

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Yahya Afridi, CJ  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Miangul Hassan Aurangzeb

**Civil Petition No. 4459 of 2023**

*[Against judgment dated 05.10.2023 of the  
Peshawar High Court, Peshawar passed in  
Custom Reference No.12-P of 2014]*

*Collector of Customs, Model Customs Collectorate,  
Customs House, Peshawar.*

... *Petitioner*

**Versus**

*Shahid Muhammad and another.*

... *Respondents*

For the Petitioner:

Mr. Atif Ali Khan, ASC.  
Syed Rifaqat Hussain Shah, AOR.

For Respondent No.1:

Nemo.

Date of Hearing:

18.08.2026.

**JUDGMENT**

**Muhammad Shafi Siddiqui, J.** This Civil Petition for Leave to Appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is directed against the judgment dated 05.10.2023 passed by the Peshawar High Court, Peshawar, in Customs Reference No.12-P/2014, whereby the Reference filed by the petitioner under section 196 of the Customs Act, 1969, was answered in the negative and the judgment dated 06.05.2014 passed by the Customs Appellate Tribunal, Peshawar Bench, was upheld.

2. Briefly stated, the facts giving rise to the present petition are that respondent No.1 imported a limousine car bearing VIN No. 2C3KA53G97H610047 through Customs Dry Port, Peshawar, vide Goods Declaration (GD No. PDRY-HC-1165) dated 01.11.2011. The vehicle was initially declared by the clearing agent of the importer under Heading 87.02,

relating to motor vehicles for the transport of ten or more persons, including the driver. Upon examination, however, the Customs authorities found the vehicle to be a stretched vehicle originally designed as a five-seater. On this basis, the vehicle was considered classifiable under Heading 87.03, pertaining to motor cars and other motor vehicles principally designed for the transport of persons, other than those falling under Heading 87.02. The vehicle was accordingly assessed under PCT 8703.2490, and respondent No.1 obtained its release upon payment of the assessed differential duty and taxes.

3. Aggrieved by the classification, respondent No.1 approached the Federal Tax Ombudsman (FTO), Islamabad, which directed the Federal Board of Revenue (FBR) to have the matter of classification determined in accordance with law. Upon completion of the requisite formalities, the matter was placed before the Deputy Collector of Customs (Adjudication), Peshawar, who, vide Order No. C.No. PDRY-HC-1165/2011/1975 dated 03.10.2012, upheld the departmental classification of the vehicle under PCT 8703.2490. Respondent No.1 thereafter preferred an appeal before the Collector of Customs (Appeals), Peshawar, which was dismissed vide Order-in-Appeal dated 27.12.2012, thereby maintaining the classification determined by the adjudicating authority. Respondent No.1 then approached the Customs Appellate Tribunal, Peshawar Bench. The learned Tribunal, vide order dated 06.05.2014, set aside the Order-in-Appeal and held that the vehicle was classifiable under PCT 8702.9090 rather than PCT 8703.2490, and consequently directed refund of the excess amount of duty and taxes recovered from respondent No.1. The petitioner-Department challenged the said judgment before the Peshawar High Court through Customs Reference No.12-P/2014 under section 196 of the Customs Act, 1969. The learned High

Court, vide impugned judgment dated 05.10.2023, answered the questions of law framed by the Department in the negative and upheld the judgment of the Tribunal. Hence, the present petition.

4. Learned counsel appearing on behalf of the petitioner contended that the imported vehicle was originally designed and manufactured as a five-seater motor car and was subsequently modified and stretched to accommodate additional passengers since it was a stretched limousine. It was argued that such subsequent modification could not alter the essential character of the vehicle or the basis of its tariff classification, which was required to be determined with reference to its original design and construction. Learned counsel submitted that the expression “designed” occurring in the relevant Harmonized System description of Heading 87.02 was of particular significance, as the said heading contemplated motor vehicles designed for the transport of ten or more persons, including the driver. Reliance was placed upon the examination report, the decoding of the Vehicle Identification Number (VIN) and the relevant Harmonized System Explanatory Notes, which, according to learned counsel, established that the vehicle was originally a five-seater passenger car and was consequently classifiable under PCT 8703.2490. It was further contended that the sale certificate relied upon by respondent No.1 was not an original manufacturer's certificate and, therefore, could not establish the original design of the vehicle so as to displace the evidence relied upon by the Department. Learned counsel, therefore, submitted that the learned Tribunal and the High Court erred in treating the modified seating capacity as determinative of the classification of the vehicle.

5. We have heard learned counsel for the petitioner and perused the material available on record.

6. The controversy before us essentially concerns the proper classification of the vehicle under PCT Headings 87.02 and 87.03 and, in particular, the significance to be attached to its original design and subsequent modification.

