

ISLAMABAD HIGH COURT, ISLAMABAD

Petitioner:

Khawaja Saad Saleem. Versus:

Respondents:

**Federation of Pakistan
and others.**

Present:

Mr. Justice Shaukat Aziz Siddiqui.

Writ Petition No. 1476 of 2013, decided on 19th June, 2013.

REPRESENTED:

Petitioners by: Syed Javed Akbar and Mr. M. Imran Amir.

Respondents by: Mr. Tariq Mehmood Jehangiri, learned D.A.-G., Mr. Ahmad Hassan Rana, Advocate for FBR alongwith Mr. Muhammad Saleem Secretary, FBR.

JUDGEMENT:

MR. JUSTICE SHAUKAT AZIZ SIDDIQUI--(1).

Petitioner invoked the constitutional jurisdiction of this court by way of filing instant writ petition with the following prayer:--

“WHEREFORE, it is respectfully prayed that

- (i) Notification S.R.O. 172(I)/2013 dated 5-3-2013 introducing Amnesty Scheme for smuggled/seized vehicles be declared illegal and unconstitutional being *ultra vires*, discriminatory and based on *mala fides*.
- (ii) The respondents be restrained from acting upon S.R.O. 172(I)/2013 dated 5-3-2013 and introducing, allowing or implementing such schemes in future.
- (iii) The respondents be directed to immediately seize all the vehicles which were legalized by payment of concessional duty/tax/fine under the Amnesty Scheme and treat them according to the applicable law and procedure by either confiscating them or subjecting them to payment of normal duty prescribed by law.

The petitioner may also be awarded costs of this writ. Any other relief, which this Hon'ble Court deems proper in the circumstances of this case, may also be granted to the petitioner.”

AND presented the facts, as under:--

2. That petitioner is President of Defence of Human Rights of Public Services Trust which is a charitable and welfare Trust, registered under the Trust Act, 1882 having its office at Bank Road, Saddar, Rawalpindi. In exception of clause (a) of S.R.O. 499(I)/2009 dated 13-6-2009, the Federal Government recently

issued S.R.O. 172(I)/2013 dated 5-3-2013 whereby an Amnesty Scheme for smuggled/seized vehicles (hereinafter referred to as the "Amnesty Scheme") was introduced allowing release of vehicles on payment of redemption fine alongwith duty and taxes on smuggled/non duty paid motor vehicles. However, the said S.R.O. does not allow the aforesaid concessions in payment of duty and tax on the import of vehicles through a custom station in violation of the Import Policy Order. It is contended that Amnesty Scheme is being misused in a number of ways by the persons lined up behind the scene being authors of the said scheme. That petitioner being tax payer citizen of the country, is aggrieved by the Amnesty Scheme, which not only caused huge loss to the Government Exchequer but serious infringement of rights and discrimination against him and more than one million other cars/vehicle owners in Pakistan who have bought cars/vehicles in the past for their use after payment of full duties and taxes.

3. Learned counsel for petitioner contended that S.R.O. 172(I)/2013 introducing Amnesty Scheme for smuggled/seized vehicles is illegal and unconstitutional being *ultra vires*, discriminatory and based on *mala fide inter alia* on the grounds that, this scheme has been carved to be misused by the persons who have violated the law by avoiding normal taxes and duties on import of automobile vehicles which has caused loss of billion of rupees to Government Exchequer at the cost of all the taxpayers and citizens of country including petitioner. That the impugned S.R.O. is in violation of fundamental rights of equal treatment under Article 25 of the Constitution of Islamic Republic of Pakistan as this is a duty ordained under law that public organizations are legally obliged to follow reasonable, rational, transparent, fair and non-discriminatory procedure to provide equal opportunity to inspire the public confidence, therefore, concessions in payment of duty and taxes under S.R.O. 172(I)/2013 have not been extended to the vehicles imported in violation of Import Policy Order through normal channels of custom stations. That under the Import Policy Order for imports under normal channels, a person is allowed to import a motor vehicle up to 3 years old under the transfer of residence, gift and baggage scheme. If the allowable age limit of 3 years and available depreciation allowance

