

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL, CJ  
MR. JUSTICE AMIN-UD-DIN KHAN  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITIONS NO. 389, 696 TO 742 OF 2022**

(Against the judgment dated 01.12.2021 passed by the Peshawar High Court, Peshawar, in Custom Reference Nos.270-P to 317-P/2020)

Collector of Customs, Model Customs  
Collectorate, Peshawar

...Petitioner  
(In all cases)

**VERSUS**

- |     |                             |                  |
|-----|-----------------------------|------------------|
| 1.  | Waseef Ullah and another    | (In CP.389/2022) |
| 2.  | Akhtar Badshah and another  | (In CP.696/2022) |
| 3.  | Aurangzeb Khan and another  | (In CP.697/2022) |
| 4.  | Fazal Rahim and another     | (In CP.698/2022) |
| 5.  | Niaz Ali Shah and another   | (In CP.699/2022) |
| 6.  | Muhammad Kashif and another | (In CP.700/2022) |
| 7.  | Javid Khan and another      | (In CP.701/2022) |
| 8.  | Ansar Ali and another       | (In CP.702/2022) |
| 9.  | Inamullah and another       | (In CP.703/2022) |
| 10. | Pir Muhammad and another    | (In CP.704/2022) |
| 11. | Noor Taj and another        | (In CP.705/2022) |
| 12. | Khalil Ahmed and another    | (In CP.706/2022) |
| 13. | Ghulam Qadir and another    | (In CP.707/2022) |
| 14. | Yaseen Khan and another     | (In CP.708/2022) |
| 15. | Ali Akbar Shah and another  | (In CP.709/2022) |
| 16. | Irfan and another           | (In CP.710/2022) |
| 17. | Bakht Zaman and another     | (In CP.711/2022) |
| 18. | Usman Khan and another      | (In CP.712/2022) |
| 19. | Ali Rahman and another      | (In CP.713/2022) |
| 20. | Suleman and another         | (In CP.714/2022) |
| 21. | Ikram Ullah and another     | (In CP.715/2022) |
| 22. | Ali Khan and another        | (In CP.716/2022) |
| 23. | Fazal Subhan and another    | (In CP.717/2022) |
| 24. | Said Malook Jan and another | (In CP.718/2022) |
| 25. | Sajid Muhammad and another  | (In CP.719/2022) |
| 26. | Khalid Jan and another      | (In CP.720/2022) |
| 27. | Niazm ud Din and another    | (In CP.721/2022) |
| 28. | Habib Ullah and another     | (In CP.722/2022) |
| 29. | Bawar Khan and another      | (In CP.723/2022) |
| 30. | Israr Khan and another      | (In CP.724/2022) |
| 31. | Riaz Khan and another       | (In CP.725/2022) |
| 32. | Habib Ullah and another     | (In CP.726/2022) |
| 33. | Nabi Roz Khan and another   | (In CP.727/2022) |
| 34. | Ziarat Khan and another     | (In CP.728/2022) |
| 35. | Musa Khan and another       | (In CP.729/2022) |
| 36. | Zahir Khan and another      | (In CP.730/2022) |
| 37. | Muhammad Ismail and another | (In CP.731/2022) |

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|--------------------------------|------------------|
| 38. Zubair Shah and another    | (In CP.732/2022) |
| 39. Said Atif Shah and another | (In CP.733/2022) |
| 40. Mohib Ullah and another    | (In CP.734/2022) |
| 41. Naveed Jan and another     | (In CP.735/2022) |
| 42. Abdul Rabbi and another    | (In CP.736/2022) |
| 43. Tayabullah and another     | (In CP.737/2022) |
| 44. Anwar Ullah and another    | (In CP.738/2022) |
| 45. Muhammad Ali and another   | (In CP.739/2022) |
| 46. Ashraf Ali and another     | (In CP.740/2022) |
| 47. Adil Hussain and another   | (In CP.741/2022) |
| 48. Asfandyar Khan and another | (In CP.742/2022) |

...Respondents

For the Petitioner: Mr. Abdul Rauf Rohaila, Sr. ASC

For the Respondents: N.R.

