

Presented on 17/6/21

Assistant Registrar (Writ)

IN THE HIGH COURT OF SINDH AT KARACHI
CONSTITUTIONAL JURISDICTION

Constitution Petition No. D-3268 of 2021

Rehan Arif S/o Syed Siraj Ahmed,
Having present address, Apartment No.85,
Tower No.20, Bahria Town,
Karachi.....PETITIONER

VERSUS

1. Federation of Pakistan,
Through D.A.G/Chairman,
Federal Board of Revenue,
ISLAMABAD.
2. Collector of Customs,
MCC Appraisalment & Facilitation (West),
Customs House,
KARACHI.
3. State Bank of Pakistan,
Through Director Exchange Policy Department,
I.I. Chundrigger Road,
KARACHI.
4. United Bank Limited,
Through Manager, Remittance Department,
I.I. Chundrigger Road,
KARACHI.....RESPONDENTS



AMENDED TITLE FILED IN THE INSTANT CONSTITUTION PETITION
UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3268 of 2021

Date

Order with Signature(s) of Judge(s)

1. For orders on CMA No.15374/2021
2. For hearing of CMA No.13855/2021
3. For hearing of main case.

22.06.2021

Mr. Aqeel Ahmed Khan, Advocate for the Petitioner.

Ms. Afsheen Aman, Advocate for Respondent along with Mr. Abdul Ghani Soomro, AO [MCC-A] West & Taufiq Ahmed Shaikh, PA [MCC-A] West

Mr. Kafeel Ahmed Abbasi, Deputy Attorney General, Pakistan.

Mr. Alam Zaib, Advocate for Respondent No.3/State Bank of Pakistan.

Pursuant to order dated 15.06.2021, nobody has turned-up on behalf of United Bank Limited, whereas, Mr. Alam Zaib, Advocate is in attendance on behalf of State Bank of Pakistan and submits that no prayer has been sought against them in this petition. We have heard learned Counsel as well as departmental representatives. For the reasons to be recorded later on, this petition is allowed by directing the respondents to immediately release the vehicle in question after payment of duties and taxes.

For Muhammad Tawad Abbasi
JUDGE

For Mrs: Rashida Asad
JUDGE

Faizan/PA*

Asad
15/7/21

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CONSTITUTIONAL JURISDICTION

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IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. D-3268 of 2021

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Justice Mrs. Rashida Asad.

Petitioner: Rehan Arif,
Through Mr. Aqeel Ahmed Khan, Advocate.

Federation of Pakistan: Through Mr. Kafeel Ahmed Abbasi,
Deputy Attorney General.

Respondent No.2: Through Ms. Afsheen Aman, Advocate along
with Mr. Taufiq Ahmed Shaikh, Principal
Appraiser & Mr. Abdul Ghani Soomro,
Appraiser (Model Customs Collectorate-
Appraisement-West.

Respondent No.3 (State Bank of Pakistan) Through Mr. Alam Zaib, Advocate.

Dates of hearing: 15.06.2021 & 22.06.2021.

Date of Order: 22.06.2021

J U D G E M E N T

Muhammad Junaid Ghaffar J.- The petitioner has imported a Vehicle under personal baggage scheme in terms of Import Policy Order, 2020 ("Import Policy"). The Respondents/Custom Authorities have detained the same on the ground that the duties and taxes have not been paid in accordance with the requirements as stipulated in the Import Policy.

2. Learned Counsel for the petitioner has contended that the petitioner on his return to Pakistan from U.A.E., after retirement, has brought a vehicle under personal baggage scheme and made remittance from UAE to his Pakistani account being maintained at UBL, Model Colony Branch, Karachi; however, despite this, the Customs Authorities have refused to release the vehicle, even though they have accepted the duties and taxes into their account. He submits that the Petitioner was maintaining his account at ADIB Bank, Dubai, U.A.E. and withdrew UAE Dirham ("AED") 1,50,000/-, 2,40,000/- & 5,000/- on 08.12.2020, 23.12.2020 and 26.12.2020 and then deposited the same at UBL Dubai U.A.E. by availing the online deposit facility into his personal account being maintained at UBL Model Colony Branch, Karachi. He submits that UBL, Karachi, has already issued a Home Remittance Certificate in terms



15/7/21

of guidelines issued by State Bank of Pakistan, which has been presented to the Customs Authorities; but despite this they are adamant and have refused to release the vehicle. He prays that since the requirements of the Import Policy have been fulfilled, directions be issued for release of the vehicle.

3. On the other hand, Counsel for the department ably supported by the departmental representatives namely Mr. Taufiq Ahmed Shaikh, Principal Appraiser & Mr. Abdul Ghani Soomro, Appraising Officer, (MCC-A) West has contended that since in the Certificate issued by UBL, Karachi, the account number from which the remittance has originated is not mentioned; therefore, the Petitioner has failed to fulfill requirements of Import Policy; resultantly, the vehicle has been detained; and the Petitioner has been informed accordingly. They have also relied upon letter dated 10.9.2020 issued by FBR in consultation with Ministry of Commerce and have contended that if this permitted, then all duties and taxes would be paid by Overseas Pakistanis through hundi / hawala.