of 1% per month calculated from the 1st day of January, subsequent to the year of manufacture under the Custom General Order No. 14 of 2005 dated 6-6-2005, as amended through the Custom General Order No.13 of 2012 dated 31-8-2012, is taken into account, an importer could avail maximum depreciation allowance of up to 48%. Conversely, under the S.R.O. 172(I)/2013, the depreciation allowance for the smuggled vehicle covered under PCT heading 87.03 (motor and other vehicles principally designed for the transport of less than 10 persons, including station wagons and racing cars) is 1% per month calculated from the 1st day of January subsequent to the year of manufacture with a maximum depreciation claim of 60% for the first five preceding years and a further depreciation allowance of 5% per year subject to a minimum duty and taxes of US Dollars 500. Likewise, for all other vehicles (Motor and other vehicles principally designed for the transport of ten or more persons including vehicles greater than 1800 cc) the depreciation allowance entitlement for the smuggled vehicles is 1% per month calculated from the 1st day of January subsequent to the year of manufacture with a maximum depreciation allowance of 72% for the first six preceding years and a further depreciation allowance of 5% per year subject to a minimum duty and taxes of Rs. 100,000. It is further contended that the impugned S.R.O. is based on *mala fide* having illegitimate and illegal aim of smuggling the motor vehicles, which cannot be brought to the country through normal channels, and such schemes are intended to be misused and a number of officers of the respondents have hatched a concerted scheme with those who are involved in business of smuggling the vehicles, but the responsible authorities of the respondents have miserably failed to prevent such schemes.

4. On the other hand respondent No.1, FBR filed its reply and para wise comments and while presenting the facts of the case contended that Hon'ble Supreme Court of Pakistan, in C.P. No.77 of 2010, in the missing person's case while taking up the issue of law and order situation in the province of Balochistan, also examined the issue of smuggled vehicles plying in the province during hearing dates 21-5-2012 and 20-6-2012 it was observed that these smuggled vehicles pose a threat to law and order situation in

the country because of their use in crime due to availability of the same at cheaper price and with no apprehension of being traced due to non-registration. Therefore, Hon'ble apex Court directed Customs authorities to take necessary steps so that no smuggled vehicle should ply in Balochistan Province. Moreover, the Supreme Appellate Court, Gilgit Baltistan, *vide* order dated 8-11-2012 also directed to regularize non-duty paid vehicles plying in Gilgit Baltistan which have been indexed/temporarily registered by the local authorities. That in this perspective of the matter amnesty scheme had been launched by the Federal Government, *vide* Notification No. S.R.O. 172(I)/2013 dated 5-3-2013, after approval by the Minister for Finance and Revenue. The scheme allowed release of smuggled vehicles, if seized or voluntarily presented to the Customs on or before 6-4-2013 on payment of duty and taxes alongwith redemption fine @ 1% of total payable duty and taxes. The scheme stipulated that vehicles of Asian make having engine capacity up to 1800cc will be assessed after allowing depreciation @ 12% per annum up to 5 years, (maximum 60%). All other vehicles having higher engine capacity will be assessed after allowing depreciation @ 12% per annum up to 6 years, (maximum 72%). The afore-mentioned amounts of duties and taxes calculated at the end of 5 and 6 years, as the case might be, would be further reduced @ 5% per annum for vehicles older than 5 and 6 years respectively. That after allowing maximum reduction in duty and taxes, minimum benchmark regarding payment of duty and taxes for vehicles of Asian make having engine capacity up to 1800cc was fixed at US \$ 500 (or equivalent amount in Pak rupees), in case of vehicle older than 25 years or above. For all other vehicles, minimum amount of Rs. 100,000 was payable, in case of vehicle older than 26 years or above. The statement is suggestive of the fact that 46,169 vehicles out of 50,901 are more than ten years old (ranging from 10 years to 26 years) as such they neither hurt the industry nor the taxpayers as the owners of the vehicles were driving hardly serviceable vehicles and paid huge amount as taxes to get these legitimized. It is further contended that amnesty scheme remained valid from 5-3-2013 till 6-4-2013. Provisional data collected from the Customs field formations of the FBR indicates that the total revenue collected

through this scheme (including amount of duty, taxes and redemption fine) amounts to Rs. 15,862.27 million for legitimization of 50,901 vehicles.

