ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before: Muhammad Junaid Ghaffar ACJ,
& Mohammad Abdur Rahman,J

C.P. No. D–542 of 2025

Lucky Motors Corporation
Vs.
Federation of Pakistan & Others

Petitioner	:	Through Mr. Hussain Ali Almani assisted by Mr. Ghulam Hussain Shah, Advocates
Respondent Nos.1(i) & (ii)	:	Through Miss Alizeh Bashir, Assistant Attorney General along with Abdul Hameed Shaikh, Manager EDB, Ministry of Industries and Production.
Respondent No. 2	:	Through Miss Alizeh Bashir, Assistant Attorney General along with Abdul Hameed Shaikh, Manager EDB, Ministry of Industries and Production.
Respondent No. 3	:	Nemo
Respondent No. 4	:	Nemo
Respondent No. 5	:	Nemo
Respondent No. 6	:	Nemo
Respondent No. 7	:	Nemo
Respondent No. 8	:	Nemo
Date of Hearing	:	11 March 2025
Date of Reasons	:	14 March 2025

O R D E R

MOHAMMAD ABDUR RAHMAN,J: Through this Petition, maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner seeking that:

(i) a letter dated 23 December 2024, issued by the AC (LED-II) of the Ministry of Industries & Production i.e., Respondent No.1(ii) to the Chief Executive Officer of the Engineering Development Board EDB, Islamabad i.e., Respondent No.2, declining a request made by the Petitioner to issue a certificate to it permitting it to claim exemptions under clause (xvia) of S.R.O. No. 656(I)/2006 as amended by S.R.O. No. 837(I)/2021 for a "variant" of a model of one of the cars being manufactured by the Petitioner, should be declared as illegal;

(ii) a letter dated 20 January 2025 issued by Respondent No.2 to the Respondent No.4, premised on the letter dated 23 December 2024 of the Respondent No. 2 (ii), directing the Respondent No. 4 to collect customs duties on a "variant" of a model of a car being manufactured by the Petitioner should be declared as illegal; and

(iii) a declaration be issued that the Petitioners are entitled to benefit from exemptions that are available to it under clause (xvia) of S.R.O No.656(I)/2006 as amended by S.R.O. No.837(I)/2021 in respect of the variant of a model of a car being manufactured by it.

2. The Petitioner is a public company that deals in the manufacturing of motor vehicles under the brand name "KIA". In this capacity the Petitioner, on 18 December 2017, entered into an Investment Agreement (hereinafter referred to as the "Investment Agreement") with the Respondent No. 1 (ii) that was premised on policies developed by the Respondent No. 1 (ii) to incentivise investment for the manufacture of motor vehicles in Pakistan initially being the Automotive industry Development Program 2007-2012 and which was replaced by another policy known as the Automotive Development Policy (ADP) 2016-2021.

3. To give effect to each of the policies, S.R.O. No.656(I)/2006 dated 22 June 2006 was issued by the Respondent No.1(i) granting exemptions to manufacturers in the Automotive Sector in Pakistan and which was amended by S.R.O. No.837(I)/2021 dated 30 June 2021, clause (ii) of which reads as hereinunder:

" … *(ii) after condition (xiv), the following new conditions, shall be added, namely*

> *"(xiva) The concessionary custom duty for various models of new entrants under ADP 2016-21 to continue for five years from date of first manufacturing certificate of respective variant issued by Engineering Development Board or upto 30th June 2026, whichever is earlier"*

As is evident the amendment permitted a manufacturer of a motor vehicle to claim exemption of variant of a model of a car manufactured by it subject to a certificate being issued by the Respondent No.2 that the new design came within the definition of the expression "variant" as contined in clause (j) of Article 1 of the Investment Agreement and was not altogether a new model.