Heading 87.02 covers:

*“Motor vehicles for the transport of ten or more persons, including the driver.”*

Whereas Heading 87.03 covers:

*“Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), ...”*

The distinction between the two headings, therefore, cannot be determined merely by reference to the number of persons that could physically be accommodated in a vehicle in its “modified form”. The more fundamental question is whether a vehicle which was originally/principally designed and manufactured as a five-seater motor car, and was subsequently modified to accommodate additional passengers, can, by virtue of such subsequent modification, be regarded as a motor vehicle falling within Heading 87.02. In determining this question, the expression “designed” occurring in the Harmonized System description assumes significance, as does the distinction between the vehicle’s original manufacture and its subsequent alteration. The question that, therefore, falls for determination is whether such subsequent alteration is sufficient to displace the vehicle’s original design and character for purposes of tariff classification, or whether, notwithstanding the modification, the vehicle remains a motor car principally designed for the transport of persons within the contemplation of PCT Heading 87.03.

7. Upon examination of the record, it becomes evident that the vehicle bearing VIN No.2C3KA53G97H610047 was originally designed and

manufactured as a five-seater motor car. The examination record describes it as a stretched vehicle originally designed as a five-seater. The record further shows that, for verification of its original configuration, data relating to the vehicle was obtained from the manufacturer's website, while its VIN was examined and found to correspond with a vehicle originally designed as a five-seater. The sale certificate relied upon by respondent No.1, as available on the record, was in no way an original manufacturer's certificate and, therefore, could not establish the original design of the vehicle so as to displace the evidence relied upon by the Department. The additional seating capacity was thus introduced through a subsequent structural modification and was not a characteristic with which the vehicle was originally manufactured. The Explanatory Notes of the World Customs Organization to the Harmonized Commodity Description and Coding System, read with the applicable tariff provisions, also support the distinction between a vehicle originally designed and manufactured for the transport of persons and one which, through subsequent alteration, has acquired an increased seating capacity. The material on record, when considered in conjunction with the said Explanatory Notes, therefore supports the conclusion that the vehicle's original design and construction are material to its classification and that its subsequent modification cannot, by itself, bring it within PCT Heading 87.02.

8. The above approach finds support in the decision of this Court in *Collector of Customs, Karachi v. M/s Muhammad Shafiq* (2022 SCMR 2107) wherein the Court considered the same competing classifications under Headings 87.02 and 87.03 and examined, inter alia, the vehicle's manufacturer, the certificate relied upon by the importer and the vehicle history recording a standard seating capacity of five persons. The Court attached particular significance to the word "designed" in Heading 87.02 and

observed that the manufacturer's certificate was the relevant document for establishing the vehicle's design. The Court attached significance to the requirement that a vehicle falling under Heading 87.02 be "designed" for the transport of ten or more persons and, upon examining the evidence on record, did not accept the subsequently asserted configuration as sufficient to bring the vehicle within that heading. The principle emerging from the said decision is that a vehicle originally manufactured and designed as a five-seater motor car does not become a vehicle designed for the transport of ten or more persons merely because it is subsequently and privately subjected to structural modification which increases its seating capacity. The subsequent alteration may change the physical configuration of the vehicle, but cannot, without more, alter the design and character with which it was originally manufactured for purposes of tariff classification. The decision is therefore instructive in the present case, where the evidence relating to the vehicle's original manufacture, its VIN and the manufacturer's data has to be considered in determining the effect of its subsequent modification.

9. The wording of the relevant tariff provisions must be considered in this factual context. Heading 87.02 covers motor vehicles *"for the transport of ten or more persons, including the driver,"* while the corresponding Harmonized System Explanatory Notes refer to vehicles "designed" for the transport of ten persons or more. The expression "designed" is concerned with the purpose and configuration for which the vehicle was originally manufactured. In the present case, the vehicle was originally manufactured as a five-seater motor car and only subsequently and privately altered, so as to accommodate either additional passengers or lesser disputed taxes. The increased seating capacity was, therefore, a consequence of a later modification and not a feature of the vehicle's original manufacture. In such circumstances, the

mere existence of additional seats in the vehicle at the time of importation cannot, by itself, establish that the vehicle was one designed for the transport of ten or more persons within the meaning of Heading 87.02. The original design and construction of the vehicle, as established from the material on record, consequently remain relevant to its classification and support its placement under PCT Heading 87.03.

10. Viewed in this context, the approach adopted by the learned High Court cannot be sustained. In answering the Reference in favour of respondent No.1, the learned High Court relied upon the judgment of the Sindh High Court in *Collector of Customs v. M/s Muhammad Shafique*, Special Customs Reference Application No.1229 of 2015, decided on 29.01.2016. That judgment, however, had already been set aside by this Court in *Muhammad Shafiq's case (supra)* before the present Reference was decided.

11. In view of the above and after examining the competing classifications under HS Headings 87.02 and 87.03, we convert this petition into an appeal and the same is hereby allowed. The impugned judgment 05.10.2023 of the High Court is set aside.

Chief Justice

Judge

Judge

Islamabad:  
18.08.2026

Approved for Reporting  
[Simra Sohail, L.C]