

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D-237 / 2018**

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Date Order with signature of Judge

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**PRIORITY.**

- 1) For orders on office objection.
- 2) For hearing of CMA No. 922/2018.
- 3) For hearing of main case.

**10.03.2021.**

Mr. Khawaja Shamsul Islam Advocate for Petitioner.  
Mr. Kafeel Ahmed Abbasi Deputy Attorney General.  
Mr. Khalid Rajpar Advocate for Respondent.  
Mr. Alam Zaib Advocate for Respondent No. 5.

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Through this Petition, the Petitioner has sought the following relief:-

- A. Declare that both the SROs 1067(I)/2017 dated 20.10.2017 and 1237(I)/2017 dated 04.12.2017 are in gross violation of fundamental rights guaranteed to the Petitioners specially Article 9 as well as the doctrine of legitimate expectations, concept of good governance, stability and consistency of fiscal policies.
- B. Declare that the Automotive Development Policy issued by Respondents No. 4(a) shall remain in force at least for five years and shall not be altered during the fiscal year after announcing the budget, therefore, the impugned SROs 1067(I)/2017 dated 20.10.2017 and 1237(I)/2017 dated 04.12.2017 are totally destructive to the Import Policy and liable to be strike down.
- C. Declare that under Article 90 of the Constitution of Pakistan, 1973 the Executive Authority of the Federal Government could only be exercised by the Federal Government acting through the Cabinet not by the Director by issuing the aforesaid SROs and both SROs are liable to be strike down.
- D. Declare that the Respondents are not liable to take any action pursuant to the SROs 1067(I)/2017 dated 20.10.2017 and 1237(I)/2017 dated 04.12.2017 regarding the importation as well as clearance of their vehicles.
- E. Declare tht the impugned SROs are in violation of the language of sub-section (1) of Section 3 of the Imports and Exports (Control) Act, 1950 read with Section 16 of the Customs Act, 1969 which requires Federal Government means Cabinet in terms of the case of *Mustafa Impex v. Government of Pakistan* reported in PLD 2016 SC 808.
- F. Direct Respondents No. 1 & 2 to release the consignment of the Petitioners under the Transfer of Residence Scheme, Personal Baggage Scheme and Gift Scheme in terms of the Import Policy Order, 2016 which was in vogue before issuance of the SROs 1067(I)/2017 dated 20.10.2017 and 1237(I)/2017 dated 04.12.2017 and not to take any coercive action against the Petitioners and shall not demand the customs duty for clearance of the respective vehicles in foreign exchange to be brought by them from abroad.
- G. Mandatory Injunction, suspend the operation of the impugned SROs i.e. 1067(I)/2017 dated 20.10.2017 and 1237(I)/2017 dated 04.12.2017 issued by Respondent No. 4 which are in gross violation of fundamental rights guaranteed to

the Petitioners specially Articles 4, 8, 9, 10A, 18, 24, 25, 77 and 90 of the Constitution of Pakistan 1973.

- H. Permanent Injunction, restrain the Respondent No. 4 not to issue any SRO during the subsistence of the Automotive Development Policy 2016-2021 or any order which will affect the import of the Petitioners of new and used vehicles under the Transfer of Residence Scheme, Personal Baggage Scheme and Gift Scheme.
- I. Pass any order or further order(s) in favour of the Petitioners and against the Respondents which may be deemed fit and proper under the facts and circumstances of this case.”

As informed by the learned Counsel for the Petitioner, during pendency of this Petition the Petitioners in compliance of the policy impugned herein, had got the Vehicle released after fulfilling conditions stipulated in the impugned policy, through which being aggrieved, instant petition was filed, and while confronted, learned Counsel for the Petitioners submits that since vires of the policy were challenged; hence, the Court shall decide the issue on merits., notwithstanding compliance of the same by the Petitioners.

However, we are not satisfied with this response as in our view the cause of action no more remains alive, whereas, the Petitioner No.1 a Pakistan National<sup>1</sup> in compliance of the impugned amended policy, got his vehicle released after fulfilling the requirements, including payment of duty and taxes out of foreign exchange arranged by him through his own account abroad. It is not in dispute that the Petitioner No.1, at the most can only bring a Vehicle by way of gift, transfer of residence or otherwise, once in two years; hence, presently, there is no cause of action alive. If there is any fresh cause of action to the extent of Petitioner No.1, then he may seek appropriate remedy in accordance with law.

Insofar as Petitioners No. 2 & 3 are concerned, apparently, they cannot be aggrieved of the policy in question which is applicable only to non-resident Pakistanis who are entitled for the benefit of import of used vehicles under Transfer of Residence and Personal Baggage Scheme. Therefore, to their extent, neither they could be aggrieved persons; nor have any cause of action, hence, Petition is not maintainable. After confronting the learned Counsel with this, we had given an option to him as to withdrawal of this Petition; but he has insisted for adjudication on merits, but in our considered view, for the afore stated facts and circumstances, this isn't required anymore, and can be dealt with at an appropriate time when an aggrieved person is before the Court.

Accordingly, by means of a short order in the earlier part of the day, this Petition was dismissed with cost of Rs. 10,000/- to be deposited in the account of Sindh High Court Clinic and there are the reasons thereof.

**J U D G E**

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<sup>1</sup> as defined in clause 1(d) of Appendix-E of the Import Policy Order 2016 issued under Para 16 thereof

Arshad/

**J U D G E**