

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.551 of 2017

Date	Order with signature of Judge
-------------	--------------------------------------

Present:

Mr. Justice Muhammad Ali Mazhar

Muhammad Saeed**Plaintiff**

Vs.

Federation of Pakistan

& others..... Defendants

For hearing of C.M.A No.4263/2017

Dates of hearing: 22.5.2017 and 25.05.2017

Mr.Jawaid Farooqi, Advocate for the Plaintiff.

Mr.Kashif Nazeer, Advocate for the Defendant
Nos.3 to 5.

Mr.Abdul Qadir Leghari, Assistant Attorney General.

Mr.Muhammad Aftab, Deputy Collector, Appraisement
Customs (West).

Mr.Ilyas Ahsan, Law Officer, FBR.

Muhammad Ali Mazhar, J. This suit for declaration,
permanent and mandatory injunction has been brought
to seek out following reliefs:

**“(a) Declare that the act of the officials of the defendant
Nos.3 and 4 in intercepting, seizing and impounding the
said vehicle by inventory dated 26.1.2017 is mala fide,
unlawful and of no legal effect.**

**(b) Direct the defendant Nos.3 and 4 to immediately release
the said vehicle seized and impounded by inventory
dated 26.1.2017.**

**(c) Direct the defendant Nos.3 and 4 to immediately deliver
handover custody/possession of the said vehicle
mentioned in the inventory to the Nazir of this court.**

(d) Restrain the defendant No.3 and 4 from taking any other coercive action against the plaintiff in respect of the said vehicle intercepted, seized and impounded by inventory dated 26.1.2017 by themselves or any other agency working under them or under the defendant Nos.1 and 2.”

2. The learned counsel for the plaintiff argued that the plaintiff purchased Toyota Surf Jeep, Registration No.BF-8588 (Karachi) from Sharoz Khalid on 10.5.2016 against valuable consideration of Rs.31,00,000/- after due verification from CPLC and clearance of Excise and taxation department. The first owner of the vehicle was Zahir Muhammad who purchased the vehicle through Customs Auction in the sum of Rs.14,65,000/-. The seller handed over transfer deed, transfer letter (open) and other title documents including registration book to the plaintiff. However on 26.1.2017, the defendant No. 3 and 4 intercepted the vehicle and seized and impounded it vide inventory dated 26.1.2017. He further argued that after seizer, the officials of defendant Nos.3 and 4 obtained verification of import from the defendant No.5 but vide letter dated 1.2.2017, the defendant No.5 informed that the import documents of the vehicle are fake and AICT has no record of index.

3. The learned counsel further contended that it is a case of purchase through Custom's Public Auction and not a import by the first owner. The officials of defendant Nos.3 and 4 with mala fide intention sent wrong documents for verification including IGM No.305/14, index No.238 and Delivery Order No.6479 dated 30.6.2015. The learned counsel also referred to the documents attached with the plaint to show bona fide and legitimate right of the plaintiff. He bring to an end with closing submission that plaintiff purchased a

registered vehicle from local market so he is not accountable or answerable if any fraud or forgery is committed or any manipulation was made in the documents for which the custom authority and their officials are blameworthy. He referred to **2013 PTD 765** and argued that in this case also vehicle was released which was impounded/seized on ground of fake imported documents. The learned counsel also showed willingness to furnish solvent surety by the plaintiff to the satisfaction of Nazir of this court if custody of vehicle is released to the plaintiff pendente lite.

4. The defendant No.6 (Excise and Taxation Department) filed the written statement with the submissions that on receipt of application for registration along with documents, registration fee and other taxes from the auction purchaser under Section 25 of Motor Vehicles Ordinance, 1965 (West Pakistan Ordinance XIX of 1965) and after fulfillment of all prevailing legal formalities, including verification of documents from customs authorities, the vehicle was registered and allotted registration No.BF-8588.