5. On facts, it is contended that the petitioner has miserably failed to identify any person or group involved in manipulation of the kind nor could prove that the said scheme was engineered by any interested group. That the S.R.O. introducing amnesty scheme for smuggled/seized vehicles, draws force from relevant provisions of law, the scheme was approved by the Finance Minister and measure is in conformity with the observations of Apex Court. On grounds it is contended that Relaxation in age limit on normal import of vehicles under the transfer of residence, gift and baggage scheme falls within the purview of Ministry of Commerce. However, FBR announced amnesty for all those smuggled vehicles which were plying on the roads in any of the region of Pakistan and whose date of entry into Pakistan was unknown. The purpose behind such amnesty/relaxation was to ensure the documentation of such vehicles followed by massive campaign. The benefit to the Federal Government in the form of revenue was accrued in the process. The amnesty scheme was notified *vide* S.R.O. 172(I)/2013 dated 5-3-2013, whereas, the letter referred to by the petitioner was received in the Federal Board of Revenue on 15-3-2013. The points raised in letter referred to by the petitioner were in fact examined prior, to finalization of the proposal in relation to amnesty scheme notified, *vide* aforesaid S.R.O. It had already been done by the Federal Government on two, previous occasions as well. These schemes were never found detrimental to the interest of local manufacturers and argument of the petitioner on this account is false and without any substance, therefore, writ petition being misconceived maybe dismissed.

For convenience relevant legislation is being discussed hereunder:-

Relevant Legislation

6. The Imports and Exports (Control) Act, 1950 ("Act") is the primary legislation which regulates imports into and exports from Pakistan whether by sea, land or air. Section 3 of the Act empowers the Federal Government to prohibit, restrict, or

otherwise control the import and export of goods of any specified description, or regulate generally all practices and procedure connected to the import or export of such goods, by an order published in the official Gazette. By invoking its powers under section 3, the Federal Government issued S.R.O. 193(I)/2013 dated 8-3-2013 ("**Import Policy Order**") setting out a general policy and procedure for Import of Vehicles under the Personal Baggage, Transfer of Residence, and Gift Schemes.

The Customs Act, 1969 ("**Customs Act**"), is the primary legislation which regulates the levy and collection of customs duties, fee and services charges and to provide for other allied matters. Section 16 of the Customs Act also empower the Federal Government to prohibit or restrict the bringing into or taking out of Pakistan of any goods of specified description by air, sea or land by notification in the official Gazette. Section 19 empowers the Federal Government to exempt any goods imported into or exported from Pakistan from customs duties chargeable thereon subject to such conditions, limitations or restrictions as it thinks fit to impose by notification in the official Gazette.

Under section 181 of the Customs Act, where an order for confiscation of goods is passed, the owner of the goods may be given an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit, unless exempted by the Board. The section further explains that any fine in lieu of confiscation of goods shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods. In exercise of the powers conferred by section 181 of the Customs Act, FBR, *vide* S.R.O. 499(I)/2009 dated 13-6-2009 ("**Customs Notification**"), was pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of *inter alia* smuggled goods falling under clause (s) of section 2 of the Customs Act.

7. The Federal Government whilst exercising the various enabling provisions of law, issued S.R.O. 172(I)/2013 dated 5-3-2013 thereby directing that smuggled or non-duty paid motor vehicles, having non-tampered engine or chassis numbers, which

have been seized or voluntarily presented to Customs on or before 31-3-2013 shall be allowed to release on payment of redemption fine along with duty and taxes as prescribed therein (“**Amnesty Scheme**”). The impugned Scheme was issued taking specific exception to clause (a) of the Customs Notification and remained in effect till 6-4-2013.

8. The essence of the matter in hand lies on the determination of the following issues:--

- (a) Whether the Federal Government has acted in a reasonable, fair, just and transparent manner by introducing the Amnesty Scheme under the enabling provisions of law?
- (b) Whether the Amnesty Scheme is discriminatory and offensive to Article 25 of the Constitution of the Islamic Republic of Pakistan?
- (c) Whether the Amnesty Scheme is akin to the NRO?
- (d) Whether indigent economy of Pakistan can stretch to import luxurious vehicles at any level?

9. Reply to above questions is provided under the following paras:--

The impugned Amnesty Scheme provides varying conditions for imports under allowable age limits to importer of vehicles through the regular normal channels as opposed to persons clearing smuggled/non-duty paid vehicles. As a matter of fact, persons who have violated the laws of the country by smuggling vehicles of their choice and not paying taxes/duties have been incentivized to smuggle even more vehicles during the subsistence of the Amnesty Scheme not only without any imposition of allowable age restriction applying on them but also allowing a more relaxed registration/regularization scheme compared to the normal scheme in vogue.