Date of Hearing: 06.07.2022

### **JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** The aforesaid forty-eight Civil Petitions for leave to appeal are directed against the common judgment dated 01.12.2021 passed by the learned Peshawar High Court in Custom Reference Nos. 270-P to 317-P/2020, whereby the Reference Applications were answered in the negative in favour of the respondents, and against the petitioner.

2. The tersely enunciated facts of these civil petitions are as under:-

The Federal Government, vide S.R.O. 499(I)/2013 dated 12-6-2013, exempted customs duty, sales tax and with-holding tax on import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03. During the audit, the Deputy Collector Customs (Import) Dry Port, Model Customs Collectorate, Peshawar observed that used Hybrid Suzuki, Hustler, Wagon-R, Mazda, Cross-over, Suzuki IGNIS were cleared illegally on 50% exemption of duty and taxes in terms of SRO 499(I)/2013 dated 12-6-2013. Show cause notices were issued to the importers and Customs Clearing Agents under section 32 (3A) of Customs Act 1969 read with Section 3(1) of Imports and Exports (Control) Act, 1950, Section 3(1)(b) of Sales Tax Act, 1990, Section 148 and 182 of the Income Tax Ordinance, 2001 and section 33(5) of Sales Tax Act, 1990 and after submission of replies, the Deputy Collector Customs (Adjudication) through Order-in-Original upheld the show cause notice. The respondents preferred appeals to the Collector of Customs (Appeals) but all appeals were dismissed, thereafter, the respondents approached the Customs Appellate Tribunal and the appeals were allowed, thereafter, the petitioner filed Customs Reference against the Customs Appellate Tribunal judgment but all Reference applications were dismissed.

3. The learned counsel for the petitioners argued that the learned High Court has wrongly held that the Notification S.R.O. 499(I)/2013 dated 12.06.2013 ("S.R.O.") is applicable to both new and used imported Hybrid Electric Vehicles ("HEV(s)"), which is contrary to the Import Policy Order, 2016 in which import of old and used HEVs are not allowed. It was further contended that during the audit it was revealed that the duty, taxes and other charges have been short levied, therefore the importer could be served with a show cause notice within five years, under Section 32(3A) of the Customs Act 1969 ("Customs Act"), for recovery of the deficit amount of levy, and the adjudicating authority had rightly issued notice to the importers that they have availed the exemption wrongly, but both the learned Tribunal and learned High Court have decided the issue without proper application of mind.

4. Heard the arguments. The sticking point and bone of contention between the parties is embryonic vis-à-vis the interpretation of the S.R.O. and the subsequent circular dated 05.10.2018 issued by the Assistant Collector of Customs, MCC Appraisement-West, Custom House, Karachi ("Circular"). For the ease of convenience, both are reproduced as under:

**"GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE, ECONOMIC AFFAIRS,  
STATISTICS & REVENUE  
(REVENUE DIVISION)**

Islamabad, the 12<sup>th</sup> June, 2013

**NOTIFICATION  
(Customs, Sales Tax and Income Tax)**

S.R.O.499 (I)/2013.- In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), clause (a) of sub-section (2) of section 13 of the Sales Tax Act, 1990 and sections 53 and 148 of the Income Tax Ordinance, 2001 (XLIX of 2001), and in supersession of Notification No. S.R.O. 607 (I)/2012, dated the 2<sup>nd</sup> June, 2012, the Federal Government is pleased to exempt customs duty, sales tax and withholding tax on Import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03, specified in column (2) of the Table below, to the extent as specified in column (3) thereof, namely:-

S.No.	Engine Capacity	Extent of exemption in leviable duty & taxes
(1)	(2)	(3)
1	Upto 1800 cc	50%
2	From 1800 cc to 2500 cc	25%

2. This notification shall take effect from the 13<sup>th</sup> day of June, 2013.

(Mohammad Riaz)  
Additional Secretary"