4. While the expression "variant" was not defined in S.R.O No. 656(I)/2006 dated 22 June 2006 or in S.R.O.No. 837(I)/2021 dated 30 June 2021, it was defined in the Investment Agreement as hereinunder:

> " … *Variant means the vehicles which have all of the following manufacturing/construction features in common:*
>
> *i. The body shell (Sedan, Hatchback etc)*
> *ii. Engine:*
>
> *a) Energy supply (Electric, hybrid, combustion, fuel cell etc.).*
> *b) Working principle (Spark ignition/compression ignition etc.).*
> *c) Number, arrangement of cylinders and capacity.*
>
> *iii. Transmission (Manual, Automatic)*
>
> *illustrative Note: Sedan, Engine Size and Transmission (MT) is one variant. Sedan, Engine Size and Transmission (AT) is another variant. Likewise, Hatchback, Egnine size and Transmission MT is one variant, Hatchback, Engine size and Transmission At is another variant."*

5. Premised on such representations made by the Respondent No.1 (i) and the Respondent No. 1 (ii), the Petitioner entered into the Investment Agreement with the Respondent No. 1 (ii) and whereafter certificates were issued by the Respondent No. 2 authorising the manufacture of motor vehicles specified therein including a Certificate dated 8 November 2024 permitting the Petitioner to inter alia manufacture a motor vehicle that was described as hereinunder:

> " … *KIA Shortage (2X4) FWD, 1999cc AT Grade D, SUV"*

The Petitioner is now proposing to introduce a variant of this above-mentioned model and sought a certificate from the Respondent No. 2 as envisaged in S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O.No. 837(I)/2021 dated 30 June 2021 for the exemption of the variant from customs duties under clause (xiva) of S.R.O.No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021. To process such a request, the Respondent No. 2 issued a letter dated 19

November 2024 to the Respondent No. 1 (ii), that was premised on the definition of the expression "variant" as contained in the Investment Agreement and detailed therein a comparison as between the existing vehicle and the design of the new variant which was described by the Respondent No. 2 as hereinunder:

> " … *For approval of upgraded model, the company was requested to share the Comparison of already approved variants with upgraded variant under ADP which is given a under,*

Model Codes/Variant	***KIA SPORTAGE (2X4) FWD, 1999 CC, AT, GRADE D***	
	EXISTING	***UPCOMING***
	SIZE COMPARISON	
Length (mm)	*4480*	*4660*
Width (mm)	*1855*	*1865*
Height (mm)	*1635*	*1665*
Wheel Base (mm)	*2670*	*2755*
Ground Clearance (mm)	*172*	*180*
Engine Capacity	*1999CC*	*1999CC*
Transmission	*6 Speed AT*	*6 Speed AT*
Tire & Wheel	*17" (Grade D) & 18"*	*17" (Grade D) & 18"*
	BODY SHELL	
Body Shell Changes	*Complete Change*	

> …"

and sought confirmation from the Respondent No.1(ii) as to whether the design of the new model would be entitled to be classified as a "variant" so as to avail the benefit of SRO No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021.

6. It seems that a reply was sent by the Respondent No.1 (ii) to the Respondent No.2 on 21 November 2024, a copy of which is not available on record, by which apparently the Respondent No. 2's view on the application was sought and to which the Respondent No.2 sent a reply in the following terms:

> " … *I am directed to refer to Ministry of Industries & Production's letter No. 2(10)/2017-LED-II dated November 21, 2024 on subject cited above.*
>
> *02. EDB's viewpoint on approval of any variant under ADP 2016-21 after expiry of policy i.e June 30, 2021 is as under;*
>
> *i. As per SRO 656(1)/2006 vide para (xiva) the cut-off date of the policy incentives is June 2026, whereas the variant specific incentives have a timeline of five years in case of cars/SUVs/LCVs and three years in case of HCVs. The same clause of SRO is reproduced below,*
>
> > *(xiva) The concessionary customs duty for various models of new entrants under ADP 2016-21 to continue for five years from date of first manufacturing certificate of respective variant*

> *issued by Engineering Development Board or upto 30th June 2026, whichever is earlier and*
>
> *ii. Models/Variants not approved under Table-ll of SRO 656(1)/2006 i.e under ADP 2016-21 would attract higher customs duties of Table-l i.e 30%-46% instead of 10%-25% as in case of Cars/LCVS.*
>
> *iii. Any change or extension in approved business plan requires approval of Mol&P being the signatory of Investment Agreement as was done in the case of Universal Motors (Pvt) Ltd.*
>
> *iv. As such Business Plan only covers models/ variants and upgradation of model by the Principal globally is not available in the Investment Agreement as in the instant case*
>
> *03. Keeping in view above, Mol&P may like to advice EDB either to extend incentives to KIA SPORTAGE (2X4) FWD, 1999cc, A/T, Grade D under ADP 2016-21 which will expire on June 14, 2025 or otherwise. However, for further deliberation matter may be placed before Auto Industry Development and Export Committee (AIDEC), if deemed appropriate."*

7. Thereafter, the Respondent No.1(ii) issued a letter dated 23 December 2024 to the Respondent No.2 declining the Petitioner the right to have the new design classified as a "variant" and hence prevented it from claiming an exemption from customs duties under S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 the relevant part of which reads as hereinunder.

