IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Spl. Customs Reference Application No. 230 of 2026

Naqeeb Ullah VS Collector of Customs (Enforcement), Karachi & others

Date of hearing:	11.09.2026
Date of decision:	11.09.2026
Applicant:	Through Mr. Basit Umar, Advocate.
Respondents:	Nemo.

O R D E R

DR. SHAH NAWAZ MEMON, J.: — This reference application, maintained under section 196 of the Customs Act, 1969 (hereinafter referred to as the "Act"), impugns a judgment dated 30.07.2026 of the Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal No. K-3267 of 2024, whereby the appeal maintained by the Applicant was dismissed and an Order-in-Original No. 61/2024-25 dated 26.09.2024 passed by the Collector of Customs (Adjudication-I), Custom House, Karachi was sustained.

I. FACTS OF THE CASE

1. On 07.08.2024, acting upon prior information that glassware of foreign origin was being transported into Karachi under the cover of previously utilised import documents, the staff of the Collectorate of Customs (Enforcement), Karachi intercepted a truck/trailer bearing Registration No. C-2819, carrying container No. GESU-5486158, at the Moachko Customs Check Post on the R.C.D. Highway.

2. The driver, Zahid Khan, in support of the consignment, produced a copy of Goods Declaration No. QCSI-HC-16941 dated 25.06.2024. Verification of the check-post entry register, corroborated by the WeBOC record, disclosed that the very same Goods Declaration had already been presented and verified at that same check post on 07.07.2024 against an earlier consignment.

3. The cargo was accordingly taken into possession, a mushirnama and inventory were drawn on the spot, and a detailed examination at CPF Bond, Maripur yielded 20,700 kg (gross) of Iranian-origin glassware packed in cartons. The goods, together with the container and the conveyance, were seized under section 168 of the Act for contravention of sections 2(s), 16, 17, 178 and 187 thereof, punishable under clauses (8) and (89) of section 156(1) read with section 156(2) of the Act and section 3(1) of

the Imports and Exports (Control) Act, 1950. Notice under section 171 of the Act was issued and displayed on the notice boards of the Custom House and of the ASO Headquarters, NMB Wharf, Karachi.

4. A show cause notice was issued on 28.08.2024. The applicant appeared before the adjudicating authority, claimed ownership of the goods on behalf of M/s Muhammad Shafi, Abdul Wasay & Co., filed a written reply and annexed thereto his documents, namely the Release Order of the NLC Dry Port, Quetta, the Balochistan Revenue Authority challan, the weighbridge paper and *Goods Declaration No. QCSI-HC-16941 dated 25.06.2024*. By the Order-in-Original the seized glassware was confiscated outright with a penalty of Rs.50,000, while the conveyance and container were permitted to be redeemed on payment of a fine equal to 40% of the re-assessed customs value, with a like penalty.

5. In the appeal preferred under section 194-A of the Act, the learned Tribunal, after reproducing the grounds of appeal and the parawise comments of the Department *in extenso*, framed a single question for determination, namely, whether the appellant had discharged the statutory burden cast upon him by section 187 of the Act by proving lawful importation of the seized foreign-origin goods. That question was answered in the negative and the appeal was dismissed.

II. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

6. The applicant has invited this Court to answer the following three questions, which are reproduced verbatim from the memorandum of the Reference Application:

(a) *"Whether, in the facts and circumstances of the case, the non-issuance of a prior notice under Section 26 of the Customs Act, 1969, to the Appellant/owner of the goods before the issuance of a Show Cause Notice, renders the entire confiscation proceedings initiated against the Appellant illegal, void ab initio, and without lawful authority?"*

(b) *"Whether the Customs Appellate Tribunal, being the final fact-finding authority, erred in law by refusing to exercise its lawful jurisdiction and powers to verify the authenticity and validity of the bona fide import document (Goods Declaration No. QCSI-HC-9682 dated 17.01.2024) through the widely recognized and accessible WeBOC system, especially when such verification was crucial for a just determination of the case?"*

(c) *"Whether the impugned Order-in-Appeal, having been passed in disregard of fundamental procedural safeguards enshrined in the Customs Act, 1969 (Sections 26 and 171), and in defiance of its duty to verify material facts and apply settled legal principles, gives rise to a substantial question of law requiring authoritative interpretation and determination by this Honourable Court?"*

7. Mr. Basit Umar, learned counsel for the applicant, was heard at some length. He contended that the applicant had produced before the learned Tribunal *another*

Goods Declaration, being GD No. QCSI-HC-9682 dated 17.01.2024, which establishes the lawful importation of the seized glassware; that the learned Tribunal did not take that document into consideration, nor did it verify it from the WeBOC system, which, as the last fact-finding forum, it was bound to do; and that the impugned order is for that reason not maintainable. He prayed that the questions proposed be answered in favour of the applicant and against the Department.

