

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Q.P.No.49-B/2016

Muhammad Salam & 04 others

Versus

The State etc:

JUDGMENT

Date of hearing: **12.4.2018.**

Appellant-petitioner: **Noor Zada Khan Ahmadzai,**

Advocate.

Respondent: **State By Shahid Hameed Qureshi,**

Addl: AG.

SHAKEEL AHMAD, J.- Through this single judgment, I
propose to decide the following petitions:-

- 1. Q.P.No.49-B/2016.**
(Muhammad Salam Vs. The state etc:).
- 2. Q.P.No.50-B/2016.**
(Gul Shad Vs. The state etc:).
- 3. Q.PNo.53-B/2016.**
(Anwar Aziz Vs The State etc:).
- 4. Q.P.No.55-B/2016.**
(Abdul Wadood Vs. The State etc:).
- 5. Q.P.No.64-B/2016**
(Haji Wali Khan Vs. The State etc:).

2. In these petitions following questions of law are involved, therefore, the same are being decided through this consolidated judgment.

➤ *Whether the vehicles in question are Non Custom Paid and these were brought to the settled area in violation of the Customs Act, 1969?*

➤ *Whether in presence of Customs Act, 1969 as well as judgment of the apex Court in Criminal Petitions No.802 of 2015 and 22 of 2017, the Non Custom Paid vehicles can be released on Superdari?*

3. The brief facts of the case are that the petitioners are the permanent residents of North Waziristan Agency and are now residing in Bannu as Temporary Dislocated Persons (TDPs). That the Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, vide circular No.SO(AR)/HD/1-8/NCP/2014/KC dated 03rd October, 2014, approved a mechanism/policy for Non Custom Paid (NCP) vehicles of TDPs of North Waziristan Agency in wake of Military operation “Zarb-e-Azb” and circulated the same in different Provincial Government Departments. That in pursuance of the circular, referred to above, some vehicles were provisionally registered and allowed to be plied in Districts Bannu,

D.I.Khan and Lakki Marwat, while other were not registered. The Police Officers/Officials intercepted some of the vehicles while plying in District Bannu, and it transpired that no duty and taxes leviable on such imported vehicles were paid, which culminated in registration of FIRs. The vehicles were apprehended by the local police and cases were accordingly registered.

4. The petitioners filed petitions before the learned Illaqa Magistrates concerned for release of the vehicles in question on *Superdari*, which were turned down. Not contented with the same, the petitioners filed criminal revisions before the learned Additional Sessions Judges, concerned and the learned revisional Court through separate orders, maintained the orders passed by the Illaqa Judicial Magistrates on the ground that the petitioners have failed to prove their ownership in support of their contentions, therefore, they filed the quashment petitions under Section 561-A Cr.PC, for release of the vehicles in question claiming to be its lawful owners and its importation under the circular, referred to above.

5. It is, inter alia, agued by the learned counsel for the petitioners that the petitioners are Temporary Dislocated Persons (TDPs) and in order to facilitate the TDPS, the Provincial Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department vide circular No.SO (AR)/HD/1-

8/NCP/2014/KC dated 03rd October, 2014, approved the mechanism/policy for Non Custom Paid (NCP) vehicles of TDPs of North Waziristan Agency, therefore, interception and apprehension of such vehicles by the Officials of Police is illegal, without lawful authority and without jurisdiction and they are entitled for its custody.

6. As against that, the learned Addl: A.G representing the State strenuously opposed the contention of the learned counsel for the petitioners and argued that under Section 19 of the Customs Act, 1969, only the Federal Government is competent to grant exemption from payment of custom duties chargeable thereon and the circular issued by the Provincial Government offends Section 19 of the Act *ibid*, therefore, seizure of the vehicles in question and registration of FIRs by the Government functionaries are legal; that neither the vehicles have lawfully been imported into settled area nor the taxes and duties leviable thereon have been paid; that the learned Illaqa Judicial Magistrate, Additional Sessions Judge and High Court have got no power to release such vehicles on *Superdari*.

7. Arguments heard and record perused.

8. Perusal of the record reflects that the vehicles in question are of foreign origin and were seized by the Officials of Police being Non Custom Paid. The petitioners have failed

to produce any documentary evidence showing their ownership and lawful import in the settled areas.

9. The question emerging for consideration of this Court, as formulated above, is whether the vehicles seized have been lawfully imported and the persons importing them have paid the duties and taxes leviable thereon and whether the circular under which some vehicles were provisionally registered offends Section 19 of the Customs Act, 1969 or not, the answer to the question is obviously in affirmative. It will be advantageous to reproduce Section 19 of the Act *ibid*, which reads as under:-

“19. General power to exempt from customs duties..---[(1)] *The [Federal Government], subject to such conditions, limitations or restrictions, if any, as it thinks fit to impose, may, by Notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon [and may remit fine, penalty, charge or any other amount recoverable under this Act.]*

[(2)] A Notification issued under sub-section (1) shall be effective from the day specified therein, notwithstanding the fact that the issue

of the official Gazette in which such Notification appears is published at any time after that day.]

[(3)] Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms Act, 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or Court, no person shall, in the absence of a notification by the Federal Government published in the official gazette expressly granting and affirming exemption from or refund of customs duty on the basis of the doctrine of promissory estoppel or on account of any correspondence or admission or promise or commitment or concessionary order made or understanding given whether in writing or otherwise, by any government department or authority.]

10. A bare reading of this section reveals that the notification regarding exemption of any goods imported into Pakistan can only be issued by the Federal Government. There are certain other provisions of Customs Act, 1969, which empower the Central Board of Revenue also to issue certain notifications in matters pertaining to the delegated legislation, and the exemptions and the scope and extent thereof under

Section-19 of the Customs Act, 1969 are exclusively within the competence of Federal Government.

11. Admittedly, the vehicles in questions were neither brought into settled area in accordance with the provisions contained in the Customs Act, 1969, nor the custom duty nor any duties and taxes leviable thereon were paid by its importers, hence, neither the High Court nor Sessions Judges nor Judicial Magistrates have the power to release such vehicles on *superdari*. These vehicles are subject to departmental adjudication as envisaged under the Customs Act, 1969.

13. I am also fortified by the judgment of the Honourable Supreme Court of Pakistan in Criminal Petitions No.802 of 2015 and 22 of 2016, where identical questions were answered by the august Supreme Court of Pakistan, and held that the seizure of vehicles not lawfully imported, and failure of payment of the duties and taxes leviable thereon by the persons importing them, is legal.

14. For what has been discussed above, we find no substance in the petitions in hand, therefore, the same are hereby dismissed alongwith connected Contempt of Court Petitions.

Announced.
Dt:27.02.2018.

JUDGE

JUDGE