> *" … 2. In this regard, given **the policy expiry of ADP 2016-21 on June 30, 2021**, EDB is requested to review the case as per precedents of M/s Premier Motors and Universal Motors. Precedents, such as Premier Motors, where replacement of earlier approved two models under ADP 2016-21 was not agreed **in view of the expiry of ADP 2016-21**. In another case of Universal Motors, forwarded by EDB, relaxation of delayed assembly facility installation was however granted as per authority granted to MoIP under clause 2.2 of the Investment Agreement signed between the company and MolP."*

The decision of the Respondent No. 1 (ii) is apparently premised on the proposition that as the Automotive Development Policy (ADP) 2016-2021 had lapsed on 30 June 2021, thereafter no further certificates of "variants" could be issued by the Respondent No. 2 and after alluding to similar decisions on il applications maintained by two other companies i.e., Premier Motors and Universal Motors declined the request of the Petitioner.

8. The decision of the Respondent No.1 was communicated to the Petitioner on 15 January 2025 and was also communicated by the Respondent No. 2 to the Respondent No. 4 on 20 January 2025 and whereafter exemptions from custom duties have consequentially been declined by the Respondent No. 4 thereby causing the Petitioner to being aggrieved with the letter dated 23 December 2024 issued by Respondent No.1(ii) to the Respondent No.2 and also with the letter dated 20 January

2025 issued by the Respondent No.1(ii) to the Respondent No.4 and which have been impugned in this Petition on the basis that:

(i) in terms of interpreting clause (xvia) of S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No.837(I)/2021 dated 30 June 2021, the Respondent No. 1 (ii) has wrongly premised its decision on the Automotive Development Policy (ADP) 2016-2021 and should have rather premised its decision on the definition of the expression "variant" as contained in clause (j) of Article of the Investment Agreement.; and

(ii) the interpretation cast by the Respondent No. 2 in it's letter dated 19 November 2024 misinterpreted that definition of the expression "variant" as defined in clause (j) of Article 1 of the Investment Agreement.

9. Mr. Hussain Ali Almani appeared on behalf of Petitioner. Referring to the definition of the expression "variant" as contained in sub-clause (j) of Article 1 of the Investment Agreement, he contended that as there was no change in the details of the engine and the transmission for both the existing model as well as the design of the new model of the motor vehicle, the only change that could have been considered was in respect of the "body shell", the dimensions of which had been increased. He however contended that the definition of what was to constitute a change in the "body shell" was in dispute as the Petitioners contend that the description attached to that word would require there to be a change in the classification of the "body shell" of the vehicle e.g., from a sedan to a hatchback to exclude it from the definition of the expression "variant" and which had instead been incorrectly determined by the Respondent No. 2 against the threshold of the dimensions of the "body shell". He maintained that the "body shell" of the said model and the previous model were both classified as "Sports Utility Vehicle" (SUV) and there being no change in "body shell" as between the existing design and the design that has been submitted for approval, the new design would come within the definition of the expression "variant" as contained in clause (j) of Article 1 of the Investment Agreement and which should have been relied on by the Respondent No. 1 (ii) and the Respondent No. 2 when issuing a certificate in terms of clause (xiva) of S.R.O. No. 656 (I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021. He stated that the interpretation made by the Respondent No. 2 in its letter dated 19 November 2024 that as the

dimension of the "body shell" were increased the same amounted to a "complete change" in the "body shell" thereby excluding the design from being classified as a "variant" and preventing it from gaining the benefit of SRO No.656 (I)/2006 dated 22 June 2006 as amended by S.R.O. No.837(I)/2021 dated 30 June 2021, is clearly contrary to the definition given to that expression in clause (j) of Article 1 of the Investment Agreement as no reference to the dimensions of the design had been mentioned therein and rather reference was only made to the "type" of "body shell" e.g., sedan, hatchback etc. and which had not been altered. He pressed that in the event that definition of expression "variant" was correctly interpreted by the Respondent No. 2 and the Respondent No.1(ii) the Petitioner would be entitled to a certificate indicating the new design to be a "variant" and which would entitle them to claim the benefit of the exemptions as contained in S.R.O. No.656(I)/2006 dated 22 June 2006 as amended by the S.R.O. No.837(I)/2021 dated 30 June 2021.