5. The learned counsel for the defendant No.3 and 4 argued that the suit is not maintainable and barred by Section 217 of the Customs Act, 1969 so the plaint is liable to be rejected under Order 7 Rule 11 CPC. He averred that the staff of defendant No.4 on 26.1.2017 intercepted smuggled/non-duty paid Toyota Surf Jeep involving duty and taxes to the tune of Rs.6.96 million for verification of its legitimate import and payment of duty and taxes. Subsequently it revealed that the vehicle was neither imported nor was cleared on filing of Goods Declaration and payment of duties and taxes. The non-

duty paid vehicle was registered by ETO on the basis of fake customs auction documents. The vehicle has been seized due to contravention of Section 2(s), 16 and 178 of the Customs Act, 1969 punishable under Clause (8) (77) and (89) of sub-section (1) read with sub-section (2) of Section 156 of the Customs Act, 1969. That efficacious remedy is the adjudication proceedings under Section 179 of the Customs Act 1969. He referred to S.R.O. 566(I)/2005 dated 6th June, 2005 issued by Ministry of Finance, Revenue and Economic Affairs, Government of Pakistan in exercise of powers conferred by sub-section (ii) of clause (s) of Section 2 and sub-section (2) of Section 156 of the Customs Act whereby the Federal Government was pleased to specify the goods for the purposes of the aforesaid sub-clause (ii) of clause (s) of section 2 and sub-section (2) of section 156 and at Sr.No.26 mentioned the "Vehicles of all sorts". He also referred to S.R.O.499(I)/2009 dated 13th June, 2009 issued in exercise of powers conferred by Section 181 of the Customs Act, 1969 by means of which FBR was pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of the various goods and clause (a) of this Notification pertains to "smuggled goods falling under clause (s) of Section 2 of the Customs Act, 1969". He further contended that lot No. CF-10-JAN-15 was allotted to Used Honda Fit Shuttle Hybrid Car (Automatic) which was imported vide IGM No.305/14. The terminal operator (Customs) M/s.Al-Hamd Container Terminal has confirmed vide letter dated 31.1.2017 that they have no record pertaining to IGM No.3471/2015 index No.69. He concluded that proper remedy is to invoke the hierarchy provided under Customs Act, 1969 to deal and adjudicate upon the matter and cited relevant provisions of the Customs Act.

In support of his contention, the learned counsel alluded to following judicial precedents:

Unreported order passed by the hon'ble Supreme Court in Civil Appeal No.1050 of 2009 (Collector of Customs, Peshawar v. Wali Khan etc.), Civil Appeal No.1600 of 2006 (Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others), Civil Petition No.832-K to 833-K of 2011 (M/s.Ghani Tayyab (Pvt.) Ltd. v. Federation of Pakistan & others), 2006 PTD 1491 (M/s.Binaco Traders v. Federation of Pakistan & others) and 2006 PTD 2167 (Malik Muhammad Saeed v. Federation of Pakistan & others).

6. Heard the arguments. A quick look to Section 168 of the Customs Act articulates and enunciates that the appropriate officer may seize any goods liable to confiscation and where it is not practicable to seize any such goods he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. In tandem and contemporarily, Section 180 and 181 of the Customs Act germane to show cause notice before confiscation of goods or imposition of penalty and option to pay fine in lieu of confiscated goods. Whereas Section 156 of the same Act provides that whoever commits any offence described in Column-1 of the table shall in addition to and not in derogation of any punishment to which he may be liable under any other law be liable to the punishment mentioned against that offence in Column-2 thereof. Clause 89 (i) embodies and characterizes that if any person without lawful excuse the proof of which shall be on such person acquires possession of, or if in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with smuggled goods or any goods with respect to which there may be

reasonable suspicion that they are smuggled goods. Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods and where the value of such goods exceeds three hundred thousand rupees, he shall further be liable upon conviction by a Special Judge, to imprisonment for a term not exceeding six years and to a fine not exceeding ten times the value of such goods.

7. The plaintiff has attached following documents with the plaint to put on view his conduct straightforward and trustworthy:

List of documents.

