

Form No: HCJD/C-121.

**JUDGEMENT SHEET**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

**CUSTOMS REFERENCE No. 42 of 2017**

NISAR AHMAD

***Vs***

CUSTOMS APPELLATE TRIBUNAL (MEMBER JUDICIAL) ISLAMABAD, ETC.

**APPLICANTS BY:** M/s. Arif Chaudhry, Mehr Asif Iqbal &  
Muhammad Saeed Khan Niazi, Advocates

**RESPONDENTS BY:** M.D Shahzad, Ms. Naziran Malik and Sajid  
Mahmood Baig, Advocates.  
Mr. Muhammad Saleem, Chief Custom.

**DATE OF HEARING:** 14-05-2018

**ATHAR MINALLAH, J.-** Through this

consolidated order we intend to decide the instant Custom Reference alongwith Custom Reference No.01/2017, Custom Reference No.39/2017 and Custom Reference No.40/2017 since the questions of law raised for our consideration are the same.

2. The facts, in brief, are that in all the Tax References vehicles owned by the applicants were initially detained by officials of the Directorate General, Intelligence & Investigation, Islamabad. The vehicles were sent to the Forensic Science Laboratory for

chemical examination and the latter confirmed that chassis numbers were not tampered. During the course of investigations, it was revealed that the vehicles had been cleared by the concerned customs authorities from the respective customs ports/stations. It was further revealed that the importers of the vehicles had misdeclared the year of manufacture and, therefore, they had violated the restriction imposed under the Imports and Exports (Control) Act, 1950. Moreover, after clearance of the vehicles, the original importers had sold the vehicles in the open market. Show cause notices were issued by the Department and the same were adjudicated by the concerned adjudicating officers. The vehicles were outrightly confiscated in the light of SRO 499(1)/2009, dated 13-09-2009 (hereinafter referred to as "**SRO 499**"). The appeals preferred by the applicants were also dismissed by the learned Customs Appellate Tribunal, Islamabad (hereinafter referred to as the "**Tribunal**"). The questions of law proposed for our consideration have, therefore, arisen out of the respective orders passed by the learned Tribunal. It is an admitted position that several other similar vehicles had also been detained and subsequently seized by the Department on the same grounds i.e. failure to declare the correct year of manufacture at the time of customs clearance and thus obtaining clearance in violation of the restriction prescribed under the Act of 1950. No allegation of evasion or escape of revenue was involved. The said vehicles were confiscated but an option of redemption was given to the owners despite the fact that the cases were covered under SRO 499. Through the said notification the Federal Board of Revenue has specified goods or classes of goods regarding which option under

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3. The learned counsels for the applicants and the respondent Department were heard at length.

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rank of

Pursuant to direction of this Court, an official of the rank of Chief (Customs), Federal Board of Revenue had appeared on 17-04-2018. He had also conceded that vehicles, which had been detained and seized on the same grounds as in case of the present applicants were released against redemption fine and that no action was taken by the Board. The representative was afforded an opportunity to place the matter before the Federal Board of

Revenue so that the latter may consider to treat the applicants at par with other similarly placed persons who were allowed release of confiscated vehicles against redemption fine under section 181 of the Act of 1979.

6. When the instant applications were taken up today, a written report was submitted on behalf of the Federal Board of Revenue. The said report has been made part of the record. Perusal of the report, dated 11<sup>th</sup> May, 2018 unambiguously shows that the Federal Board of Revenue has acknowledged that the cases of the present applicants are similar to those in which release was allowed against redemption fine despite being covered under SRO 499. However, the Federal Board of Revenue has expressed its inability to reverse the decisions rendered by the learned Tribunal and the learned adjudication officers. Taking a fair stance, the Federal Board of Revenue has suggested that the cases be remanded to the respective adjudication authorities so that they may be re-examined for the purposes of treating them at par with other similarly placed owners of vehicles who were given option to redeem the same under section 181 of the Act of 1969. The

relevant portion of the report dated 11.05.2018 is reproduced as follows:-

*"Keeping in view the mitigating and identical facts/circumstances surrounding the cases at hand, the Federal Board of Revenue is of the same opinion that the appellants are also deserve to be treated at par or have same relief as given in earlier cases decided by the adjudicating authorities. The Hon'ble*

*Court in the circumstances may, therefore, remand the impugned cases for re-examination by adjudicating authorities under section 181 of the Customs Act, 1969 on case specific and one time basis to resolve the indiscrimination met by the appellant. Alternatively, the Honourable Court may pass such orders as deemed appropriate to grant relief to the Appellants."*

7. In the light of the above fair stance taken by the Federal Board of Revenue, the cases of the applicants are remanded to the respective adjudicating authorities. It is noted that the concession granted by the Federal Board of Revenue by way of treating the vehicles in these applications at par with those cases wherein option to pay fine in lieu of confiscation was given, is on one time basis and that it shall not be considered as a precedent in any other case. The facts and circumstances in case of these applications are peculiar. Admittedly, other owners under similar facts and circumstances were given option to redeem the vehicles against payment of fine despite the fact that their cases were covered under SRO 499 for being outrightly confiscated. The Federal Board of Revenue did not exercise its power to reopen the adjudicated cases under section 195 of the Act of 1969. The Federal Board of Revenue had, therefore, through its conduct impliedly exempted the vehicles from operation of SRO 499. The power under section 181 of the Act of 1969 exclusively vests in the Federal Board of Revenue and it is settled law that it has to be

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exercised in a fair and just manner without treating similarly placed persons differently.

8. In the light of the above discussion, the respective judgments rendered by the learned Tribunal are hereby set aside. The respective Orders-in-Original to the extent of confiscation of the vehicles are maintained. However, the adjudication relating to outright confiscation is hereby set aside. The learned adjudication officers after affording an opportunity of hearing to the applicants shall exercise discretion by giving option to pay fine in lieu of confiscation so that the vehicles may be treated at par with those which had been confiscated on the same grounds but released against fine.

9. The respective adjudicating officers are expected to pass fresh adjudication orders, preferably within (30) thirty days from the date of receiving a certified copy of this order. The questions proposed for our consideration are answered in the above terms and the custom references are accordingly disposed of.

10. A copy of this order shall be sent to the learned Tribunal under the seal of this Court as required under Section 196 of the Act of 1969.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

(ATHAR MINALLAH)  
JUDGE

Announced in the open Court on 27-06-2018

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