10. Referring to issues regarding the maintainability of this Petition, he contended that while contractual disputes cannot ordinally be adjudicated before this Court in its Constitutional Jurisdiction, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, it was now settled that a court could exercise such a jurisdiction in respect of the contractual dispute where no disputed question of fact existed as has been held in ***Qazi Asghar Ali v. Superintendent of Police;***[1] ***Muhammad Asif v. Federation of Pakistan;***[2] ***Engro Fertilizers Ltd. V. Islamic Republic of Pakistan***[3] ***Dewan Petroleum v. Government of Pakistan;***[4] ***S.M. Ismail v. Capital Development Authority***[5] ***Hazara Improvement Trust v. Qaisra Elahi***[6] ***Ittehad Cargo Service v. Syed Tasneem Hussain Naqvi;***[7] ***Network Television Marketing Ltd. V Government of Pakistan***[8] and ***Huffaz Seamless Pipe v. Sui Northern Gas Pipelines.***[9] He maintained that since there was only a question of the interpretation of the expression "variant" there was no question of a disputed fact arising in the determination of this lis and hence this Petition was clearly maintainable and called for this Court to declare that the letter dated 23 December 2024 and the letter dated 20 January 2025 as illegal and for a further declaration to permit the Petitioner

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[1] 2015 CLC 374
[2] PLD 2014 SC 206
[3] PLD 2012 Sindh 50
[4] PLD 2010 Lahore 404
[5] 2006 CLC 131
[6] 2005 SCMR 1274
[7] PLD 2001 SC 116
[8] 2001 CLC 681
[9] 1998 CLC 1890

to avail the benefit of clause (xvia) of S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021.

11. Miss Alizeh Bashir, Assistant Attorney General Pakistan entered appearance along with Mr. Abdul Hameed Shaikh, Manager EDB, Ministry of Industries and Production, on behalf of the Respondent No. 1 (ii) and the Respondent No. 2 and maintained that the Petitioner had made a representation to the Federal Secretary of the Respondent No.1(ii) under Article 4.6 of the Investment Agreement on the same issue and which was the correct procedure to be adopted by it in respect of such disputes and which article reads as hereinunder:

> *" … 4.6. **Dispute resolution:** That if any dispute or difference of any kind whatsoever nature, arises between the Parties in connection with or out of this Agreement, the Parties shall attempt to settle the dispute amicably by mutual consultations and negotiations, within thirty (30) days from the notice of such dispute, failing which the parties may agree to refer the issue to the Secretary, Ministry of Industries & Production, Government of Pakistan, Islamabad for decision."*

In this context she referred us to a document entitled "Hearing Order" dated 4 February 2025 that had been issued by the Federal Secretary of the Respondent No. 1 (ii) and alleged that the same issue that had been raised in this Petition had been raised by the Petitioner before the Federal Secretary and who had declined such a request by the passing of the "Hearing Order" on 4 February 2025. She contended that against such a an order, Article 4.7 of the Investment Agreement provided the Petitioner the right to arbitrate the dispute and which clause read as hereinunder:

> *" … 4.7. **Arbitration:** In case any dispute or difference remains unresolved under Article 4.6 above or if such dispute or difference remains unresolved within a period of 45 days of the matter having been referred to the Secretary, or if First Party is aggrieved by the decision of the Secretary, such difference of opinion or dispute shall be referred to and resolved through arbitration in accordance with the Arbitration Act 1940 or any re-enactment thereof."*

She submitted there being an adequate remedy in the form of an arbitration being available to the Petitioner, this Petition clearly was not maintainable and was hence liable to be dismissed.

12. On the merits of the Petition, Miss Alizeh Bashir contended that the benefit of the exemptions from customs duties as contained S.R.O.No. 656(I)/2006 dated 21 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 were permitted only during the pendency of the Automotive Development Policy 2016-2021 and which, having lapsed on 30

June 2021 only variants that were certified during the period when that policy was in force could claim exemptions under clause (xvia) of S.R.O.656(I)/2006 dated 22 June 2006 as amended by S.R.O. 837(I)/2021 dated 30 June 2021. She therefore maintained that the Petition was not maintainable, misconceived and was liable to be dismissed.