The Amnesty Scheme is also discriminatory as in that persons importing motor vehicles through the normal scheme have not been extended the tax/duty concessions where such vehicles are imported in violation of the Import Policy Order.

The Amnesty Scheme also extends the advantage of extra depreciation allowance benefit to owners of smuggled/non-duty paid motor vehicles. Under the normal scheme, a person is allowed to import motor vehicles up-to a maximum of three (03) years old under the Personal Baggage, Transfer of Residence, and Gift schemes and may claim depreciation allowance up-to a maximum of forty eight percent (48%). However, under the Amnesty Scheme, no age limit has been set for smuggled/non-duty paid motor vehicles. Furthermore, depreciation allowance up-to 60% and 72% (depending on the category and age of car) may be claimed thereby again giving undue advantage to owners of smuggled vehicles in the form of extra depreciation reward of even up-to 100%, subject to the trifling payment of US \$500 or Rs. 100,000 as made applicable.

The Amnesty Scheme has also seriously affected the local car market and automobile manufacturers by disrupting the competitive market and creating a parallel black or grey market for vehicles especially if the government continues with such amnesty schemes in the future. This whole amnesty thing has put the future prospects of local auto industry in jeopardy as they cannot place effective long term policies fearing anti-industry schemes like the one in the instant case to harm their returns.

The road worthiness and safety of such smuggled cars is also a cause of concern coupled with higher maintenance costs. Under the Amnesty Scheme, the

smuggled cars are not subjected to roadworthiness or emission control tests as no criteria for allowable age limit have been set as is the case for regular import channel vehicles. Therefore, vehicles which are 15 to 20 years old have also been cleared under the Amnesty Scheme which are not only an environmental hazard but will also increase the import bill for fuel and spare parts resulting in the loss of much needed foreign exchange.

Although the Amnesty Scheme may have been intended for regulation of vehicles already smuggled into Pakistan, it has created, in its present form, a far worse situation by encouraging and motivating further smuggling of cars in connivance with customs and other government officials. Such state of affairs has resulted in a colossal loss to the national exchequer in the form of loss of revenue expected from vehicles imported under the Baggage Scheme, regularization of smuggled cars with full tax impact and also those from the import of brand new cars, due to market saturation during the coming years.

As mentioned above, the scheme was meant only for vehicles that were already smuggled into Pakistan and were being used without payment of due duties/taxes, but reportedly a large number of vehicles were smuggled into Pakistan for regularization under the amnesty scheme **AFTER** the scheme was launched. Furthermore, vehicles which were **already confiscated** by the custom authorities have also been released against payment of duty under the Amnesty Scheme whereas the auction of such released vehicles would have yielded quadruple the amount recovered *via* the Amnesty Scheme.

It is also reported that large number of vehicles duty of which have been received are still not brought in

Pakistan and are parked at "Dubai, Bandarabass Port, Iran, Harrat and Qandhar and some vehicles are on the Chamman and Miran Shah boarders for making entry into Pakistan. It is double crime and shows about the inefficiency, dishonesty, *mala fide*, ulterior motives and inferious designs of officials being paid from the public ex-chequer to protect the rights of country but for their personal interest and motivated objects they allowed manipulation to cause loss to Pakistan.

The direct loss of this scheme can be determined or estimated from the fact that the price of a confiscated vehicle is normally Rs. 1000,000 (Rupees One Million) in open auction. The expensive and fancy cars, 4wds, SUV's fetch more value whereas the rest are sold for less but the average price is around Rs. 1000,000 per unit. Thus, for 50,901 smuggled vehicles, the auction proceeds would have been $50,901 \times \text{Rs. } 1000,000$ Approximately Rs. 51 billion whereas under the amnesty scheme only Rs. 15.8 billion has been collected. Thus the Amnesty Scheme has resulted in a direct loss of Rs. 35 billion to the national exchequer, in addition to the environmental hazards and rising import bill for fuel and spares.

It is beyond comprehension that why the Amnesty Scheme has been made applicable to vehicles already confiscated by the custom authorities which could have fetched far more revenue through open auction. Perhaps the government officials would also desire reaping fruits of their sullied hands by taking a piece of the pie. The Amnesty Scheme has also accommodated import of vehicles which were stuck at ports or in transit after age limit reduction from 5 years to 3 years.