**"GOVERNMENT OF PAKISTAN  
MODEL CUSTOMS COLLECTORATE OF  
APPRAISEMENT WEST  
CUSTOM HOUSE, KARACHI**

No.SI/MISC/102/218-VI      dated 05.10.2018

**CIRCULAR**

It is for information of all concerned that the benefit of exemption from custom duties, sales tax and Income tax on import of Hybrid Electric Vehicles (HEVs) under S.R.O.499(I)/2013 dated 12.06.2013 is only available and extended to Fully Hybrid Vehicles. Only those vehicles are termed as Full Hybrid, which have larger batteries and motor to drive the vehicle on EV (Electric Vehicle) made for certain period of time. The concession under aforesaid S.R.O. is not being extended to any other vehicle claimed to be HEV like Mild/Micro Hybrid vehicles.

(Raissa Kanwal)  
Assistant Collector of Customs  
MCC Appraisement-West  
Group-VII"

5. The S.R.O. dated 12.6.2013 was issued by the Government of Pakistan in exercise of powers conferred by Section 19 of the Customs Act, clause (a) of sub-section (2) of Section 13 of the Sales Tax Act, 1990 ("Sales Tax Act"), and Section 53 and 148 of the Income Tax Ordinance, 2001 ("ITO 2001"). The nitty-gritties of Section 19 of the Customs Act make it unequivocally clear that it communicates the general power of granting exemptions from customs duties whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interest in the situation arising out of abnormal fluctuation in international commodity prices, implementation of bilateral and multilateral agreements, etc. In the aforesaid eventualities, the Government of Pakistan may by notification exempt any goods imported into or exported from Pakistan from the whole or any part of the customs duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under the Customs Act. A similar provision is incorporated under sub-section (2) of Section 13

of the Sales Tax Act, in which also the Federal Government may exempt any supplies made or import of any goods from the whole or any part of the tax chargeable under this Act. In tandem, Section 53 of the ITO 2001 is also germane to the exemption and tax concessions in the Second Schedule, and Section 148 of the ITO 2001 is related to advance tax paid to a collection agent. Within the precincts of powers, the Federal Government had issued the S.R.O. to exempt customs duty, sales tax and withholding tax on the import of HEVs falling under PCT Code 87.03, and the S.R.O. was made effective from 13.06.2013. During the existence of this S.R.O., the Assistant Collector of Customs MCC Appraisement-West issued the Circular dated 5.10.2018 wherein an unjustifiable condition was sought to be imposed, beyond the purview of the original S.R.O., that the benefit of exemption of duties and taxes on the import of HEVs under the S.R.O. is only available to Fully Hybrid Vehicles which have larger batteries and a motor to drive the electric vehicle.

6. The Deputy Collector, Collectorate of Customs (Adjudication), Islamabad, issued show cause notices in the year 2019 which were obviously issued after the dissemination of the Circular. The primary thrust of the show cause notice was that the aforesaid S.R.O. was applicable only to Fully Hybrid Vehicles which have larger batteries and enough power to drive the vehicles, and its benefit was not applicable to the hybrid vehicles which do not have larger batteries. The Deputy Collector, in the Order-in-Original, directed the recovery of taxes and duties along with the imposition of penalty on the importer and a separate penalty on the clearing agent. This order was challenged before the Collector of Customs Appeals, who affirmed the Order-in-Original and also held that the Circular dated 5.10.2018 was not in conflict with the statutory order, but was clarificatory in nature and finally, the appeal was also dismissed. The appellate order was assailed by the importers before the Customs Appellate Tribunal and, vide order dated 27.8.2022, the appeals were allowed and the order passed in the appeals by the Collector, as well as the Orders-in-Original were set aside.

