ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

CP D 6167 of 2019
CPs D 4851, 6291, 6351, 6422, 6425, 6506, 6906, 6941, 6942, 6943, 6952, 7095, 7211, 7234, 7310, 7346, 7391, 7498, 7499, 7500, 7510, 7529, 7673, 7818, 7882, 8207, 8332, 8333 & 8484 of 2019
CPs D 1118, 1119, 1246, 1247, 1515, 21, 22, 2245, 2525, 2807, 2808, 3273, 3518, 3519, 3520, 3521, 3598, 3599, 3609, 3654, 3655, 3656, 3657, 3682, 3690, 3709, 3710, 3825, 3860, 3879, 3955, 4191, 4679, 4707, 4784, 4787, 4957, 4958, 4959, 4960, 5084, 776, 861, 862, 5232, 5428, 5484, 5910, 5933, 5934 & 6995 of 2020
CPs D 1367, 2352, 2486, 258, 2724, 3436, 3518, 3610, 424, 4468, 4469, 4488, 4547, 4717, 716 & 954 of 2021
CPs D 1402, 29, 4393 & 4587 of 2022
CP D 2 of 2023
CP D 3835 of 2024

Date	Order with signature(s) of Judge(s)

1. For hearing of CMA No.27370/20219.
2. For hearing of main case.

26.02.2025

Advocates for the Petitioners
Khalid Jawed Khan, Ali Almani, Mukesh Kumar G. Karara, Uzair Qadir Shoro, Sajid Ali Channa, Muhammad Salman Khan, Gohar Mehmood, Muhammad Ali, Sami-ur-Rehman, Qazi Umair Ali, Imran Iqbal Khan, Hamza Waheed, Muhammad Nasir Anwar Kashif Mumtaz, Ammar A. Saeed, Usman Alam, Jawed Farooqui, Kohmir Rind & Nadir Hussain Abro.

Advocates for the Respondents
Khalid Mehmood Rajpar, Syed Ahsan Ali Shah, Agha Shahid Majeed Khan, Muhammad Bilal Bhatti, Masooda Siraj, Muhabbat Hussain Awan, Shahnawaz Sahito, Sardar Zafar Hussain, Muhammad Ishaq Pirzada, Zafar Imam, Aamir Ali Shaikh, Rameez Adnan, Salman Ahmed, Muhammad Rshid, Imran Ali, Muhammad Zakir, Khalid Mehmood Siddiqui, Muhammad Khalid Tanoli, & Asif Ali Sial.

Ms. Alizeh Bashir & Mr. Kashif Nazir, Assistant Attorney General.
Mr. Muhammad Haris Ansari, Chief Tariff, FBR, Islamabad.
Chaudhry Muhammad Javed, Chief (Legal), FBR, Islamabad.
Mr. Tariq Aziz, Assistant Collector, SAPT.

The petitioners, automobile manufacturers, submitted that pursuant to Automotive Development Policy, 2016-21, certain concessions / exemptions were extended in order to attract investment. Notification No.2(9)/2013-LED-II, dated 02.06.2016 was issued by the Government of Pakistan, Ministry of Industries and Production, whereby in pursuance of the ECC decision dated 18.03.2016 the Government of Pakistan was pleased to notify a five years tariff plan on customs *duties* in respect of matters covered there under. It is imperative to observe that the verbiage employed in the said notification is plural; i.e. *duties*.

It is demonstrated that in order to give effect to the aforesaid notification, the Ministry of Finance and Revenue Division issued SRO 483 of 2016 dated 29.06.2016. The Automotive Development Policy 2016-21 finds specific mention therein. While this notification, and others issued consistent herewith, crystalized the duty ceiling in respect of the matters covered thereunder, however, SRO 670/2019 was subsequently issued, imposing 7% additional customs duty.

The grievance of the petitions arose from this juncture onwards, as it was contended that the imposition was in excess of the ceiling guaranteed and had

been imposed without the earlier concession having been withdrawn or modified. The petitioners' learned counsel relied on several judgments of the superior courts, including that reported as *2022 SCMR 579,* to insist that the concession / exemption in respect of duties encompasses each of the three constituents under section 18 of the Customs Act, 1969, hence, the breach of ceiling vide SRO 670/2019 was unlawful.

Learned counsel also refer to comments filed by the learned Assistant Attorney General, available at page 315, to demonstrate the inconsistent plea of the Chairman FBR that exemption under reference was only in respect of customs duty and not additional customs duty . Learned counsel also referred to the last paragraph on page 2 of the relevant note to demonstrate that notwithstanding the aforesaid assertion, a remedial decision was made to reduce the additional customs duty to pre-ceiling quantum, in some instances, and the same given effect by the Finance and Revenue Division vide SRO 967 of 2022 dated 13.06.2022.

The Supreme Court has taken notice of litigation clogging the docket of the Courts on account of unmerited litigation attributable to acts / omissions of the exchequer. One such instance was the *Packages case*[1] wherein the Court was pleased to illumine as follows:

> *"We may observe that the Income Tax Department, which is now the Federal Board of Revenue, must act fairly in dealing with taxpayers and to abide by the law governing it. If any benefit accrues to taxpayers under the law, it must not be withheld and the assessee's and its own time and resources should not be needlessly wasted. This frivolous litigation also wasted the time of the Tribunal, the High Court and of this Court; time which would have been better spent in resolving legitimate disputes."*

Prima facie the inconsistency of initial positions taken by Govt. departments and the subsequent contradictory remedial measures are issues that ought to have been resolved by the Govt. itself. Since the same was not done therefore repeatedly the matter was referred to the executive domain, however, no resolution appeared in sight.

Pursuant to order dated 20.02.2025, the Chairman FBR has been pleased to designate Mr. Muhammad Haris Ansari, Chief Tariff, and Chaudhry Muhammad Javed, Chief (Legal), FBR, Islamabad to assist the court with this controversy. The argument articulated by Mr. Muhammad Haris Ansari, Chief Tariff, was that the concession / exemption / ceiling was only with respect to the customs duty and not any other constituent of section 18 of the Customs Act, 1969. *Prima facie* this oral submission could not be demonstrated to reconcile with the judgments of the Supreme Court inclusive of that cited supra.

In view hereof and prior to proceeding any further, it is considered expedient to call for a specific response from the Chairman FBR, with respect to the above encapsulated controversy; in light of the cited Supreme Court judgment/s, to which the Finance / Revenue Division were parties. Let the said statement be filed in court under the signature of the Chairman FBR before the next date, with advance copy to the respective learned counsel for the petitioners.

Per joint request, to come up on 22.04.2025. Interim orders passed earlier to continue till the next date. Office is instructed to place copy hereof in each connected file.

Judge

Judge

Khuhro/PA

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[1] Per *Qazi Faez Isa J* in order dated 13.01.2022 *CIR LTO Karachi vs. Packages Limited* (Civil Petition 4-K of 2021).