From the custom data collected, it appears that 50,901 vehicle have been regularized by payment of

Rs. 15,862.27 million as duties and taxes which could have been much more had the regular rate of duties/taxes been applied to such vehicles. The recovery would have been three to four times greater than what FBR calimes.

Apart from discrimination, the common man is also being manipulated into buying imported cars where its odometers are tampered by local auto dealers so as to show lesser kilometers or miles on the imported vehicles. Such tampering will be further encouraged where older smuggled cars are flooded in the market. Since the last decade or more, vehicles have been smuggled into Pakistan from Afghanistan. Influential and opportunists upon becoming aware of the Amnesty Scheme booked used vehicles in Kandahar through links settled in Pakistani areas bordering Afghanistan. Most of these smuggled vehicles are registered in Quetta and Karachi with the connivance of FBR officials who facilitate their movement in Pakistan without being checked by border security and law enforcement agencies. Others smuggle vehicles into KPK *via* the Kohistan District and from Chitral *via* Shandoor Pal and find safe haven in the Gilgit-Baltistan region as well.

10. Therefore, in proposing and issuing the S.R.O., the Federal Government has failed to appreciate the serious adverse consequences of the stimulus provided under the Amnesty Scheme and without fully deliberating on the same. The S.R.O. is, accordingly, bad in law for the following reasons:--

It favours tax evaders and puts the honest taxpayers at a disadvantage.

Such schemes, announced at random, are against Article 25 of the Constitution as these violate the guarantee against arbitrary decisions under the whims and fancies of the rulers in power.

It favours unscrupulous taxpayers, leading to unjustified and hostile discrimination resulting in a violation of equality clause of the Constitution.

This scheme, amounting to approving the crimes of tax evasion, rent-seeking and money laundering will have pernicious effect on the general moral fabric of society.

All such moves put integrity at a discount and place a premium on vulgar and ostentatious display of wealth. This shatters the faith of the common man in the dignity of honest labour and virtuous living.

It does not provide a level playing field for all stakeholders, especially the local automobile manufacturers to benefit from the Amnesty Scheme.

It promotes anti-competitive market behavior by saturating the market with cheaper, older and high maintenance vehicles; effectively collecting long term junk and attracting the middle class to opt for such affordable cars as opposed to buying new or relatively less used and more efficient imported vehicles.

It creates a black/grey market for vehicles or a special deal offer to the corrupt elements of society by not only financially incentivizing but also encouraging smuggling of more and more vehicles if such Amnesty Scheme is allowed to persist.

It discriminates against law abiding and taxpaying citizens and discourages them from gaining confidence in the legal system, especially in the tax regime which is to be administered justly and fairly across the board.

11. It is imperative that the tax dodgers should be punished, not pampered with pardons. If the perpetrators of law are not checked and placed in order, the impression that it does not pay to follow the rules and that there are ways to defeat the law will manifest

itself in permanently detrimental ways. Also, considering the fact that Pakistan's tax to GDP ratio is abysmal, such unwarranted, capricious and senseless Amnesty Scheme will only further encourage the rampant culture of tax evasion. The Amnesty Scheme and any such similar schemes encourage tax evasion and might offer short term advantages to the State, if at all. It would appear more akin to the State settling/compromising with the tax evaders where the State is positioned with the weaker bargaining position. The failure of State institutions to apprehend the violators and subject them to the law of the land **must** not be an excuse to allow for amnesty schemes to prevail and again suggests a failure of the State to establish its writ and protect its boundaries from illegal transit of goods.

12. Corruption must be uprooted and all state agencies must be regulated, scrutinized and held strictly accountable, but such type of schemes encourage illegality in the financial sphere, by promising to turn 'black' money into 'white'. If Amnesty scheme for smuggled vehicles is stamped, it will set an erroneous precedent and a certain section of society will claim benefits at the expense and detriment of law-abiding citizens who pay full taxes on their vehicles. The Amnesty Scheme is benefitting only a few influential, tax evading citizens and corrupt government officials at a time when the country requires a level playing field where the protected stakeholders are also taxed similar to the common man.

13. It is a common perception that persons having influence in FBR can procure the issuance of SRO for their illegitimate benefits and gains by exercising lucrative influence upon the officials of FBR. It is the right time to inquire about the motives, considerations, objectives and theme of S.R.O's. issued on different occasions in order to benefit a particular class or group of persons. Such type of tainted devices, disrupt the economic fiber of the country which promotes classism through illegal modes, polluted approach, irrelevant considerations and mockery of the rule of law. This aspect has also been well understood by the intellegentia of the country that there is no other mechanism except upholding the rule of law to salvage the economy from the shackles of economic and social depression.

