI.
- V. Whether on the fact and circumstances of the case the Honorable Custom Tribunal was justified to hold that impugned goods enjoyed the exception under SRO 567(1) 2006 dated 05.06.2006 subject to fulfillment of certain condition without considering

that all condition for imports were fulfilled according to law.

VI. Whether on the fact and circumstances of the case the Honorable Custom Tribunal was justified to upheld the duty which was imposed by Adjudication Officer on exempted goods under SRO 567(1) 2006.

7. The custom authorities while analyzing the data of imports of vaccines and syringes from July, 2005 to June, 2009 came to know that 57 consignments of vaccines valuing Rs.3,256.16 Million were imported by M/s National Institute of Health, Islamabad, Islamabad for its EPI programme and got it cleared through MCC, Rawalpindi without payment of duties / taxes by availing exemption from duty and taxes available to privileged persons / agencies of UN under the United Nations (Privileges and Immunities) Act, 1948 as well as under the Diplomats / Embassies / Consulates in terms of the Diplomatic and Consular Privileges Act, 1972. During the course of process, the Collector, MCC, Rawalpindi, was requested to provide 138 original GDs along with relevant record in respect of total import of vaccines during the aforesaid period, whereby 69 GDs have been provided by the Collector, MCC, Rawalpindi, out of which 17 GDs indicate the NIH as importer, per se, on all such GDs the NIH, without any certificate of exemption, claimed exemption as being diplomat, while in actuality Exemption Certificates in respect of the 17 GDs have been issued by the Ministry of Foreign Affairs in favour of UNICEF that the goods are being imported under diplomatic privilege, as such, all the consignments were not delivered to the UNICEF, but to the NIH.

8. The entire case was initiated through show cause notice in terms of Sections 16, 19 & 20 of the Customs Act, 1969 read with

other allied laws and as such, the applicant, vide Order-in-Original dated 16.06.2011, has been notified with the duties / taxes to the tune of Rs.882,094,746/- in terms of Section 32(2) of the Customs Act, 1969. The applicant feeling thereof, filed appeal, whereby the matter was remanded by the Collector (Appeals) in order to clearly determine the liabilities. After two rounds of proceedings, the matter was concurrently decided against the applicant by the Customs Appellate Tribunal, Islamabad (Bench-I). The reasons which prevail the authorities below have been highlighted by the Customs Appellate Tribunal in the following manner:

*"18. Appellant (NIH) in Appeal No.67/Cus/2015 argued that NIH is not importer. The importer in this case is EPI. Nih has only provided building space since EPI had no premises to conduct execution of the immunization program. It is, however, on record that the goods are imported by NIH as indicated in Goods Declaration (GD), declaring PCT Heading 9901 and 9902, meant for diplomatic cargo. MoU signed between NIH Islamabad and UNICEF contains specific provisions regarding "Custom's Clearance" which stipulate that Govt will be fully responsible for reception at port of entry, custom's clearance and distribution of supplies. Liability of leviable duty and taxes was created against NIH, Islamabad after mis-declaration of PCT heading meant for diplomatic cargo. Adjudicating officer at original stage as well 1<sup>st</sup> appellate stage has rightly pointed out that the impugned goods enjoyed exemption under SRO 567(I)/2006 dated 05.06.2006, subject to fulfillment of certain conditions but the same is never claimed on import of impugned goods during 2005 to 2009. As regard, plea in appeal No.68/2015 filed by EPI that PC1 of EPI/CDD cell for the period 2004-2005 to 2008-2009 describes the whole project in details, it is observed that said PC1 gives only broad outlines of total cost of Project as Rs.11470.030 Million, sponsored by Health Division, GOP, to be executed by Federal EPI/CDD, NIH, Islamabad.*

*19. It is also argued both by NIH and EPI that the vaccines are procured through UNICEF from 1978 to June, 2007 and imported through the same procedure and therefore, not chargeable*

*to duty and taxes, it is revealed from MOU signed by GOP and UNICEF that UNICEF will provide procurement services, the Government or its nominated representative will be the consignee of the supplies (Article 14 of MOU) which happened to be NIH, as declared on GDs. NIH, Islamabad's plea that they had nothing to do with import of the impugned goods and disowning the MOU signed between UNICEF the UN Children Fund and NIH (2005), no official record or report produced by NIH or EPI, conducting proper inquiry or probe to conclude that the said MOU is either fake or unlawful.*