8. We have considered the submissions of the learned counsel, perused the judgment of the learned Tribunal and the Order-in-Original, and examined the record available before us.

III. THE SCOPE OF THE REFERENCE JURISDICTION

9. Before coming to the questions, it is necessary to remind ourselves of the character and the limits of the jurisdiction we exercise. Section 196(1) of the Act, as it now stands, permits an aggrieved person to file a reference before this Court "*stating any question of law or a mixed question of law and fact arising out of such order*", and section 196(3) requires the Special Bench to "*decide the question of law or a mixed question of law and fact raised in the reference and pass judgment thereon specifying the grounds on which such judgment is based*".

10. Two points of construction follow. *First*, the jurisdiction is a limited and statutory one, and it is confining in two respects: the question must answer the statutory description, that is to say, it must be a question of law or a mixed question of law and fact, and it must *arise out of the order* of the Tribunal. *Secondly*, the inclusion of a "mixed question of law and fact" is new. Section 196 was substituted in its entirety by the Finance Act, 2024, and the sub-section which it replaced spoke only of "any question of law arising out of such order". The amendment has undoubtedly widened the field. It admits a question in which a legal standard has to be applied to facts which the Tribunal has found, as, for instance, whether the facts as found satisfy the statutory test. What the amendment does *not* do is to convert this Court into a second appellate forum upon the facts. A pure question of fact remains outside the section, and a finding of fact does not become a mixed question merely because the party dissatisfied with it chooses to plead it in the language of law. The distinction is between applying the law to the facts found, which we may do, and finding the facts afresh, which we may not.

11. The nature of the jurisdiction has been determined by the Hon'ble Supreme Court in *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax*[1]. Tracing the history of the remedy from section 51 of the Income Tax Act, 1918, through section 66 of

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[1] *Messrs Squibb Pakistan (Pvt.) Ltd. and another v. Commissioner of Income Tax and another [2017 SCMR 1006]*

the Act of 1922 and section 136 of the Income Tax Ordinance, 1979, down to section 133 of the Income Tax Ordinance, 2001, the Court held that the familiar description of a reference as an "advisory" jurisdiction is the legacy of a statute long since gone, under which the opinion of the Court was rendered to the revenue authority before any order had been passed. Of that legacy it was observed that "*the corpus had disappeared, but the shadow remained*", and it was held:

> "There is no question of advisory jurisdiction (which phrase was never used in the law at any stage) and the plain words of the section must now be given their ordinary meaning. No hyper technicalities now stand as barriers in the way of substantive justice. … It is therefore clear beyond any doubt that the remedy under section 133 *ibid is appellate in nature and must be construed and applied as such."*

12. The feature which the Hon'ble Supreme Court found decisive was that the judgment of the High Court had been made self-executory: the order of the Tribunal stands modified by operation of law, instead of awaiting action by the Tribunal upon an opinion tendered to it. Section 196(3) of the Act, as substituted by the Finance Act, 2024, now carries that very feature, for this Court is to decide the question "*and pass judgment thereon specifying the grounds on which such judgment is based and the Appellate Tribunal's order shall stand modified accordingly*". What was said in *Squibb* of section 133 therefore applies with equal force to section 196 as it now stands. We accordingly understand the jurisdiction we exercise to be appellate in nature, though confined by the statute to questions of law and to mixed questions of law and fact; and where the earlier decisions of this Court speak of an "advisory" jurisdiction, that description must now be read subject to *Squibb*.

13. But *Squibb* is quite as important for what it leaves untouched. The Court was at pains to say that "*the facts as stated in the Tribunal's order have to be taken as recorded and any question which can be made out from those facts may be raised … regardless of whether it was previously urged or not*". The liberality therefore operates upon the facts as the Tribunal has found them. It frees a litigant from the requirement that his question should have been argued below; it does not free him from the findings. A question which can be made out from the facts recorded may be raised; a question which requires those facts to be re-made cannot. That distinction governs the present reference.