4. We have heard both the learned Counsel as well as departmental representatives and perused the record. As to the entitlement of the Petitioner to bring a Vehicle in terms of Appendix-E (Paragraph-16) of the Import Policy, the same does not appear to be in dispute. The only objection of the department is that the duty and taxes have not been deposited and or paid in terms of the Import Policy. The precise issue is in respect of the exact interpretation of Para-6 of Appendix-E, which reads as under:-

"(6) All vehicles in new/used condition to be imported under transfer of residence, personal baggage or under gift scheme, the duty and taxes shall be paid out of foreign exchange arranged by Pakistan Nationals themselves or local recipient supported by bank encashment certificate showing conversion of foreign remittance to local currency, as under,

- (a) The remittance for payment of duties and taxes shall originate from the account of Pakistan national sending the vehicle from abroad; and
- (b) The remittance shall either be received in the account of the Pakistani national sending the vehicle from abroad or, in case, his account is non-existent or inoperative, in the account of his Family:

Provided that in case the Pak Rupee depreciates or government increases the import duties or taxes after receipt of remittance and before filing of the goods declaration, which results in shortfall of remitted amount against payable duties and taxes, the importer shall be allowed to meet the shortfall through local sources."



5. It is provided hereinabove that for Vehicles in new and used condition imported either under transfer of residence, personal baggage or under gift scheme, the duty and taxes are to be paid out of foreign exchange arranged by Pakistan Nationals themselves or local recipient supported by bank encashment certificate showing conversion of foreign remittance to local currency in the manner; (a) That The remittance for payment of duties and taxes shall originate from the account of Pakistani national sending the vehicle from abroad; and (b) The remittance shall either be received in the account of the Pakistani national sending the vehicle from abroad or, in case, his account is non-existent or inoperative, in the account of his Family. The proviso therein is not relevant insofar as instant matter is concerned.

6. It appears that the petitioner has retired after serving with Dubai Electricity and Water Authority from 12.03.2007 to 31.10.2020 and as stated was drawing a salary of AED 24,150/= per month. He has placed on record a Certificate issued by the said authority, which has not been disputed. The Petitioner was maintaining a regular account with ADIB Bank U.A.E. and has annexed such statement of account, which reflects that he had sufficient funds in the said account and made three withdrawals in cash on 08.12.2020, 23.12.2020 and 26.12.2020 of AED 1,50,000/-, 2,40,000/- and 5000/-, respectively. It is the case of the petitioner that since a direct remittance from ADIB Bank, Dubai, U.A.E. to any of his account(s) in Pakistan or of his family was too expensive, he deposited the said amount with UBL Sheikh Zayed Road, Dubai, UAE into his account jointly being maintained by him and his wife via Tezraftaar Application Scheme and the said deposit was made online to be transferred into his UBL account being maintained at Model Colony Branch, Karachi. This deposit was made in two parts, one of AED 150,000/- on 21.12.2020 and the other of AED 245,000/- on 28.12.2020. It has further come on record that UBL Karachi issued him Proceed Realization Certificate dated 12.02.2021 for Rs.10,682,000/- and Rs.6,532,500/- and when the same was presented, the Customs Authorities wrote a letter to UBL with certain reservations. This was replied by UBL Head Office, dealing with remittances and confirmed the encashment / withdrawals by further stating that the same qualifies for home remittance as per Policy of State Bank and in this letter of 31.03.2021 all details, as required for home Remittance and in terms of the Import Policy were mentioned; but an objection was raised by the Customs department that in the Column for remittance, senders bank



details with account number has not been mentioned. The said Certificate dated 31.03.2021 issued by UBL, Karachi, reads as under: -

*Date: 31-MAR-2021

MODEL CUSTOM COLLECTORATE
OF APPRAISEMENT AND FACILITATION-WEST
CUSTOM HOUSE, KARACHI

Subject: CONFIRMATION OF ENCASHMENT CERTIFICATE

Please refer to your letter No.SI/MISC/6376/2021-VII dated 22-Mar-2021 on the captioned subject.

We hereby confirm that referred proceeds realization certificates were issued by UBL against Home Remittance transaction in favor of referred beneficiary.

Furthermore, these payments were received in Pakistani Rupee from our overseas branch in UAE through electronic mode of transfer (other than Swift) under Home Remittance arrangement with UBL. In Home Remittance Scheme any Pakistani national can transfer the funds to his/her beneficiary in Pakistan through foreign bank/ authorized exchange companies without having bank account in overseas jurisdiction.