7. The learned High Court framed the following questions of law in the aforesaid Customs References:-

- i. Whether as per facts and in the circumstances of the case, the Federal Government through Notification SRO.499(I)/2013 dated 12.06.2013 has exempted customs duty, sales tax and withholding tax on import of new Hybrid Electric Vehicles (HEVs) to the extent specified in column (3) of the Notification?.
- ii. Whether as per facts and in the circumstances of the case, "The Tribunal" has wrongly held that old imported Hybrid Electric Vehicles (HEVs) imported by respondent No.1 is entitled for the exemption notified under Notification SRO.499(I)/2013 dated 12.06.2013?
- iii. Whether as per facts and in the circumstances of the case, the old and used vehicle imported by respondent No.1 has wrongly been extended the benefit of SRO.499 (I)/2013 dated 12.06.2013 by "The Tribunal committing gross illegality?
- iv. Whether as per facts and in the circumstances of the case, where it is discovered as a result of an audit or examination of importer's documents, that any duty, taxes or charge has been short levied, the importer can be served within five years with notice under section 32(3A) of "The Act" requiring him to pay the amount specified in the notice?
- v. Whether as per facts and in the circumstances of the case, the adjudicating authority has correctly issued notice to the importer and customs clearing agent under section 32(3A) of "The Act" 1969 read with section 3(1) of the Imports and Exports (Control) Act, 1950, section 31 (b) of the Sales Tax, 1990, section 148 of Income Tax Ordinance, 2001 having wrongly availed exemption of S.R.O. 499 (I)/2013?

8. After considering the pros and cons, the learned High Court answered all the questions in negative in favour of the respondents, and against the petitioner. The learned counsel for the petitioner, though accepting the validity of the S.R.O., endeavored to argue by presenting an altogether new plea that the above S.R.O. was applicable only to new HEVs which was never the subject matter in the lower *fora*, including the learned High Court. Neither was any plea taken with regard to the Import Policy Order 2016 in the forum below, nor was any such thing alleged in the show cause notice, nor were the original proceedings triggered on this count. Even otherwise, the Import Policy of 2016 cannot be given retrospective effect to take away or withdraw the relief of exemption extended in the S.R.O. As a matter of fact, the show cause notice was issued under the garb of the Circular, wherein the Assistant Collector of Customs innovated a new criteria that the benefit in the original S.R.O. was only extended to the Fully Hybrid Vehicles which have larger batteries and a motor to drive the vehicles, but nothing is mentioned in this regard in the

S.R.O. itself. At the outset, nothing was placed on record as to how the Assistant Collector of Customs, MCC Appraisement, West Group-VII had any lawful authority to issue such Circular in order to make an amendment in the original S.R.O. whereby he added certain strange conditions under the guise of a so-called clarification which changed the complexion and substratum of the S.R.O. without any lawful authority. Both the learned Appellate Tribunal and learned High Court have rightly discarded this Circular which was unjustifiably and irrationally approved in the Appellate Order while describing the Circular as clarificatory in nature. In fact, the Federal government exempted duties on the import of HEVs falling under PCT Code 87.03 without any distinction of new or used hybrid vehicles, or large or small batteries, or with any specific qualification *sine qua non* for exemption, so the plea articulated by the learned counsel for the petitioner is misconceived and beyond the pleadings which was never set up before any forum below. According to the literature of the U.S. Department of Energy, accessible through their website, the technical details of HEVs are as under:

Hybrid Electric Vehicles (HEVs) are powered by an internal combustion engine in combination with one or more electric motors that use energy stored in batteries. HEVs combine the benefits of high fuel economy and low tailpipe emissions with the power and range of conventional vehicles. Although HEVs are often more expensive than similar conventional vehicles, some cost may be recovered through fuel savings or state incentives. In HEVs, the extra power provided by the electric motor may allow for a smaller combustion engine. The battery can also power auxiliary loads and reduce engine idling when the vehicle is stopped. Together, these features result in better fuel economy without sacrificing performance. HEVs cannot plug into off-board sources of electricity to charge the battery. Instead, the vehicle uses regenerative braking and the internal combustion engine to charge. The vehicle captures energy normally lost during braking by using the electric motor as a generator and storing the captured energy in the battery.