1. **Inventory of vehicle dated 26.1.2017.**
2. **Letter dated 25.01.2016 of Model Customs Collectorate of Appraisement (West) AICT, Karachi addressed to Excise and Taxation Officer, Motor Registration Authority, Civic Centre, Karachi on the subject Pre-Registration Verification & Confirmation of Custom Documents for the vehicle cleared under Auction Scheme.**
3. **Letter dated 8.1.2016 of Excise and Taxation Officer/Incharge Custom and Auction Verification Motor Registration Wing, Civic Centre, Karachi addressed to Superintendent of Customs House Karachi on the subject verification for particulars of vehicle.**
4. **Letter dated 1.2.2017 of Government of Pakistan, Model Customs Collectorate of Appraisement (West) AICT, Karachi addressed to the Deputy Director, Directorate General, Intelligence and Investigation-FBR, (Customs Anti-Smuggling), Regional Office, Karachi on the subject verification of documents in respect of the said vehicle.**
5. **Letter dated 31.1.2017 of Manager, Al-Hamd International Container Terminal (Pvt.) Limited addressed to the Appraising Officer, AICT, Karachi on the subject Verification of IGM No.3471/2015 Index No.69.**
6. **Photo copy of Registration Book of the vehicle No.BF-8588.**
7. **Receipt dated 13.2.2016 of Excise and Taxation Department of Rs.40,000/- for Registration of Vehicle.**
8. **Sale Receipt and Delivery Acceptance dated 10.5.2016 by Purchaser and Seller.**
9. **Photocopy of CNIC of Zahir Muhammad first owner.**
10. **Open Transfer letter**

11. **Blank T.O. Form.**
12. **Blank Sale Transfer Deed on Stamp paper.**
13. **Payment Advice of JS Bank Ltd. dated 10.5.2016.**
14. **Application Form for New Registration Certificate of Vehicle filled up with particulars of Zahir Muhammad dated 27.1.2016.**
15. **KPT Karachi Delivery Order (Customer Copy) dated 16.6.2015.**
16. **Notice for deposit of 75% Balance Amount and Adjustment of 25% Earnest Money of Collectorate of Customs Appraisalment, Custom House, Karachi dated 11.6.2015 with name of successful bidder Zahir Muhammad.**
17. **Certificate under Rule 72 of Collectorate of Customs (Appraisalment) Custom House, Karachi dated 16.6.2015.**
18. **Receipt of NBP dated 8.6.2015 of Rs.366250/- paid to NBP for the credit of collector Custom Account Auction Money.**
19. **Receipt of NBP dated 11.6.2015 of Rs.1098750/- paid to NBP for the credit of collector Custom Account Auction Money.**
20. **Income Tax Department, Computerized Payment Receipt dated 11.6.2015 NBP.**
21. **Receipt of Al-Hamd International Container Terminal Pvt. Ltd.. Sales Tax Invoice dated 16.6.2015.**
22. **Gate Pass Al-Hamd International Container Terminal Pvt. Ltd. dated 16.6.2015.**

8. The record reflects that on 27.2.2017 when this application was fixed for orders before the learned Single Judge, the court while issuing notice to the defendants as well as D.A.G., directed to maintain status quo with further directions to handover the vehicle in question within a week to the Nazir of this court. The counsel for the Customs Authority maintained that since this court directed to maintain status quo therefore show cause notice could not be issued nor any proceedings commenced under Section 180 and 181 of the Customs Act. However he requested to the court that the Department may be allowed to adjudicate the matter in accordance with law.

9. The assertion of the plaintiff is that he has lawfully purchased vehicle in question from Sharoz Khalid after

due verification from CPLC and Registration Authority. In point of fact Zahir Muhammad purchased the vehicle through Customs auction and the second owner sold the vehicle to the plaintiff and handed over all original documents including the open letter. At this juncture Section 25 of the West Pakistan Motor Vehicles Ordinance, 1965 is somewhat imperative and domineering which is relatable to the registration of vehicle on the application by the owner of a motor vehicle in view of the information contained in the Form 'F' set forth in the First Schedule. Thus it is clear that before making registration of any vehicle the authority concerned has to comply with the requirements set forth in Section 25.