13. Exercising his right of reply Mr. Hussain Ali Almani protested and stated that no representation had been made by the Petitioner under Clause 4.6 of the Investment Agreement to the Secretary of the Respondent No. 1 (ii). He demonstrated that the "Hearing Order" dated 4 February 2025 that had been produced by the Respondent No. 1 (ii) had been backdated by Mr. Saif Anjum, Federal Secretary of Ministry of Industries and Production and referred us to a "watermark" that existed on the "Hearing Order" and which indicated the date and time of printing of the "Hearing Order" as being "Monday, 17 February 2025 at 4:27:44 p.m." but contrastingly the date of the letter has been shown as having been issued by Mr. Saif Anjum, Federal Secretary of Ministry of Industries and Production on 4 February 2025. He further contended that this was done to attempt to show that the issue raised in this Petition was resolved prior to the institution of this Petition, so as to create a plea that the Petitioner had availed a remedy before the Secretary under Clause 4.6 of the Investment Agreement and therefore putting forward a plea that this Petition was therefore not maintainable. He however suggested that this fraud failed as if one is to peruse the "Hearing Order" dated 4 February 2025, it does not actually decide the issue raised in this Petition but rather adjudicates on another issue regarding the payment of additional customs duty that is in dispute as between the Petitioner and the Respondents. He therefore submitted that the contentions raised by the Respondent No. 1 (ii) as to the maintainability of this Petition in this regard were not sustainable and should be rejected.

14. Relying on judgments reported as ***Wajahat Ali vs. Government of Khyber Pakhtunkhwa;***[10] ***Ameer Khan & Co vs. Government of Punjab;***[11] ***Habibullah Energy Limited vs. WAPDA;***[12] and ***Wak Orient Power and Light Ltd. V. Government of Pakistan***[13] he submitted that it has been held that the presence of an arbitration clause would not be an adequate remedy so as to oust the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and pleaded that in the event that the Respondent wished to adjudicate the matter in

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[10] PLD 2016 Peshawar 164
[11] PLD 2010 Lahore 443
[12] 2008 YLR 2612
[13] 1998 CLC 1178

arbitration the correct course that it should have adopted was to have maintained an application under Section 34 of the Arbitration Act, 1940 in this Petition and which should have been filed by the Respondent No. 1 (ii) before filing comments, failing which that application itself would not be maintainable as the Petitioner would have been considered to have taken "steps in the proceedings" estopping the Respondent No.1(ii) from maintaining such an objection. He concluded by contending that the Petitioners were entitled to a declaration that the letter dated 23 December 2024 and the letter dated 20 January 2025 were each illegal and prayed for a further declaration to permit the Petitioner to avail the benefit of the exemptions contained in clause (xvia) of S.R.O. No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021.

15. We have heard Mr. Hussain Ali Almani and Miss Alizeh Bashir, Assistant Attorney General and have perused the record.

16. We must begin by showing our extreme displeasure as to the manner in which the Federal Secretary of the Respondent No.1(ii) has acted as transparently an attempt has been made to fraudulently frustrate these proceedings. As correctly pointed out by Mr. Hussain Ali Almani, the "Hearing Order" dated 4 February 2025 clearly has a watermark on it indicating that it was printed on "Monday, 17 February 2025 at 4:27:44 p.m." and which to our mind would indicate that the document was printed on that date and at that time. The fact that thereafter the Federal Secretary has affixed his signature and dated the letter as 4 February 2025 clearly indicates that an attempt has been made to perpetuate a fraud on this Court by backdating this document. As if this was not bad enough, a bare perusal of the "Hearing Order" dated 4 February 2025 as produced by the Respondent No. 1 (ii) under its comments, clearly shows that the issue decided in that order has no relevance to the issue in hand and was just another attempt to mislead this Court in the hope that the document would not be properly examined by the Court and in the hope that this Court would summarily dismiss this Petition. Such actions on the part of a Government Officer holding the position of Federal Secretary, undermine the credibility of the Government of Pakistan before this Court and in the eyes of the general public and which we must admonish in the highest terms.