Therefore, since conversion is being made at remitting bank end and we are receiving remittance amount in Pakistani Rupee for disbursement in to beneficiary's account as per SBP directives. However, we have taken up the matter with our UAE branch and they provided the details as below:

Remittance Sender's Name	Remittance Sender's Bank Details with A/C no.	Remittance Receiver's Name	Remittance Receiver's Bank Details with A/C no.	Account remitted in foreign currency	Amount Equivalent to PAK Rupees
REHAN ARIF REHAN	N/A	REHAN ARIF & RUBINA	UBITED BANK LIMITED PK40UNIL0112084510068168	AED 150,000	6,532,500.00
REHAN ARIF REHAN	N/A	REHAN ARIF & RUBINA	UBITED BANK LIMITED PK40UNIL0112084510068168	AED 245,000	10,682,000.0

Regards,

Sd/-
Manager
Remittance Department*



7. Perusal of the above reflects that insofar as the petitioner is concerned, he has arranged the foreign exchange from abroad and after surrendering to a Pakistani Bank in one of its schemes for smooth transfer of money to Pakistan has received rupees against such foreign exchange. He has fulfilled the requirement regarding arranging foreign exchange and from that money he has paid the duty and taxes. The only shortcoming in his case is that the remittance certificate is not showing

any account number from where the remittance has originated. Insofar as Para-6 of Appendix "E" of the Import Policy is concerned, firstly, it clearly appears that there is no strict condition that any such certificate with specific details has to be issued by the Bank in Pakistan; nor even it has been provided that the remittance by an Overseas Pakistani qualified under the Scheme has to bring the same through a transfer directly from his account maintained overseas to the local account in Pakistan. Though it is provided in Para 6-(a) that it shall originate from his account abroad and be received either in his account in Pakistan or of his family; however, in the instant case, from the record placed before us, it appears that though the amount has originated from the petitioner's account maintained abroad in ADIB Bank, Dubai, U.A.E. as reflected from the statement of such bank annexed with the petition; but instead of a direct remittance from ADIB Bank to the account at UBL in Karachi, the remittance has come after cash withdrawal from ADIB Bank account of the Petitioner and then to an online deposit in UBL at Dubai UAE for further credit into Petitioner's account at Model Colony Branch, Karachi. This in our considered view fulfills the requirements of Para-6 of Appendix "E" of the Import Policy as it is has not been disputed before us that the amount in question was first withdrawn form Petitioners account with ADIB Bank in foreign currency i.e. AED which was then deposited in the same denomination with UBL Dubai, U.A.E. Merely for the reason that in the Certificate issued by UBL Bank, Karachi, the senders account number is not mentioned, we cannot accept the stance of the customs department, that it never originated from Petitioners account abroad. It is not a cash deposit per-se directly into his joint account in Karachi. If that had been the case, then perhaps the objection would have been weighty. Here, the amount has been first withdrawn from the foreign account of the Petitioner and then was deposited. The certificate has been issued by UBL in Karachi and naturally since they have accepted payment at their branch at Dubai, UAE, as from a customer having an online account, they cannot mention the account number of the Petitioner being maintained at ADIB Bank, UAE.

8. As to reliance on letter of FBR dated 10.9.2020 and mentioning of International Bank Account Number (IBAN) on the remittance certificate, it would suffice to observe that in the given facts and circumstances of this case, the same would not apply and has no relevance for the issue in hand.



9. Lastly, though the departmental representatives were apprehensive that if this is permitted; then people would use this as a precedent and the remittance would then be sent through Exchange companies and or by Hundi / Hawala and would open a flood gate of unscrupulous means to avoid stringent measures enforced by the Government to confine the scheme in question being available only to genuine Overseas Pakistanis. Though this argument appears to be attractive; but to keep the record straight, we may observe that insofar as the present case is concerned, the facts before us are an exception to this. The petitioner has fully established that he was employed with Dubai Electric & Power Authority; was earning substantial amount in AED; was maintaining an account with ADIB Bank, Dubai, U.A.E. duly supported by the Bank Statement; various transactions have taken place on continuous basis before and after the transactions in question; that the withdrawal of amount in AED was exactly the same which he deposited at UBL Dubai, U.A.E. by availing the benefit of Tezraftaar scheme initiated by the Bank on the directions of the State Bank of Pakistan to facilitate Overseas Pakistanis; therefore, for the present purposes we may observe that the Petitioner has made out a case for grant of the relief so claimed, warranting interference by this Court in view of the peculiarity of his case; therefore, by means of a short order dated 22.06.2021, we had allowed this Petition by giving directions to the respondents to release the Vehicle to the petitioner after payment of duties and taxes and these are reasons thereof.



AYAZ P.S.

1.
Sd/- Mulla Muhammad Tward Allahyar

Judge

01.7.2021

Sd/- Mrs: Rashida Asad
Judge

THE HIGH COURT OF SINDH, KARACHI
CERTIFIED TO BE TRUE COPY

[Signature]
ASSISTANT REGISTRAR (COPYING)

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