10. At this moment in time the case pertains to the sale of the vehicle through public auction and the first owner or the auction purchaser was not the importer. Letter dated 25.01.2016 issued by Deputy Collector, AICT to the Excise & Taxation Officer, Motor Registering Authority, Civic Centre, Karachi is available at page 17 of the file which was written in response to the query raised by the Excise & Taxation Officer as Pre-Registration Verification/Confirmation of Custom Documents for the Vehicle cleared under Auction Scheme. The Deputy Collector AICT verified that the vehicle was sold through public auction to Zahir Muhammad while one more letter is also attached at page 21 which was written by another Deputy Collector on 01.02.2017 to the Deputy Director, Directorate General, Intelligence & Investigation, FBR in which he informed that the AICT has no record of the said index and communicated that the documents sent for verification are fake. A copy of registration book is also

available at page 25 which shows that the vehicle was transferred in the name of Zahir Muhammad on 27.01.2016. The receipt of payment for the registration of vehicle is also available. The copy of sale receipt and delivery acceptance shows the name of purchaser Abdul Hadi Saeed, son of the plaintiff and various documents are also available including the application for new registration given by Zahir Muhammad to the Excise & Taxation Department, the delivery order issued by the Customs Authorities, letter dated 11.06.2015 issued by Deputy Collector of Customs Purchase to the bidder/auction purchase Zahir Muhammad to deposit outstanding 75% of the bid amount, certificate under Rule 72 issued by authorized officer of Customs to the auction purchaser Zahir Muhammad with the description of the vehicle. Two receipts of National Bank of Pakistan dated 08.06.2015 and 11.06.2015 are also available. The computerized payment receipt of Rs.1,46,500/- is also attached with the sale tax invoice and gate pass issued by Al-Hamd International Container Terminal (Pvt.) Ltd.

11. It indisputably and irrefutably manifests from the reply of Excise and Taxation Department that after due verification from Customs Authority, vehicle was registered. Neither the plaintiff was the auction purchaser nor the importer but he purchased registered vehicle from open market, so being cautious and observant to the tenet/precept of "*Caveat Emptor*", "*Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another. Let a buyer beware; for he ought not to be ignorant of what they are when he buys the rights of another.*" [Ref: Black's Law Dictionary, Sixth Edition], the plaintiff verified the title documents

from Excise department and also sought verification from CPLC regarding any adverse/negative report against the vehicle in question and according to plaintiff for purchasing a registered vehicle he fulfilled the basic requirements and nothing else was required to go through with as registration of vehicle by a competent authority has significant impact and it deems to have been done cautiously after complying with statutory requirements. So in my view the plaintiff has some better edge and advantage rather than the defence plea at this point in time to decide the right of intermediary and transitional custody of vehicle till such time the matter in issue is properly adjudicated by the concerned department in accordance with the provisions of Customs Act. In my tentative view there seems no element of mens rea on the part of plaintiff who purchased the vehicle against valuable consideration after due verification of the title of its former owner. At this stage no reasonable grounds exists to postulate and predicate that the plaintiff was in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with smuggled goods or any goods with respect to which there may be reasonable suspicion that they are smuggled goods.

12. Judicial discretion can be exercised for the release of vehicle on superdari/surety in view of the well settled principle of law that if a court can grant final relief, it also possesses inherent jurisdiction to grant temporary relief pending proceedings before it. Normally the disputed property is handed over to the person from whom it is taken till decision of the criminal court or the civil court about the title of contested claim. An open letter, registration book and computer checking slip may

be considered sufficient to give vehicle on superdari/surety to a person from whom it was taken. The courts in normal course restore the possession to the party from whose possession vehicle is recovered however the question of title may be decided subsequently. The retention of subject vehicle with Nazir for an indefinite period would mean nothing but its complete decay, deterioration and damage which is not allowable under the law. Even in the matter of superdari, the law is quite settled that in case there are no rival claimant for superdari of a vehicle then the vehicle should ordinarily be given on superdari to the person from whom it was taken into possession. In the present case the plaintiff is the only person claiming the custody.