[Ref: [https://afdc.energy.gov/vehicles/electric\\_basics\\_hev.html](https://afdc.energy.gov/vehicles/electric_basics_hev.html)]

9. The abbreviation "S.R.O." stands for "Statutory Regulatory Orders" which in fact refers to genres of government regulations disseminated through delegated powers under the statutory regime. Insofar as it relates to taxing statutes, the concessions or exemptions may be granted through statutory regulatory orders; it may also impose tax in the form of additional duties and regulatory duties including exemptions and may lay down the procedural niceties to implement the laws and amendments in an existing S.R.O. It is clear that the

S.R.O. only classifies HEVs with PCT headings without drawing any distinction with regard to fully or semi hybrid, or used or new vehicles, or any specification of large batteries. Anything which tried to be inferred extraneously or beyond the scope or tenor of the S.R.O. was not permissible under any rule of interpretation. According to well-settled canons and rules of interpretation laid down by the superior Courts time and again, the indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. The S.R.O. requires purposive interpretation or construction which complements its effect to the purpose by following conscientious and exact meaning. S.R.Os are issued fundamentally in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. If the words of the section are plain and unambiguous, then there is no question of interpretation or construction. The duty of the Court then is to implement those provisions with no hesitation. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. The Court cannot supply *casus omissus* and while interpreting a statute, the Court cannot fill in gaps or rectify defects and cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The legal maxim, "*absoluta sententia expositore non indigent*" also reminds us that, when the language is not only plain, but admits of but one meaning, the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no need of interpretation. Whereas another maxim "*generalia verba sunt generalita intelligenda*" expresses that general words are to be understood generally and what is generally spoken shall be generally understood unless it be qualified by some special subsequent words or unless there is in the



statute itself some ground for restricting their meaning by reasonable construction, not by arbitrary addition or retrenchment [Ref: **N. S. Bindra's interpretation of Statutes (Tenth Edition)**, (Page No.609-610) & (Page No.656-657)].

10. It is well established law that the burden rests on the person who claims an exemption or concession to substantiate that he is entitled to the same. In a taxing statute, there is no leeway or probability of any intendment but the manner of interpretation should be such which undoubtedly or unmistakably comes into sight from the plain language of the notification with the conditions laid down in it, but with the caution that the benefits arising from a particular exemption should not be defeated or negated and, in case of any ambiguity or mischief, the taxing statute should be construed in favour of the assessee. By and large, the exemption notification is interpreted rigidly, but when it is found that the assessee has satisfied the exemption conditions, a liberal construction should be made. The doctrine of substantial compliance, though on one hand premeditated to avoid hardship, simultaneously safeguards the essential compliance of the prerequisites in which the exemption in tax or customs duty are invoked. Here we would like to refer to the relevant excerpts from N. S. Bindra's interpretation of Statutes (Tenth Edition), page 1118, with regard to strict construction of taxing statutes, as well as the exemptions accorded therein, as under:

#### **CHAPTER 23: FISCAL STATUTES**

##### **12. STRICT CONSTRUCTION**

Taxing Acts must be construed strictly. One must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed. If there are two views possible, the one favorable to the assessee in matters of taxation has to be preferred. The assessee should be given the benefit of doubt and the opinion which is in its favour should be given effect to. In interpreting a fiscal statute the court cannot proceed to make good deficiencies if any; the court must interpret the statute as it stands and in the case of a doubt, in a manner favorable to the tax-payer.

##### **14. EXEMPTIONS FROM TAXATION**

It is true that when in a fiscal provision if benefit of exemption is to be considered this should be strictly considered. However, the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented. They have to be interpreted strictly and in its entirety and not in parts. Where an exemption is conferred by a statute by an exemption clause, that

clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exemption provision, which must be regarded as paramount. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. The apex court has held that excise department could not deny the benefit of an exemption notification to the respondents on the reasoning that to get the benefit, the ingots must be manufactured from ore 100% made in the factory of the assessee, when the exemption notification contained no indication to such effect. A provision intended for the benefit of the taxpayer must be construed liberally in favour of the tax-payer.

Claims of exemption must fall within the four corners of the exemption provision. One of the settled principles of construction of the an exemption notification is that it should be construed strictly but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly and once the good is to fall even narrowly in any of these categories there appears no justification to exclude it".