20. *regarding allegation of sub-standard vaccines, according to Article 24 of MOU, UNICEF has not undertaken to give warranty of any kind with regard to value, adequacy, freedom from fault, quality or infringement. No documentary evidence provided either at time of import of the impugned goods or at the time or original and appellate stage of adjudication to substantiate that conditions of the Drugs (Imports & Exports) Rules, 1976 have been fulfilled as explained in paras 29 and 30 of Order-in-Original No.06 of 2011 dated 16.06.2011. Similarly, MoU between NIH and UNICEF is pertaining to UNICEF's services of procurement, shipment etc. and is not responsible for clearance of impugned goods from Customs (Article 18). There is no corroborating evidence in support of stance either taken by NIH, Islamabad or EPI to prove that the impugned goods were imported fulfilling the conditions of availing the exemption of duties and taxes available to privileged personnel / agencies of UN under UN (Privileges and Immunities) Act, 1948.*

9. We have examined the entire case with the able assistance of both the parties and factual aspect has been highlighted by the learned AAG assisting in this case on behalf of the applicant, who has relied upon SRO No.567(I)/06, dated 05.06.2006, which discloses that all goods imported by UN agencies under the UN (Privileges and Immunities) Act, 1948 are certified by Ministry of Foreign Affairs under PCT Code 9901 with 0% duty, which was initially the stance of the applicant before the forums below.

10. However, the primary question in this reference is whether the Expanded Program on Immunization (EPI) is an independent

entity or otherwise? In this regard, we have been assisted by the learned AAG with the help of PC-I, pertaining to Expanded Program on Immunization and Control of Diarrheal Diseases (EPI & CDD), which reveals that Ministry of National Health Services, Regulations and Coordination has initiated the said project on the sponsorship of Health Division, Government of Pakistan, to be executed through Federal EPI / CDD Cell, NIH, Islamabad / Provincial and AJK/FANA/ICT Health Departments. The objectives of the project are referred in Clause-8 of PC-I, which are as under:

- (i) *Elimination of Neonatal Tetanus at the rate of less than 1 case per 1000 live birth per year at every level in the country by the year 2010.*
- (ii) *Incidence due to Measles to be reduced by 90% while Measles deaths to be reduced by 95% by the year 2010.*
- (iii) *Reduction of Childhood Tuberculosis, Diphtheria, Pertussis (whooping cough), Hepatitis B at minimum levels. Protection of all infants (5.5 million each year) for the seven EPI target diseases.*
- (iv) *Protecting all the pregnant ladies (more than 6.4 Millions each year) in five years against Tetanus and their neonates against NNT.*
- (v) *Protecting 4.998 million children less than 5 years (each year) against complications and mortality of diarrheal disease through Oral Rehydration Therapy (ORT) and other potential preventive interventions."*

11. The PC-I was approved by the Executive Committee of the National Economic Council (ECNEC) in its meeting held on 04.08.2005 at the cost of Rs.11470.03 million, including foreign exchange component of Rs.4108.538 million, which was further accorded by the Administrative Approval of the President on 16.08.2005.

12. As per PC-I, the annual capital cost of the EPI project was to be Rs.5.3 billion from Federal Government for the procurement of

vaccines and related costs. The costs for the Federal EPI would be met through Non-Development budget of NIH (Rs.11.8 billion), however the costs of vaccines and ADS were based on UNICEF rates presented to the NIH in August, 1998. Similarly, the procurement services with respect to execution of the EPI project could only be used through UNICEF in terms of the MoU, dated 19.04.2002, which offers the Government of Pakistan the procurement services, including EPI products and other associated supplies. The Payment for Supplies (Currency Swap Mechanism) in PC-I reveals that the funds for procurement of vaccines for routine immunization and products is paid in local currency to UNICEF, as these funds arise from the Government revenue. The PC-I shows that no donor funds were accounted for in the procurement plans for vaccines. Since these vaccines come from manufacturers outside Pakistan, the local funds have to be exchanged in hard foreign currency. The Government transfers the local currency to UNICEF Pakistan Country Office (PCO), which in turn transfers the equivalent in USD to UNICEF Supply Division.