13. In the unreported order passed by the hon'ble Supreme Court in **Civil Appeal No.1050 of 2009 (Collector of Customs, Peshawar v. Wali Khan etc.)**, the court held that confiscated goods were admittedly of foreign origin and there was no proof that they were lawfully imported into Pakistan (by an authorized importer under a valid license and through an authorized route), therefore, the forums below have erred in holding that the confiscated goods were not notified and thus do not fall within the purview of Section 2(s) of the Customs Act. In **Civil Appeal No.1600 of 2006 (Indus Trading and Contracting Company v. Collector of Customs (Preventive) Karachi and others)**, the controversy before the apex court was that the appellant imported two consignments of medicines, which were free from customs duty on the basis of concession granted under the Finance Act, 1995. Before this consignment arrived at port the

Federal Government issued S.R.O. imposing 5% ad valorem regularity duty which the appellant paid and got the consignments released but subsequently the appellant challenged the levy of regularity duty through Constitution Petition in the High Court of Sindh. The apex court in paragraph 4 held as under:-

“4. Before examining the merits of the case, we find it necessary to state that at the stage when regulatory duty was charged, the appellant ought to have challenged the same before the forum provided under the Customs Act. Instead of doing that, the appellant invoked the jurisdiction of the High Court under Article 199(1) of the Constitution of Pakistan. Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time.We could have relegated the appellant to seek remedy before the appropriate forum, however, as the dispute in the present case is now more than twenty years old, we for this reason only as matter of indulgence, proceed to decide the controversy on its merits.”

In Civil Petition No.832-K to 833-K of 2011 (M/s.Ghani Tayyab (Pvt.) Ltd. v. Federation of Pakistan & others). The petitioner contended before the court that under Section 25B of the Customs Act, 1969 the value of a class or description of goods was notified for the purposes of duty, it could not have been charged in any other manner notwithstanding the value of goods declared was higher than the one notified under the aforesaid provision. The apex court held as under:-

“4. Jurisdiction of Civil Court is clearly barred under Section 217 of the Customs Act. The suit thus instituted, in our view, was not competent. Though this

point has not been raised in the fora below yet it being a question of jurisdiction cannot be lost sight of.

5. We, therefore, maintain dismissal put on the ground of jurisdiction. These petitions for leave to appeal are dismissed.....”

In the case of **M/s.Binaco Traders v. Federation of Pakistan & others**, reported in **2006 PTD 1491**, the brief facts were that the plaintiff called in question the legality of Customs Authorities’ action to acquire plaintiff’s goods under the provisions of Section 25-A of the Customs Act which authorized the Customs Authorities to acquire the imported goods in case their value has been understated and there is a buyer willing to buy such goods at substantially high price. The court keeping in view the controversy involved held as under:-

“In view of the above discussion I hold that the plaintiff ought to have contested the matter before the Customs Authorities instead of filing the present suit which is not maintainable in law on account of the bar contained in section 217(2) of the Customs Act. With these observations, this suit is dismissed.”

Whereas in the case of **Malik Muhammad Saeed v. Federation of Pakistan & others**, reported in **2006 PTD 2167**, the plaintiff filed suit for declaration and permanent injunction challenging the detention order, show cause notice and order-in-original. The plaintiff pleaded that he imported one used Mercedes Car from Dubai. The bill of entry was filed and it was alleged that the defendant No.3 illegally detained the said car and prepared a concocted contravention report and served show cause notice. The court held as under:-

“The pleas, which were raised by the plaintiff in the present suit, can be agitated by him while filing appeal against the order-in-original passed by the Customs Authorities. The remedies by way of appeal is available to the plaintiff up to the level of High Court..... In this case, since the action taken by the Customs Authorities is within four corners of Customs Act the same cannot

be termed as mala fide and is saved under section 217 of the Customs Act and is not open to challenge before a civil Court and the same cannot be set aside or modified by this Court.”