11. The survey of the judgment rendered by this Court in the case of Jamat-i-Islami Pakistan Vs. Federation of Pakistan (PLD 2000 Supreme Court 111), demonstrates that the statutes must be intelligibly expressed and reasonably definite and certain and it is the duty of the Court to find out the true meaning of a statute while interpreting the same. While in the case of Government of Pakistan and others Vs. Messrs.' Hashwani Hotel LTD (PLD 1990 Supreme Court 68), it was held that the plain ordinary meaning of the word is to be adopted in construing a document. This judgment also refers to the case of Pakistan Textile Mill Owners Association Karachi V. Administrator of Karachi (PLD 1963 Supreme Court 137), wherein it was observed that in a taxing statute, as in any other statute, there is no reason to depart from the general rule that words used in a statute must first be given their ordinary and natural meaning. Whereas in the case of Pakistan through Chairman FBR and others Vs. Hazrat Hussain and others (2018 SCMR 939), this Court held that the power of granting exemptions is discretionary, it is equally true that the said power cannot be exercised in a discriminatory manner. Exemptions are to be granted and regulated in terms of consistent policies for sound reasons. In the case of Mathuram Agrawal. Vs. State of Madhya Pradesh (AIR 2000 SC 109), the Court held that the intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. Equally impermissible is an

interpretation which does not follow from the plain, unambiguous language of the statute.

12. In the present state of affairs, exemption of customs duty, sales tax and withholding tax on Import of Hybrid Electric Vehicles (HEVs) falling under PCT Code 87.03, specified in column (2) of the Table to the extent as specified in column (3) in terms of S.R.O.499 (I)/2013, dated 12.6.2013 could neither be denied nor circumvented on the basis of subsequent circular dated 5.10.2018, issued by the Assistant Collector of Customs. It is well settled exposition of law that if the tax-payer is entitled for exemption in plain terms of notification, then the department could not deny the benefit of an exemption which was intended for the benefit of the taxpayer so it should be construed accordingly.

13. At this juncture, we cannot lose sight of the *raison d'être* of promulgating the Pakistan Climate Change Act, 2017 which envisions compliance with international conventions relating to climate change and adoption of comprehensive mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change. In the definition clause, "climate change" means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a direct or indirect consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period; whereas "emissions", in relation to greenhouse gas, means emissions of that gas into the atmosphere caused by human activity; while "greenhouse gas" means any gas that contributes to the greenhouse effect by absorbing infrared radiation produced by solar warming of the earth's surface and includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, nitrogen trifluoride and any other direct or indirect greenhouse gas as recognized by UNFCCC and IPCC from time to time. The function of the Council includes the obligation to co-ordinate, supervise and guide the mainstreaming of climate change concerns into decision-making by Federal and Provincial Governments to create enabling conditions for integrated climate-compatible and climate-resilient development processes in various sectors of the economy; approve and monitor implementation of comprehensive adaptation and mitigation policies, strategies,

plans, programmes, projects and other measures, whereas the Functions of the Authority encompasses the formulation of comprehensive adaptation and mitigation policies, plans, programmes, projects and measures designed to address the effects of climate change and meet Pakistan's obligations under international conventions and agreements relating to climate change and within the framework of a national climate change policy as may be approved by the Federal Government from time to time; establish institutional and policy mechanisms for implementation of Federal and provincial adaptation and mitigation policies, plans, programmes, projects and measures, including plans for renewable energy and clean technology measures for energy efficiency and energy conservation and awareness-raising and capacity-building programmes; carry out a Technology Needs Assessment and prepare a Climate Change Technology Action Plan in accordance with international best practices for seeking technical and financial support etc. The Schedule appended with reference to Sections 2, 4, 17 and 18 to the aforesaid Act integrates the United Nations Framework Convention on Climate Change (UNFCCC), Rio De Janeiro, 1992; Kyoto Protocol to the UNFCCC, 1997; The Paris Agreement, 2015; including any other agreement relating to climate change to which Pakistan is a signatory.