14. Since the expression "mixed question of law and fact" now stands at the gateway to this jurisdiction, it is desirable to say what it means and what it does not. A question of *fact* asks what happened: who did what, what a document is, whether a witness or a document is to be believed, and what weight a given piece of evidence should carry. A question of *law* asks what the legal rule is: the true construction of a statutory provision, the existence and the limits of a power, the incidence of a burden of proof,

the requirements of a valid notice. A *mixed* question of law and fact asks a third thing: whether the facts as found by the Tribunal satisfy the legal standard, correctly understood. It presupposes that the primary facts have already been found, and it takes them as found. The enquiry is into the legal characterisation of those facts, not into their existence.

15. This distinction has recently been drawn by this Court upon the amended text of section 196, and upon facts closely resembling those before us. In *Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir*[2], the questions posed were essentially questions of fact seeking a determination whether the documentary evidence relied upon before the Customs Appellate Tribunal was false and fabricated. Declining to entertain them, the Court held:

> *"It is settled law that a question involving inquiry into facts is not a question of law and cannot be considered by the High Court in a reference under S. 196 of the Customs Act, 1969. Findings of fact rest with the Tribunal, except where such findings are perverse or contrary to the material on record. A mixed question of law and fact may, however, be examined by the High Court in its reference jurisdiction."*

16. We respectfully follow that statement of the law. It captures both halves of the matter: the door is open to a mixed question, and it is shut against an inquiry into facts, however the inquiry may be dressed.

17. The converse case must equally be borne in mind, and it has very recently been put by the Hon'ble Supreme Court. In *Commissioner Inland Revenue, Zone-II, Large Taxpayer Unit, Karachi v. M/s Bawany Sugar Mills Ltd.*[3], a Division Bench of this Court had dismissed a reference under section 47 of the Sales Tax Act, 1990 upon the view that the two questions proposed were questions of fact. The Hon'ble Supreme Court set that judgment aside, holding that the proper application of the statutory exclusions, the application of the amending S.R.O.s and the enforcement of the banking mandate of section 73 of that Act "*are in fact questions of law which required proper adjudication*", and that the High Court and the Tribunal "*were not justified in dismissing the matter as a mere question of fact*".

18. That decision is a salutary caution against the too ready use of the label "question of fact" as a means of declining jurisdiction, and we have kept it steadily in view. It does not, however, assist the applicant, for the two cases lie upon opposite sides of the line drawn above. In *Bawany Sugar Mills* the questions proposed required the construction of statutory provisions and of notifications, and the ascertainment of the legal consequences of primary facts which were not in dispute. The tax period,

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[2] *Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir [2026 PTD 770]*
[3] *Commissioner Inland Revenue, Zone-II, Large Taxpayer Unit, Karachi v. M/s Bawany Sugar Mills Ltd. [Civil Appeal No. 939 of 2018, Supreme Court of Pakistan, decided on 17.07.2026, unreported].*

the description of the goods, the status of the supplier and the absence of banking-channel evidence were all common ground; the controversy was as to what the law made of them. That is the paradigm of a question of law, or at the least of a mixed question, and it fell to be answered.

19. The distinction may be tested upon the very material of this case. Whether Goods Declaration No. QCSI-HC-9682 was or was not produced before the adjudicating authority is a question of fact. Whether section 26 of the Act must be complied with before a seizure may be effected under section 168 is a question of law. Whether the material which the Tribunal has found to exist amounts, in law, to a discharge of the burden cast by section 187 is a mixed question of law and fact. In the first this Court is a stranger; in the second and the third it is at home. But in the third the facts are taken exactly as the Tribunal has found them, and a question does not become "mixed" by the simple expedient of disputing the findings and then fastening a legal label upon the dispute. Were it otherwise, every appreciation of evidence could be re-opened merely by pleading it as a failure to apply the law, and the amendment would have repealed by a side wind the settled position that the Tribunal is the last fact-finding forum.

20. The present case is the reverse. The applicant identifies no provision of the Act, and no notification, whose construction is in doubt and upon which his fate depends. Question (b), which is the heart of his case, asks us to hold that a document which the learned Tribunal examined and disbelieved ought instead to have been believed, and to satisfy ourselves of its genuineness from a source outside the record. The primary facts are not common ground here; they are the very matter in controversy. Nor have we shut out such points of construction as the applicant did raise. Questions (a) and (c) turn upon the true scope of sections 26 and 171 of the Act, and we have construed those sections and answered those questions upon their merits in Section V below, rather than putting them aside as factual. To that extent the course we take is the course which *Bawany Sugar Mills* requires of us.

