

IN THE HIGH COURT OF SINDH, KARACHI

**Present**

*Muhammad Shafi Siddiqui, J*

*Mahmood A. Khan, J*

**CP No.D-4292 of 2021**

***[M/s Outdoorsman v. Federation of Pakistan & 8 Others]***

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For the Petitioner	Mr. Mohsin Kadir Shahwani alongwith Mr. Azain Nadeem, Advocates
For Respondents No.1&2	Mr. Kafil Ahmed Abbasi, DAG a/w Mr. Hussain Bohra, Asstt. Attorney General
For Respondents No.3&4	Mr. Muhammad Khalil Dogar, Advocate
For Respondent No.5	Syed Zaim Hyder, Advocate
For Respondents No.6 to 9	Mr. Salman Talibuddin, AG Sindh alongwith Mr. Saifullah, Addl. AG Sindh
Dates of hearing	04.11.2021, 25.11.2021, 26.11.2021 & 29.11.2021. -o-o-o-

**J U D G M E N T**

**Muhammad Shafi Siddiqui J.**- The petitioner has impugned Letter dated 21.06.2021 of Section Officer (Arms) purportedly issued on behalf of Home Department, Government of Sindh, to the Customs Department, in relation to the consignment of arms and ammunition as imported by the petitioner with prayer that provisions of Sindh Arms Act, 2013, such as, Sections 4, 5, 9 & 10 [Section 4 inadvertently typed as 24 as stated] be declared ultra vires the Constitution and that the requirement of transportation license by respondent No.6 under Sindh Arms Act and Rules 2018 is in violation of Article 142 of the Constitution and Entry 27 of the Federal Legislative List read with Article 151 of the Constitution of Islamic Republic of Pakistan.

2]. Brief facts, as stated, are that the petitioner claimed to have imported the consignment of small arms and ammunition from USA. The consignment reached at the port on 01.06.2021 when goods declaration was filed. The duties

and taxes claimed to have been assessed and paid against the value declared. This was followed by the routine application [as claimed] dated 06.08.2020 for permission to store imported arms and ammunition at the warehouse and consequently, on account of delay being caused, it led to filing of a petition bearing No.2944 of 2020 which was disposed of directing the Home Department to decide the application of storage of arms and ammunition at the warehouse which was declined. The other application that relates to shifting of the registered address of dealers/shop from the current address to the warehouse/factory premises is also initiated which is stated to be pending alongwith an application for issuance of transportation license for transporting the consignment from Karachi port to the petitioner`s warehouse and/or registered premises.

3]. The consignment was imported in terms of the Import Policy Order, 2020 read with SRO No.772(1)/2018 for the purposes of Import Policy Order, 2016 . It is contended by Mr. Shahwani that in pursuance of such import under the Import Policy Order, 2020, the Collectortate of Customs was only required to seek clarification/authenticity of the arms dealership license which is a condition precedent for importing such consignment in terms of the Import Policy Order, 2020. On receipt of such letter seeking verification of the dealership license, the Section Officer (Arms) of the Home Department, Province of Sindh, confirmed that the said Arms Dealership License Form X & XII dated 21.12.2016 were issued from the Home Department in favour of the petitioner and was valid till 31.12.2021, however, it is not meant for import of arms and ammunition. It was further clarified in the ultimate para of the letter impugned that the Home Department`s notification dated 18.12.2018, Government of Sindh has notified the policy for regulation of import of arms and ammunition of Non-Prohibited Bore [NPB] and arms dealers of Sindh Province are required to obtain import authorization from the Home Department separately for import of arms and ammunition. On receipt of this letter, the Collectorate of Customs withheld the release of the consignment on the count that an import authorization is required from the provincial Home Department separately for the import of the subject consignment, on the basis of impugned letter.

4]. Learned counsel for the petitioner has argued that this part of letter is contrary to the mandate of constitution, law and the rules that concern the subject. He further submits that under Entry 27 to the IVth Schedule of the Federal

Legislative List of the Constitution of Islamic Republic of Pakistan, the subject of import and export across the customs frontier as defined by Federal Government is the domain of federation and the province has no role in it as far as import and export of arms and ammunition is concerned. Thus it is claimed that any embargo or objections for providing an independent import authorization from the provincial Home Department, Government of Sindh, is contrary to the constitutional scheme. He submits that in terms of Section 3 of the Import and Export (Control) Act, 1950, the SRO No.902 (1)/2020 dated 25<sup>th</sup> September, 2020 has already recognized the importability of the arms and ammunition which in terms of Appendix-B, Part-I, Entry 62 provides conditions in its IVth column which conditions were met by the petitioner and there was no further authorization of import is required from the Home Department, Government of Sindh, as alleged in the impugned letter.