17. We are also of the opinion that even if a decision had been made by the Secretary of the Respondent No. 1 (ii) under Clause 4.6 of the Investment Agreement, if the Respondent No.1(ii) wished to refer the matter to arbitration under clause 4.7 in the Investment Agreement dated 18 December 2017, the correct course of action would have been for the

Respondent No. 1 (ii) to maintain an application under Section 34 of the Arbitration Act, 1940 before filing comments which admittedly has not been done. Having taken step in these proceedings, the Respondent No.1(ii) cannot now challenge the maintainability of these proceedings seeking that an arbitration should have been preferred as against the "Hearing Order" purportedly issued on 4 February 2025 as it itself has not availed the right as conferred on it under that clause of the Investment Agreement and hence would be estopped from pleading that such a right should have been availed by the Petitioner as an adequate remedy. Reliance in this regard can be placed on the decisions of the Supreme Court of Pakistan reported as ***Muhammad Farooq vs. Nazir Ahmad and others***;[14] ***Uzin Export and Import Enterprises for Foreign Trade vs. M. Iftikhar and Company Limited***;[15] and ***Pakistan International Airlines Corporation vs. M/s Pak Saaf Dry Cleaners***[16] There is also another aspect related to the objection regarding invoking of the Arbitration clause in the Agreement. The cause of action of the Petitioner is twofold. The first cause is against the Respondent No. 1 (ii) and the Respondent No. 2; and the second is against the Customs and Federal Board of Revenue. It is an admitted position that during the pendency of the Petitioner's request certain consignments of the vehicle in question have been released provisionally. Moreover, it is a question of interpretation of clause (xvia) of S.R.O. No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 which does not fall within the scope of Article 4.7 of the Investment Agreement. Lastly, neither the Customs department nor the Federal Board of Revenue are signatories to the Arbitration Agreement; hence, this objection is otherwise misconceived.

18. Having coming to the conclusion that the Petition is maintainable, on merits we are of the opinion that the impugned letter dated 23 December 2024 issued by the Respondent No. 1 (ii) does not decide the issue at hand i.e., as to whether the new design of the motor vehicle has been correctly represented by the Respondent No. 2 in it's letter dated 19 November 2024 as not coming with the definition of the expression "variant" as defined in clause (j) of Article 1 of the Investment Agreement. The Respondent No 1 (ii) instead of deciding this issue has instead premised it's decision on the expiry of the Automotive Development Policy (ADP) 2016-2021 which it contends had lapsed on 30 June 2021 and has instead contended that on account of the lapse of such a policy, exemptions from customs duty were thereafter not available to any variant of a model of car under clause (xvia)

[14] PLD 2006 Supreme Court 196
[15] 1993 SCMR 866
[16] PLD 1981 Supreme Court 553

of S.R.O.No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021.

19. We disagree. Exemptions from customs duties are not granted by the Respondent No. 1 (ii) or by the Respondent No. 2 under the provisions of a policy framed by them but rather are granted under Section 19 of the Customs Act, 1969 and which has been reflected in clause (xvia) of S.R.O.No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 as being "*for five years from date of first manufacturing certificate of* ***respective variant*** ***issued by Engineering Development Board*** *or upto 30th June 2026, whichever is earlier."* While the basis of the introduction of such exemptions as contained in S.R.O.No.656(I)/2006 dated 22 June 2006 may well have been premised on various policies of the Respondent No. 1 (ii), the fact is that they continue to exist even after the lapse of such policies and until omitted can continue to be availed by the Petitioner. In terms of clause (xvia) of S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021, for the exemption to be availed, the Petitioner has to only obtain a certificate from the Respondent No. 2 confirming that the design of the new model is a "variant" of the existing model in terms of the definition of that expression as contained in Clause (j) of Article 1 of the Investment Agreement and for obtaining which an application had been made by the Petitioner to the Respondent No. 2. Seized with the application the Respondent No. 2 thereafter wrote to the Respondent No. 1 (ii) stating that as the dimensions of the "Body Shell" had been increased the design of the new model did not come within the definition of the expression "variant" as contained in the Investment Agreement and alluded to refusing the issuance of a certificate. The Respondent No. 1 (ii) Instead of determining as to whether the new model was a "variant" or not in terms of the definition of that expression as contained in Clause (j) of Article 1 of the Investment Agreement in it's letter dated 23 December 2024 has instead opined as to the applicability of the exemption from customs duties under clause (xvia) of S.R.O. No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021dated 30 June 2021 by stating that as the Automotive Development Policy 2016-2021 had lapsed, such exemptions for "variants" could no longer be granted and purported to rely on previous precedents for refusing such exemptions in this regard. This is incorrect as clause (xvia) of S.R.O. No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 does not premise the right to claim exemptions from customs duties as contained therein on the pendency of the Automotive Development Policy 2016-2021 but rather premises it on obtaining a certificate from the Respondent No. 2 in terms