21. Upon the wider question of the respective provinces of this Court and of the Tribunal, the governing statement of principle is that of the Hon'ble Supreme Court in *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd.*[4], where, dealing with the *pari materia* provision of section 47 of the Sales Tax Act, 1990, it was held:

> *"… the jurisdiction of the High Court under section 47 is strictly confined to answering questions of law. The source of the question must be the order of the Tribunal. The elementary characteristic of such jurisdiction is that it has been conferred to deal only with questions of law and not questions of fact. A question of law connotes a tangible and substantial question of law*

[4] *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd. [2023 SCMR 939]*

on the rights and obligations of the parties founded on the decision of the Tribunal. The Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures."

22. The same principle has been applied to section 196 of the Customs Act, 1969 itself. In *T & N Pakistan (Pvt.) Limited v. The Collector Customs*[5] the Hon'ble Supreme Court held that the precise intent of the remedy of reference under section 196 "*is to resolve and adjudicate only the question of law originating and stemming from the order passed by the Appellate Tribunal*", and that the High Court "*is not free to embark upon an unfettered inquiry into factual aspects which have been properly considered and decided by the Tribunal*". To the same effect is *Collector of Customs, Karachi v. Haji Ismail Co.*[6], wherein it was reiterated that the Appellate Tribunal is the forum meant for determining the factual aspects of the case.

23. The proposition is nowhere more sharply illustrated than in *Middle East Construction Company, Karachi v. The Collector of Customs, Karachi*[7]. There the High Court, perceiving shortcomings in the references before it, took upon itself the task of ascertaining the nature of the imported vehicles. The Hon'ble Supreme Court disapproved the exercise in terms, holding that the Tribunal was the last forum for the determination of facts; that it did not lie within the jurisdictional domain of the High Court itself to determine the nature of the imported vehicles; and that the High Court ought not to have embarked upon such a determination, least of all by relying upon material which had not been produced before the adjudicating officer or the Tribunal. That admonition has direct application to what we are invited to do in the present case.

24. The rule is not confined to customs. In *Commissioner Inland Revenue (Special Zone for Builders and Developers), RTO, Islamabad v. Khudadad Heights, Islamabad*[8] it was held that the Appellate Tribunal being the last fact-finding forum, a question of that character "*could neither be raised in reference jurisdiction of High Court nor before Supreme Court*".

25. This Court has consistently applied the identical rule in customs references. In *The Collector of Customs, Enforcement, Custom House, Karachi v. Abdul Razzaq*[9] a Division Bench held that the High Court in reference jurisdiction under section 196 cannot interfere with, and reach a conclusion different from, the finding of the Tribunal, the Tribunal being the last fact-finding forum. In *Additional Director, Directorate General of Intelligence and Investigation-FBR, Karachi v. Member (Technical), Customs, Federal Excise*

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[5] *T & N Pakistan (Pvt.) Limited v. The Collector Customs [2022 SCMR 1119]*
[6] *Collector of Customs, Karachi v. Haji Ismail Co. [2015 SCMR 1383]*

[7] *Middle East Construction Company, Karachi v. The Collector of Customs, Karachi [2023 SCMR 838].*
[8] *Commissioner Inland Revenue (Special Zone for Builders and Develops), RTO, Islamabad v. Khudadad Heights, Islamabad [2025 SCMR 716]*
[9] *The Collector of Customs, Enforcement, Custom House, Karahci v. Abdul Razzaq [2024 PTD 1205]*

and Sales Tax[10] it was held that this Court "*cannot decide questions of facts unless such findings on facts is found to be perverse or contrary to record*". In *Messrs Lever Brothers Pakistan Ltd. v. Customs, Sales Tax and Central Excise Appellate Tribunal*[11] it was held that the opinion of this Court in its advisory jurisdiction "*shall be given on the basis of facts as determined by the Tribunal*". And in *Pak Suzuki Motors Co. Ltd. v. Collector of Customs*[12] it was held that this Court, in the exercise of its advisory jurisdiction, will not give a finding of fact for the first time. See also *The Collector of Customs v. Urooj Autos*[13].