14. It is worth mentioning that Competition Commission of Pakistan warned the Federal Government and FBR about the pessimistic consequences of Amnesty Scheme but no credence was given by the persons who had conspired to yield bounties for themselves at the cost of country interest. The electronic and print media also raised questions about the vindication of impugned scheme but ignored by officials, who were bent upon to cause loss to the country's economy. As per the report of the Federal Tax Ombudsman, the Amnesty scheme has caused billions of rupees' loss to the national exchequer and that such amnesty schemes have also subsisted in the past during the period 1998 to 2007 where around 17,381 vehicles were cleared under six similar schemes. As per FTO's report, total 1405 vehicles were cleared on only 611D cards and 50/50 vehicles were cleared on just one ID card indicating the Karachi Collectorate to have cleared most of such vehicles. He further reported that several hundred cars are still parked at Tokyo Auction Yard but they have been cleared in the country under the Amnesty scheme indicating a mega corruption to be underway through the Tax Amnesty Scheme.

15. The leading English Newspaper "DAWN" in the auditorial on 21-6-2013 responded by the order annexed by this court in the following words:--

"By nullifying an amnesty scheme initiated by the last government granting duty and tax concessions for smuggled vehicles, the Islamabad High Court has sent the right message. As High Court noted, the FBR's amnesty discriminated against citizens who lawfully purchase vehicles and pay their requisite State dues. By declaring such amnesties and schemes, the State seems to imply that it is okay to dodge taxes and the formal economy as long as one pays a lower cost at a later date. Similar schemes have been announced in the past, for example the amnesty declared last year under which no questions would be asked regarding the source of funds invested in the Karachi Stock Exchange. These schemes appear to encourage illegality in the financial sphere, by promising to turn "black" Money into "white". Those who honestly pay their taxes are given the impression that it doesn't pay to follow the rules and that there are ways to break the law and still work the system. Considering the fact that Pakistan's tax-to-GDP ratio is abysmal, such amnesties only encourage the rampant culture of tax evasion. And while efforts are being made to document the informal economy, which is almost as big as the formal one, official moves that encourage

smuggling and illegal imports make no sense. Simply put, such moves are not sustainable as they work only to strengthen the *status quo*, where tax dodging is tolerated, and offer very short-term advantage to the State. Apart from questions of financial ethics and loss to the exchequer, the local automobile industry is also affected and jobs are lost when vehicles are smuggled and later legalized. As for the FBR's claims that billions of rupees were collected when over 50,000 vehicles were regularized under the amnesty, it would be fair to ask how much revenue the State could have collected had the vehicles been imported legally. The court's decision should prompt the tax authorities to avoid coming up with such dubious schemes in the future."

16. The Amnesty Scheme is not only a slap on the face of honest taxpayers but also aimed at decriminalizing the crime of tax evasion and plundering of national wealth. It is rightly termed by some as a 'financial NRO' as the corrupt government has decided to exempt the beneficiaries from questioning by National Accountability Bureau (NAB) and Federal Investigation Agency (FIA).

Amnesty SRO has not been framed for the welfare of the people of Pakistan rather framed by certain influential's for their own benefits and the benefit of certain privileged class.

Simply put, such amnesty schemes are not sustainable as they work only to strengthen the corrupted *status quo*, where tax dodging has become the norm, and offer no sustainable advantages to the State. The extent of tax evasion is truly immeasurable and reprehensible and must be scrutinized and implemented with an iron hand.

Supreme Court Judgment

17. Drawing application from Dr. Mubashar, Hassan's case *PLD 2010 SC 265*, whereby the constitutionality of NRO 2007 was challenged and held to be arbitrary and irrational without disclosing any particular reason therefor. Similar application can be made to the Amnesty Scheme which is irrational and discriminatory in every sense as is it not based on intelligible differentia and deserves to be struck down. Honourable Supreme Court held that validity of any law can be tested by its results or fruits. If a law evokes healthy feelings/atmosphere, then it is valid otherwise it is void. An illegal morsel gives birth to evils. Similarly, any legislation which hurts the welfare of the people

should not be allowed to stand among the people:--

“The impugned Amnesty Scheme was issued in direct violation of the above laid *dictum* by august Supreme Court.” It is also a settled principle of law that where a statute is *ex facie* discriminatory but is also capable of being administered in a discriminatory manner and it appears that it has actually been administered to the detriments of a particular class in particular, unjust and oppressive manner, then it is *void ab initio* - since its inception. (PLD 1957 SC 157, PLD 1988 SC 416, PLD 1993 SC 341, 1991 SCMR 1041).