5]. Learned counsel for the petitioner further submits that the provisions of Sections 4, 5, 9 & 10 of Sindh Arms Act, 2013 have been legislated and enacted contrary to Article 142 of Constitution read with Entry 27 of the IVth Schedule of Federal Legislative List of Constitution of Pakistan and hence be declared as ultra vires the Constitution.

6]. Mr. Muhammad Khalil Dogar, learned counsel for respondents No.3&4/customs department submits that since they are in receipt of a letter from the Home Department, Government of Sindh that directed them to ensure for an import authorization from the Home Department, they have restricted the release of the consignment though there is no issue of duties and taxes.

7]. Mr. Saifullah, learned Addl. AG Sindh has taken us to the Arms Rules 1994 which were framed under the Arms Act, 1878 and submits that un-licensed importation and exportation is prohibited, hence, the restriction of release was rightly exercised by the customs department.

8]. Mr. Salman Talibuddin, learned AG Sindh, who appeared on court notice, however, submits that in the absence of an independent license of import from the federal government, the import of the arms and ammunition is not lawful. He, however, submits that issuance of license for the purposes of import and export is the prerogative of the federal government and it is not within the provincial domain. He however, restricts Sindh Government`s authority and

powers in so far as regulation of such arms and ammunition within their province is concerned, by issuing licenses as required under the law i.e. other than license to import and export, for regulating the movement of consignment within province and registered offices of dealers.

9]. Mr. Kafil Ahmed Abbasi, learned DAG submits that no independent license is required once Import Policy Order, 2020 permits the import of such goods with condition enumerated therein, hence, the customs department was unnecessarily misguided by Home Department of the Province of Sindh for obtaining import authorization from the Home Department by the petitioner separately for import of arms and ammunition or for that matter from the Federal Government.

10]. We have heard learned counsel and perused all the materials available on record.

11]. The import and export is the subject which is exclusively defined in IVth Schedule of the Federal Legislative List of the Constitution of Islamic Republic of Pakistan, 1973 and there is no cavil that for the purpose of import and export only federal government is competent to legislate. Consequently and in pursuit thereof in terms of Section 3 of the Import and Export (Control) Act, 1950, federal government was pleased to issue SRO No.902 (1)/2020 dated 25<sup>th</sup> September, 2020 that constitutes Import Policy Order, 2020. Appendix-B of such Import Policy Order provides list of restricted items. Such restricted items includes the subject goods of arms and ammunition as shown in Entry 62 of the said list. This Appendix provides that such goods are importable only through an individual license holder or arms dealership license holders to whom the licenses were granted by the provincial Home Department in case of dealers located in the respective provinces, whereas in the case of dealers located in Islamabad capital territory, Ministry of Interior would issue such licenses.

12]. This is the case where dealership license is not objected by the provincial government in terms of the 1<sup>st</sup> part of the impugned letter which confirms that the said arms dealership license containing Form X and Form XII dated 21.12.2016 were issued by the Home Department in favour of the petitioner which is valid till 31.12.2021. The Home Department has confused the customs department by stating that it is not meant for import of arms and ammunition. They further stated that under a policy, Sindh Government has notified that for

the import of the arms and ammunition for Non-Prohibited Bore importers are required to have import authorization from the Home Department separately.

13]. Mr. Salman Talibuddin, however, has not been able to reconcile such by supporting it through any lawful legislation. He in fact acknowledged that it is the sole prerogative of the federal government to have issued them a license. The condition, however, to be met through the provincial department such as dealership license etc.

14]. We do not find any necessity of an independent license from the federal government in presence of Import Policy Order, 2016 w.e.f. 14.6.2018 followed by Import Policy Order, 2020. The Import Policy Order, 2016 in terms of the subject in hand was amended by virtue of SRO No.772(1)/2018 on 14.6.2018 which provides that the individual license holders or arms dealership license holders [as issued by Home Department, Province of Sindh] are allowed to import arms and ammunition. It was clarified by Federal Government, Ministry of Commerce & Textile vide letter dated 06.09.2019 that the import of arms and ammunition does not require any import authorization from the Commerce Division Islamabad after issuance of SRO No.772(I)/2018 dated 14-06-2018. For convenience and ready reference, text of [i]. Letter dated 06.09.2019, [ii]. Section 6(1) and [iii]. Entry No.62 Part I of Appendix B of IPO, 2020 are reproduced herein-below:-

[i]. **Letter dated 06.09.2019**

*Mr. Saud Imran Ahmed,  
Member (Technical),  
Government of Pakistan  
Customs Appellate Tribunal, Bench-I,  
29-C Davis Road,  
**Lahore***

***Subject: AMENDMENT IN IMPORT POLICY  
ORDER VIDE SRO No.772(1)/2018 DATED  
14-06-2018***

*I am directed to refer to your letter No.386/LB/19 dated 3<sup>rd</sup> September, 2019 on the subject cited above and to inform that the policy for import of arms and ammunition listed at Sr.No.65, Part-I, Appendix-B, IPO 2016 has been revised vide SRO 772(I)/2018 dated 14-06-2018 (copy enclosed).*

*2. Vide SRO 772(I)/2018 dated 14-06-2018 individual license holders or arms dealership license holders are allowed to import arms and ammunition subject to the conditions mentioned in the above mentioned SRO. Moreover, it may be noted that import of arms and ammunition does not*

require any import authorization from Commerce Division, Islamabad, after issuance of the above mentioned S.R.O.