14. The facts and circumstances of the case in the above judicial precedents were altogether different and distinguishable. Here the plaintiff has purchased a registered vehicle from market and the registration authority in their reply has confirmed to have registered the vehicle after complying with all requisite formalities. So at this stage the registration by the competent authority ascribes and endorses resilient and all-encompassing presumption that the plaintiff is neither at fault nor any omission on his part. If any fraud or forgery has been committed, it was committed by the first owner who claims to have purchased the vehicle from alleged customs auction. It is well settled that each case has to be seen in its own idiosyncratic and peculiar circumstances. The rigors and severities of Section 217 of the Customs Act, 1969 inter alia provide that no suit, prosecution or other legal proceedings shall lie against the Federal Government or any public servant for anything which is done or intended to be done in good faith in pursuance of the Act or the Rules. In sub-section (2) it is further provided that no suit shall be brought in any civil court to set-aside or modify any order passed, any assessment made, any tax levied, any penalty imposed or collection of any tax made under this Act. In the case in hand, there are two parallel positions and state of affairs. On one hand the Customs Officials said to have seized the vehicle in question in good faith and in pursuance of the provisions of Customs Act. Quite the reverse, the plaintiff claims to have purchased the vehicle after due verification from open market and registration

of vehicle by a competent authority attached much sacrosanctity for an innocent buyer who purchased the vehicle in question after due diligence and immediately after seizer, filed this suit to protect his right to vehicle as admittedly no proceedings were initiated at the time of filing this suit by the custom authorities against the plaintiff, so in my view, the plaintiff cannot be nonsuited but for a limited purpose which would also advance the cause of justice, an order may be passed to release the vehicle to the plaintiff subject to furnishing surety and simultaneously the Customs Authority to find out the truth may be allowed to initiate proceedings in accordance with the provisions of Customs Act and pending adjudication, the custody of vehicle with the plaintiff shall remain subject to the final outcome of proceedings under the Customs hierarchy.

15. It quite worthwhile to touch on and reiterate the defence taken by the Customs Authority that documents were counterfeited and forged. If it is so then in my view this could not be done single handedly rather this could only be done with the aid and assistance or collusion of some delinquents and miscreants in league therefore the possibility of custom officials involvement cannot be ruled out to be part of this racket. Several documents on record were allegedly issued by the Customs including the verification letter to Excise and Taxation department. Even bank receipts are also said to be forged. How these documents and bank receipts were manufactured and manipulated and with whose active participation, collusion and connivance a case of lawful auction of a vehicle was allegedly made out? In my view this is a fit case in which the Chairman FBR may refer to the matter to F.I.A for enquiry and investigation so the persons

involved in this scam may be taken to task, tried and punished in accordance with law.

16. In the wake of above discussion, the application is disposed of in the following terms:-

1. The Customs Authority may initiate proceedings in accordance with the law. The plaintiff shall also be associated and provided ample opportunity of hearing before the Customs Authorities for proper adjudication of the matter.
2. On furnishing solvent surety in the sum of Rs.30,00,000/- (Rupees thirty lacs only) with personal bond by the plaintiff to the satisfaction of the Nazir of this court, the vehicle may be released to the plaintiff subject to the final outcome of the adjudication proceedings as may be finalized by the Customs Authorities in accordance with law. In case any adverse order is passed against the plaintiff, he may avail appropriate remedy provided under the Customs Act.
3. The Nazir shall retain original Registration Book of vehicle and also mark caution to the Excise and Taxation Office not to transfer the vehicle till further orders of this court. An attested photo copy of the registration book may be issued by the Nazir to the plaintiff for plying the vehicle.
4. The plaintiff shall not sell or make out any changes in the colour of vehicle and produce it as and when required and directed by the Customs Authorities or this court.

5. The defendant No.3 to 5 shall place on record final outcome of the proceedings so that further orders with regard to the custody of vehicle handed over to the plaintiff provisionally shall be passed in this suit keeping in view the final outcome of adjudication proceedings as may be initiated by the Customs Authorities under their departmental hierarchy.

6. Office is directed to transmit copy of this Order to the Chairman F.B.R for further proceedings in the context and framework of paragraph 15 of this order. A copy shall also be forwarded to the learned Additional Attorney General, Karachi for information and follow up.

Judge

**Karachi:-
Dated.21.6.2017**