13. The above referred glimpse of PC-I, if seen in the light of MoU executed between Ministry of National Health Services, Regulations & Coordination and UNICEF, dated 16.08.2005, which was based upon the Basic Corporation Agreement, dated 24.05.1995, the procurement services have been defined in terms that the activities to be undertaken by UNICEF on behalf of the Government pursuant to the MoU for the purchase of supplies, where such supplies are required for the purpose related to UNICEF activities and consistent with the aims and policies of UNICEF, whereas the Government of Pakistan agreed to ensure that all supplies and services procured in accordance with the



MoU are for use in connection with the activities and projects that promote the well being of children. It has also been agreed between the Government and UNICEF that the Government will be fully responsible for reception at the port of entry, customs clearance and distribution of all supplies, unless otherwise provided for in the MoU.

14. The above mentioned background if seen in the light of SRO No.567(I)/2006, dated 05.06.2006, all types of vaccines are free from taxes / duties and as such, EPI is not an independent entity, but a funded program established by the Government of Pakistan to be executed through NIH in terms of standard agreed terms between the Government of Pakistan and UNICEF through MoU. Now question arises as to whether the treatment meted out by the customs authorities is in line with the issue in hand and whether EPI is different entity and for that matter NIH is not covered in definition of Government.

15. We have gone through the record and orders passed by the custom authorities and observed that each and every aspect of MoU signed by Government of Pakistan and UNICEF has been discussed, but the customs authorities have failed to consider the real mandate of PC-I, which reveals that the vaccines were procured and imported by the Government of Pakistan for EPI project executed through NIH and Ministry of National Health Services, Regulations and Coordination. Such factual aspect has wrongly been appreciated by the customs authorities. Since the EPI is functioning in NIH premises, the address of NIH was shown in column of consignee. As regards to using the PCT Heading 9901 and 9902, which are available to diplomats, were used because the vaccines were imported through UNICEF in terms of MoU, therefore, PCT Codes 9901 and 9902 were

imprinted on GD Form. The code 3002-2090 was also imprinted on GD Form, which reveal that 0% duty on vaccines has been fixed by the Government. This aspect has been confirmed from the SRO No.567(I)/2006, dated 05.06.2006, relevant portion of which is reproduced as under:

GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE, ECONOMIC AFFAIRS, STATISTICS & REVENUE  
(REVENUE DIVISION)  
  
Islamabad, the 5<sup>th</sup> June, 2006  
**NOTIFICATION**  
(CUSTOMS)

S.R.O. No.567(I)/2006.- In exercise of powers conferred by Section 19 of the Customs Act, 1969 (IV of 1969) and in supersession of its Notification No.SRO No.567(I)/2005 dated the 6<sup>th</sup> June, 2005, the Federal Government is pleased to exempt the imported goods specified in column (3) of the Tables below, falling under the HS Codes specified in Column (2) of those Tables, from so much of the customs-duty specified in the First Schedule to the said Act, as is in excess of the rates specified in column (4) thereof, subject to the following conditions, besides the conditions specified in those Tables, namely:-

2. The designated / authorized person of the following Ministries, or as the case may be, companies shall furnish all relevant information, as set out in this Notification, on line to the Customs Computerized System (PACCS) accessed through the unique users identifier obtained under Section 155d of the Customs Act, 1969, along with the password thereof, namely:-

(a) [Ministry of Health in case of imported goods specified under headings A, B and C of Table-III]

**C. Drugs**

5	3002.2090	All types of vaccines for Hepatitis, Interferon and other medicines for hepatitis, and etc.	0%
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16. In view of above SRO, no duty was leviable on the import of vaccines having been imported pursuant to execution of MoU between the Government of Pakistan and UNICEF, as such, the vaccines were procured with prior approval of Ministry of National Health Services, Regulations and Coordination, per se, the import of drugs and medicines were regularized by Ministry

of National Health Services, Regulations and Coordination in the years 2005-09 when DRAP was not in existence.

17. Keeping in view the above detailed reasons, both the Collector Customs as well as Customs Appellate Tribunal have wrongly appreciated the entire concept of Expanded Program on Immunization having been run and managed by the NIH, Ministry of National Health Services, Regulations and Coordination, as such, the case has wrongly been considered under the Diplomatic and Consular Privileges Act, 1972, which is not applicable in this case, per se, the vaccines imported by Government of Pakistan were meant for children residing in Pakistan, therefore, judgment/order passed by the Customs Collector as well as by the Customs Appellate Tribunal are SET-ASIDE being contrary to law as no duties / taxes are leviable upon the Government of Pakistan, NIH or for that matter on Expanded Program on Immunization. The questions raised in this custom reference are answered accordingly.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on:\_\_\_\_\_.

JUDGE

JUDGE

Khalid Z.