18. The relevant observation is that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike. However, a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25. That equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed. That in order to make a classification reasonable, it should be based on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and that differentia must have a rational nexus to the object sought to be achieved by such classification.

19. “Intelligible differentia” means in the case of the law differentiating between two sets of the people or objects, all such differentiations should be easily understood as logical and lucid and it should not be artificial or contrived. Intelligible differentia distinguishes persons or things from the other person or things, who have been left out:--

“Art. 25--Equality of Citizens--Reasonable classification--Principles. In order to make classification reasonable, it should be based:--

- (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;
- (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

Any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed."

20. Any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed.

21. The Amnesty Scheme besides being discriminatory has also been applied in a discriminatory manner to achieve certain political objectives with *mala fides*. Furthermore, the Amnesty Scheme has not given the country any benefit as a whole. Rather, questions arise whether a law which instead of eliminating, has encouraged the offence of corruption and moral turpitude can ever be allowed to subsist or allowed inception. Amnesty Scheme being discriminatory in nature deserves to be declared *void ab initio*, and is inconsistent with Article 25 of the Constitution as it has created *inter alia* an unreasonable classification, having no rational nexus with the object of the amnesty. Besides the above, equality is an essential requisite of justice because when there is discrimination and partiality between people, there is no justice. The Code of Allah demands absolute equality of rights between all people without any discrimination or favoritism between man and women on any count. Therefore, without any fear of doubt, it can be held that Article 25 of the Constitution mandates all citizens to be equal before the law and are 'entitled' to equal protection of law and there shall be no discrimination on the basis of sex alone, has its origins in Quranic Injunctions. Once it has been held that any law is void, insofar as, it is inconsistent with or in derogation of fundamental rights, therefore, it would also be against the injunctions of Islam and no such law shall be enacted which is repugnant to such injunctions.

If one looks at the needy economy of Pakistan, culture of corruption, budget deficit, per capita income, begging for financial assistance by all Governments and ever increasing gap between rich and poor, there is hardly any justification to import luxury

vehicles that too through illegal modes and by exercising lucrative influence. It is the right time to take some bold steps and promote the domestic manufacturing Industry of vehicles by putting ban on import of luxury vehicles.

22. For the reasons discussed above, instant writ petition is allowed and it is hereby declared that impugned scheme with S.R.O. No. 172(I)/2013 dated 5-3-2013 are illegal, unconstitutional, *void ab initio*, besides the dictums laid down by the Hon'ble Supreme Court, discriminatory, cryptic device to protect criminal act, therefore, same is set aside, with the following directions:--

- (i) All cars registered under the Amnesty Scheme must be ceased and reverted back to pre-S.R.O. position.
- (ii) Corrupt customs/government officials must be uprooted - and legal action by way of initiating criminal proceedings to be investigated by FIA against all Government officials including Chairman FBR involved in introducing, approving and executing Amnesty scheme.
- (iii) A committee may be established to examine the corrupt practices and suggest a code of ethics to be strictly complied with by all Government departments, so that against the cancer of commerce *i.e.* corruption law must strike hard at it.
- (iv) Vehicles smuggled after announcement of scheme be confiscated forthwith and entry of those vehicles which have still not been brought to Pakistan be banned and if brought be confiscated and auctioned in accordance with law. All vehicles above the age of three years may also be confiscated.
- (v) Tighter border controls must be placed to ensure that smuggling is prevented and all violators severely punished.
- (vi) In these peculiar condition and the economy, it is directed that in future no government department be allowed to import luxury vehicles and all the departments may be directed to use the locally manufactured vehicles, but in order to improve the standard of manufacturing/assembling of vehicles in Pakistan, some remedial steps may be taken. There should be a complete ban on Government, Semi Government Departments, Statutory bodies/ organizations and corporations to import any kind of luxury vehicle on any pretext whatsoever. However, Jeeps (SUVs) like vehicles used for defence purpose and for law enforcement agencies, are exempted from this direction.