14. In unison, the Pakistan Environmental Protection Act (PEPA), 1997 also ropes in various provisions for protection, conservation, rehabilitation and improvement of the environment, and for control of pollution, promotion of sustainable development, conservation, rehabilitation, improvement of the environment, prevention and control of pollution, promotion of sustainable developments which has close proximity and nexus to the Pakistan Climate Change Act, 2017. In this Act too, "pollution" means the contamination of air, land or water by the discharge or emission or effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavourably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to

biodiversity. Section 12 of this Act is directly related to the regulation of Motor Vehicles which provides that no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the National Environmental Quality Standards or, where applicable, the standards established under clause (g) of sub-section (1) of section 6 and for ensuring compliance with the standards mentioned in sub-section (1), the Federal Agency may direct that any motor vehicle or class of vehicles shall install such pollution control devices or other equipment or use such fuels or undergo such maintenance or testing as may be prescribed. Last but not least, under Section 31, the Federal Government is vested with the powers to make rules including the rules for implementing the provisions of the international environmental agreements, specified in the Schedule to this Act which includes International Plant Protection Convention, Rome, 1951; Plant Protection Agreement for the South-East Asia and Pacific Region (as amended) Rome 1956; Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia (as amended), Rome, 1963; Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 and its amending Protocol, Paris, 1982; Convention Concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention), Paris, 1972; Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Washington, 1973; Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979; Convention on the Law of the Sea, Montego Bay, 1982; Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985; Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987 and amendments thereto; Agreement on the Network of Aquaculture Centres in Asia and the Pacific, Bangkok, 1988; Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, Basel, 1989; Convention on Biological Diversity, Rio De Janiero, 1992 and United Nations Framework Convention on Climate Change, Rio De Janiero, 1992.

15. In a nutshell the niceties of both the laws are intermingled and focused on the commitments and responsibility of the concerned Council and Authority constituted under the Acts to make sincere

efforts to ensure the prevention and control of pollution, promotion of sustainable development, conservation, rehabilitation, improvement of the environment and address the effects of climate change in our country with a further obligation to implement different conventions and treatise. The mere legislation of laws without effective implementation and execution is useless and ineffectual. Instead, sincere efforts are required by the concerned authorities to safeguard the climate and reduce the adverse environmental impact of human activity. According to the U.S Department of Transportation Report, updated on 24.8.2015, motor vehicles are a leading source of air pollutants that affect human health. Vehicle emissions contribute to the formation of ground level ozone (smog), which can trigger health problems and increased susceptibility to respiratory illnesses. The aforesaid report further articulates that the levels of traffic related air pollution are higher near major roadways that have high traffic volume but the air quality may be improved through HEVs. Different research documents also suggest that toxic pollutants in the air or deposited on soils or surface waters can impact wildlife in a number of ways. Like humans, animals can experience health problems if they are exposed to sufficient concentrations of airborne toxins over time. It can also damage crops and trees in a variety of ways. Ground-level ozone can lead to reductions in agricultural crop and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease, pests and other environmental stresses.

16. The technology of HEVs is well accepted and internationally acclaimed technology in the modern world. Besides being fuel efficient, it is also an alternative solution to cautiously concentrate on the issue of global warming. The proper and futuristic use of this technology will progress our country, and will not only improve and recuperate the atmosphere and ecosystem, but also alleviate destructive facets of climate change by lessening smoke emissions in order to effectively implement the Climate Change Act of 2016 and the Pakistan Environmental Protection Act (PEPA), 1997. Though the S.R.O. granting exemption on HEVs does not specifically encapsulate this particular purpose but, on the face of it, the exemption on the import of HEVs was logically issued for protection against climate change, and to minimize its adverse impact in the future which is a step

forward towards the implementation and compliance of Pakistan Environmental Protection Act (PEPA), 1997. It is also the need of the time and a pressing priority to promote and encourage HEVs more and more, rather than applying irrational interpretations resulting in unwarranted restrictions on the exemption already in field.

17. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned Peshawar High Court. Accordingly, these Civil Petitions are dismissed and leave is refused.

Chief Justice

Judge

Judge

Islamabad the

6<sup>th</sup> July, 2022

Khalid

Approved for reporting.