as to whether or not the design being introduced amounts to a “variant” and which expression, keeping in mind the subsistence of the Investment Agreement, must be determined in terms of Clause (j) of Article 1 of the Investment Agreement. If it was found that the design being introduced came within the definition of the expression “variant” as contained in Clause (j) of Article 1 of the Investment Agreement, the Respondent No. 1 (ii) and the Respondent No. 2 had no discretion but to issue such a certificate and whereafter the Petitioner would be entitled to the benefit of the exemptions as contained in clause (xvia) of S.R.O.No. 656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021dated 30 June 2021. The fact that the Respondent No. 1 (ii) has instead determined the applicability of the exemption in terms of the Automotive Development Policy 2016-2021 would lead to the conclusion that it has incorrectly exercised it’s jurisdiction and which would render the decision made by the Respondent No. 1 (ii) in its letter dated 23 December 2024 as illegal and consequentially would also render the letter dated 20 January 2025 issued by the Respondent No. 2, that is premised on that letter, also as illegal.

20. Regarding the interpretation of clause (xvia) of S.R.O. No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021 and the benefits of the exemptions contained therein, we are of the opinion that while issuing such a certificate the Respondent No. 2, in its letter dated 19 November 2024, was correct in premising its decision on the definition of the expression “variant” as contained in clause (j) of Article 1 of the Investment Agreement. That being said, the interpretation cast by the Respondent No. 2 was incorrect. To begin with the definition of the expression “variant as contained in clause (j) of Article 1 of the Investment Agreement has been defined to mean *“vehicles which have all of the following manufacturing/construction features in common”* and which makes a reference to three factors that are to be taken into consideration i.e., “body shell”, “engine” and “transmission”. It is admitted as between the Petitioner, the Respondents No. 1 (ii) and the Respondent No. 2 that there is no change as between the design of the existing model and the new design in respect of the “manufacturing and construction features” regarding the “engine” and the “transmission” and the only change that is alleged by the Respondent No.2 to have been made is in respect of the dimensions of the “body shell” but which has been defined in clause (j) of Article 1 of the Investment Agreement with reference to the classification of the design as a *“Sedan, Hatchback etc.”* and not with regard to its dimensions or even its “shape.” The emphasis made by the Respondent No. 2 on the dimensions was therefore clearly misplaced and there being no change in respect of the classification, to our minds the new design

clearly came within the definition of the expression “variant” as contained in clause (j) of Article 1 of the Investment Agreement and hence the Petitioner was entitled to claim the benefit of the exemption as contained in clause (xvia) of S.R.O.No.656(I)/2006 dated 22 June 2006 as amended by S.R.O. No. 837(I)/2021 dated 30 June 2021. The Petition must therefore be allowed.

21. For the foregoing reasons we are of the opinion that:

(i) the letter dated 23 December 2024, issued by the AC (LED-II) of the Ministry of Industries & Production i.e., Respondent No.1(ii) to the Chief Executive Officer of the Engineering Development Board EDB, Islamabad i.e., Respondent No.2, declining a request made by the Petitioner to issue a certificate to it permitting it to claim exemptions under clause (xvia) of S.R.O.656(I)/2006 as amended by S.R.O837(I)/2021 for a variant of a model of one of the cars being manufactured by the Petitioner is illegal;

(ii) the letter dated 20 January 2025 issued by Respondent No.2 to the Respondent No.4 premised on the letter dated 23 December 2024 of the Respondent No. 2 (ii) directing the Respondent No. 4 to collect customs duties on a variant of a model of a car being manufactured by the Petitioner is illegal; and

(iii) that the Petitioners are entitled to benefit from exemptions that are available to it under clause (xvia) of S.R.O.656(I)/2006 dated 22 June 2006 as amended by S.R.O837(I)/2021 dated 30 June 2021 in respect of the new design of the “*KIA Shortage (2X4) FWD, 1999cc AT Grade D, SUV”*.

and on account of which we had by a short order allowed this Petition on 12 March 2024 and the foregoing are our reasons for that order.

JUDGE

ACTING CHIEF JUSTICE

Karachi dated 14 March 2025