

ORDER SHEET  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
(JUDICIAL DEPARTMENT)

**Writ petition no.3124/2023**

Ajmal & Brothers  
versus  
Federation of Pakistan through Secretary Revenue Division and others

S. No. of order/proceedings	Date of order/Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
1	05.10.2023	Mr. Adnan Haider, Advocate for the petitioner

This petition along with 13 others is filed against the refusal of respondents no.5, 6 and 7 to release the used auto parts imported by the petitioners in all these petitions unless a penalty in the sum of the value of the imported goods were paid.

2 By the combined operation of (i) the Customs General Order 11 of 2006 dated 19.09.2006, (ii) SRO 499(I)/2009 dated 13.06.2009, and (iii) the Valuation Ruling 1714 of 2022 dated 21.12.2022, the petitioners have remained engaged in regular import of used auto parts from many years by now, which have routinely been released after payment of the applicable import duties, redemption fine of 20% of the Customs Value determined vide the Valuation Rulings from time to time, plus a token penalty of a few thousand Rupees. This, learned counsel submits, was a consistent departmental practice, which becomes a binding source of interpretation of the relevant legal framework in view of the principles settled by the superior Courts, and also in view of the economic conditions in the country which necessitate import of used auto parts, which, if prohibited, would raise the price of repairs manifold for the transport sector of the economy.

3 The controversy owes its existence to an amendment introduced vide the Finance Act 2023 (that appears to be a rather myopic one for not being thought through all its implications), by which row no (9) of section 156(1) of the Customs Act was amended to add the words ‘*not less than the value of the goods*’ to the words ‘*not exceeding twice the value of goods*’. As a consequence of this amendment, the erstwhile practice of imposing a token penalty was, in view of respondents no.4 to 6, no longer possible, and

therefore they demanded the full penalty in the value of the imported goods, which makes the penalty prohibitive rendering the trade impossible to perform.

4 Learned counsel contends that the said amendment is being applied incorrectly, because the rationale and purpose was to curb smuggling and not to kill the trade of import and sale of used auto parts, which continues to be the case till today, because the Customs officials are ready to release the goods as long as the full penalty was paid. He concedes that the prohibition under the Import Policy Order of 2016 against the import of used auto parts is there, but submits that the Customs law operates in its own sphere, where under items otherwise prohibited under the Import Policy are routinely allowed to be released (instead of confiscation) on payment of redemption fine and a token penalty. He relies for this submission on the language of SRO 499, which, read as a whole, does support this submission. He added that the Import Policy Order 2016, the SRO, the CGO, and the Valuation Ruling, are all items of delegated legislation, and any conflict between them would have to be resolved by resort to the principle that the interpretation that saves rather than destroys the fundamental right to trade and business is to be preferred. He adds further that, in any event, the amendment vide the Finance Act 2023 could not have retrospective effect, given that the letters of credit with the permission of the State Bank of Pakistan as well as the contracts for import were opened and entered into well before the Finance Act 2023, and cites *Molasses Trading & Export (Private) Limited vs. Federation of Pakistan* (1993 SCMR 1905) in this respect.

5 As for the maintainability of this petition, learned counsel cites *Shahnawaz (Private) Limited versus Pakistan* (2011 PTD 1558), *Engro Vopak Terminal Limited versus Pakistan* (2012 PTD 130) and *Association of Builders and Developers of Pakistan* (2018 PTD 1487) to submit that all these petitions raise an important question of law of general applicability and therefore resort to the Constitutional jurisdiction is permissible.

6 It appears to the Court that there is an apparent disconnect between the policy for raising revenues and the policy for the trade in used auto parts by the Government, which has resulted in this anomaly. It would be of immense assistance to this Court if these petitions, along with a copy of this order, are considered by respondents no.1 to 3, who are directed to actively engage in a consultative exercise with the Auto Parts Association, and such a meeting

should also be participated in by the Secretaries of Commerce and Industries Division. This consultative exercise is to be held before the next date of hearing, and respondent no.3 will appear in person on the next date of hearing to assist the Court along with a **concise report** following the outcome of the meetings aforesaid.

7 In the meantime, this petition is admitted for regular hearing, and the respondents are directed to file their para-wise comments by the next date of hearing if the matter is not settled earlier by virtue of the concise report that this Court expects to see by then.

8 Relist on **24.10.2023**.

**CM no.1/2023**

The used auto parts imported by the petitioners shall be released on payment of the applicable import duties, plus the redemption fine, plus penalty within the range that was prevalent and would have been charged before the Finance Act 2023 was introduced, and in any case not more than Rs. 20,000/-. As for the balance amount of the penalty, the petitioners will submit security in the form of post-dated cheques with the Deputy Registrar of this Court before approaching the Customs for release of their imported goods in question.

**CM no.2/2023**

Exemption sought for is allowed subject to all just and legal exceptions.

**(Sardar Ejaz Ishaq Khan)**  
**Judge**