26. We are mindful that the reach of the reference jurisdiction has recently been construed liberally. In *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan*[14] the Hon'ble Supreme Court, restating the rule laid down in *Squibb*, held that the law permits all questions "*arising out of the order*" to be referred and not merely those "*argued*" or "*raised*" before the Tribunal. That liberality, however, addresses the *source* of the question, not its *character*. It enlarges the class of questions that may be agitated; it does not, any more than the admission of mixed questions by the Finance Act, 2024, convert a reference into an appeal on facts, nor does it authorise this Court to re-appraise evidence, to receive fresh material, or to substitute its own view of the record for that of the Tribunal. It is true that *Qadbros Engineering*, *T & N Pakistan* and *Middle East Construction* were decided upon the pre-amendment text; but the principle for which they stand, namely that the Tribunal is the last fact-finding forum, is not the creature of the words that were altered, and it has been reaffirmed by this Court upon the amended text in *Muhammad Sabir* (*supra*).

27. The window through which a factual finding may be examined in reference jurisdiction is therefore a narrow one, and it opens only upon a demonstration, from the record itself, that the finding rests upon no evidence at all, or proceeds upon a misreading or non-reading of material evidence, or is perverse in the sense of being one that no reasonable forum instructed in law could have reached, or is founded on surmise and conjecture. It is with these boundaries in mind that we turn to the questions proposed.

IV. QUESTION (b): THE SECOND GOODS DECLARATION

28. Question (b) is the centrepiece of the applicant's case and it is convenient to take it first. Its entire premise is that the learned Tribunal *refused* to consider, and refused to verify, Goods Declaration No. QCSI-HC-9682 dated 17.01.2024. That premise is contrary to the record. The learned Tribunal did consider the document, and gave

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[10] *Additional Director, Directorate General of Intelligence and Investigation-FBR, Karachi v. Member (Technical), Customs, Federal Excise and Sales Tax [2017 PTD 1278]*
[11] *Messrs Lever Brothers Pakistan Ltd. v. Customs, Sales Tax and Central Excise Appellate Tribunal [2005 PTD 2462]*
[12] *Pak Suzuki Motors Co. Ltd. v. Collector of Customs [2006 PTD 2237]*
[13] *The Collector of Customs v. Urooj Autos [2022 PTD 1882]*
[14] *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan [2026 SCMR 833]*

its reasons for declining to act upon it. Paragraph 13 of the impugned judgment reads:

> *"It is important to highlight that Goods Declaration No. QCSI-HC-16941 dated 25.06.2024 was produced by the driver of the vehicle in support of the seized goods. Subsequently, the appellant also relied upon the said Goods Declaration, as reflected in paragraph 2 of the reply to the Show Cause Notice. However, during the hearing before this Bench, the appellant produced another Goods Declaration No. QCSI-HC-9682 dated 17.01.2024, which had neither been produced at the time of seizure nor before the adjudicating authority. Moreover, the quantity declared therein does not correspond with the quantity of the seized goods. Mere assertions that the appellant is a bona fide importer or that the goods were lawfully imported are insufficient to discharge the statutory burden imposed under Section 187 of the Customs Act, 1969 …"*

29. The complaint, therefore, is not that the document was ignored. It is that the learned Tribunal, having considered it, did not believe it. That is a complaint about the appreciation of evidence, and it is precisely the complaint which, on the authorities set out above, cannot be entertained in this jurisdiction.

30. Nor can it be said that the learned Tribunal's assessment was without foundation. Each of the three reasons it gave is borne out by the material placed before us. *First*, GD No. QCSI-HC-9682 was admittedly not produced at the time of interception on 07.08.2024; what was produced by the driver was GD No. QCSI-HC-16941. *Secondly*, it was not produced before the adjudicating authority either: the reply filed by the applicant to the show cause notice, which is on record, expressly annexes and relies upon GD No. QCSI-HC-16941 dated 25.06.2024 as Annexure "E", and makes no mention whatever of GD No. QCSI-HC-9682. *Thirdly*, the quantities do not correspond: the Release Order of the Model Customs Collectorate, NLC Dry Port, Quetta issued against GD No. QCSI-HC-9682 records 1,896 packages of a gross weight of 22,050 kg cleared on 17/18.01.2024 against vehicle No. TLR-788, whereas the consignment seized on 07.08.2024 was of 20,700 kg gross weight, carried in container No. GESU-5486158 upon vehicle No. C-2819, nearly seven months later and by a different conveyance. These are not surmises. They are inferences drawn from primary documents, and the drawing of such inferences lies squarely within the province of the last fact-finding forum.