[ii]. **Section 6(1) of Import Policy Order, 2020**

6. **Restrictions.** – (1) Goods specified in Appendix-B shall be importable subject to the conditions laid down therein.  
 (2). ...  
 (3). ...

[iii]. **Entry No.62 Part I of Appendix B of IPO, 2020**

<i>Sr.No.</i>	<i>PCT Codes</i>	<i>Commodity Description</i>	<i>Conditions</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
...	...	...	...
...	...	...	...
62.	9302.0091 9302.0092 9302.0093 9302.0099 9303.1000 9303.2011 9303.2012 9303.2019 9303.2020 9303.2090 9303.3010 9303.3020 9303.3090 9303.9000 9306.2100 9306.2900 9306.3010 9306.3090 9306.9000	Arms and Ammunition	(a) Importable only by individual licence holders or arms dealership licence holders to whom licence is granted by;  (i) Provincial Home Department, in case of dealers located in that Province; or  (ii) Ministry of Interior, in case of dealers located in Islamabad Capital Territory;  (b) A licence holder under condition (a) shall also have certificate from Original Equipment Manufacturer (OEM) in case of imported from an OEM, otherwise a certificate from any of the prescribed PSI companies as listed in Appendix -H of IPO 2016, specifically mentioning, - (i) weapon's nomenclature; (ii) weapon's caliber or bore or gauge; and (iii) weapon's manufacturer's logo,

			<i>weapon's serial number embossed thereon and other related information; and</i> <i>(c) The weapon shall be importable only through air and sea ports.</i> <i>Note: The Commercial Import of Prohibited and Non -Prohibited Weapons and Ammunition (Regulation) Order, 2014 notified vide S.R.O. No.1112 (I)/2014 dated the 16th December, 2014 is hereby repealed.</i>
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The conditions which were supplemented vide SRO No.772(1)/2018 to Import Policy Order, 2016 made permanent feature of Import Policy Order, 2020 in the above terms. This perhaps satisfied the query of Mr. Salman Talibuddin, learned Advocate General Sindh that an independent license has not been presented by the petitioner as not required. All that was required is a dealership license in view of the facts and circumstances of the case followed by a certificate from Original Equipment Manufacturer [OEM] in case of import directly from OEM otherwise a certificate from any of the prescribed Pre-shipment Inspection Companies [PSI], as listed in Appendix-H of Import Policy Order is required to demonstrate weapons` nomenclature, caliber and/or bore or gauge or weapons manufacturing logo, weapon serial number embossed thereon and other related information and that its importability is only recognized through air and sea. Such conditions were stated to be satisfied by the petitioner as far as the customs department is concerned.

15]. We are of the view that the Home Department, Government of Sindh has unlawfully demanded presentation of an import authorization from the Home Department as a separate `import license` for the arms and ammunition which is not supported by law as this urge is contrary to Import Policy Order, 2016 w.e.f. 14.6.2018 and Import Policy Order, 2020.

16]. The next question relates to declaring some of the provisions of Sindh Arms Act, 2013, such as, Sections 4, 5, 9 & 10 as ultra vires. It is stated that in the prayer clause, Section 4 is erroneously typed as 24 and the same be read

accordingly. We have gone through them minutely and in no way such provisions could restrict the importability of the consignment. Section 4 of ibid Act 2013 is related to the license for the manufacture/sale of arms and ammunition which is not the case here. Section 5 deals with the import, export and transportation which for all intent and purposes means import and export within the province of Sindh and we, while read it down, do not find it to be ultra vires to the Constitution. It primarily concerns with the person who is bringing into and taking out of Sindh or any of its districts, arms, ammunition or military stores of a firearm or convert an imitation firearm into a firearm unless a license has been issued in accordance with the provisions and rules thereunder. Similarly, in section 9&10 the words import and export are in relation to bringing into and taking out of the province of Sindh and any of its districts and it does not mean import of any arms and ammunition from outside the country which is an independent subject of the federal government hence, we read down these provisions to be within frame of Sindh Arms Act, 2013 and are not ultra vires the Constitution.

17]. So far as the application for shifting registered office of dealership is concerned, we are of the view that since it is not yet decided, it is a premature claim made, however, we direct the authority that application for shifting of registered office be decided at the earliest, preferably within a period of 07 days from today, after hearing the petitioner, if required.

With above observations, the petition is allowed in the above terms.

JUDGE

JUDGE

Karachi:  
Date:06.12.2021.

Approved for reporting