31. What the learned counsel in substance invites us to do is to call for the WeBOC record, to verify GD No. QCSI-HC-9682 ourselves, and, upon such verification, to displace the conclusion of the learned Tribunal and substitute our own. That is the very exercise which the Hon'ble Supreme Court disapproved in *Middle East Construction Company* (*supra*), and which this Court declined to undertake in *Pak Suzuki Motors* (*supra*). We must decline it here.

32. The premise of the question is also unsound in law. Section 187 of the Act provides that where any person is alleged to have committed an offence under the Act and a question arises whether he was in possession of anything with lawful authority or under a permit, licence "*or goods declaration or sales tax invoice in his name*" or other prescribed document, "*the burden of proving that he had such authority, permit, licence … or other document shall lie on him*". The words "or goods declaration … in his name" were inserted by amendment, and they meet the present case squarely: the statute in terms places upon the claimant the burden of proving the goods declaration under which he asserts lawful possession. Section 187 casts no investigative duty upon the Tribunal to establish the claimant's case for him. Once the Department had adduced the contemporaneous check-post entry of 07.07.2024 and the corroborating WeBOC verification demonstrating that the Goods Declaration tendered had already been consumed, the onus rested upon the applicant to displace that material by cogent and legally admissible evidence. The learned Tribunal so held, and its reasoning discloses no error of law.

33. Question (b) is accordingly a question of pure fact wearing the dress of law. It is neither a question of law nor a mixed question of law and fact within the meaning of section 196(1) of the Act, for it does not ask us to apply a legal standard to the facts as found; it asks us to find the facts differently.

V. QUESTIONS (a) AND (c): SECTIONS 26 AND 171 OF THE ACT

34. Questions (a) and (c) travel together and may be dealt with in the same breath. They assert that the absence of a prior notice under section 26, and the alleged non-service of the notice under section 171, vitiate the entire proceedings.

35. The first difficulty in the applicant's path is that these contentions, although pleaded in the memorandum of appeal, were not made the subject of any finding by the learned Tribunal, which framed and answered a single question touching the burden under section 187. But assuming in the applicant's favour, on the authority of *Haseeb Waqas Sugar Mill* (*supra*), that a question may be agitated although not decided below provided it truly arises out of the order, the contentions do not survive an examination of the record.

36. As to section 26, the argument proceeds upon a version of that provision which no longer exists. Section 26 was substituted by the Finance Act, 2006 and is now headed "*Obligation to produce documents and provide information*". In its present form it casts a duty upon a person, "*as and when required, in writing, by an officer of customs not below the rank of an Assistant Collector*", to furnish information relating to importation, to produce documents or records which the appropriate officer considers necessary or

relevant "*to the audit, inquiry or investigation under the Act*", to permit extracts and copies to be taken, and to appear and answer questions. It is thus an obligation-imposing, information-gathering provision ancillary to audit, inquiry and investigation. It confers no right upon a prospective respondent, and it is not, in its terms or by necessary implication, a condition precedent to the exercise of the power of seizure conferred by section 168(1), which is attracted where the appropriate officer finds goods liable to confiscation, nor to the issuance of a show cause notice under section 180. The authorities pressed in aid before the learned Tribunal, including the decision of the Hon'ble High Court of Balochistan in Customs Appeal No. 3 of 2003, were rendered upon the pre-substitution text and upon their own facts, there being in those cases no material whatever before the adjudicating officer. Here the position is the converse: the seizure proceeded upon prior specific information, corroborated at the moment of interception by the official check-post register and by the Department's own electronic record, and that material was placed before both the adjudicating authority and the learned Tribunal.

37. More fundamentally, the object which the applicant says section 26 secures, that the person concerned be called upon to explain and to produce his documents, was in fact achieved. The Order-in-Original records that opportunity was afforded to the claimants to furnish import documents relating to procurement and purchase so as to validate lawful possession. The applicant was thereafter served with a show cause notice, filed a written reply, annexed to it such documents as he then chose to rely upon, appeared before the adjudicating authority through his own person and counsel, and was heard on three dates. He then appealed to the learned Tribunal, was represented by counsel, and was heard again. It may be added that the show cause notice dated 28.08.2024 issued well within the two months prescribed by section 168(2) reckoned from the date of the seizure. No prejudice of any kind has been demonstrated, and none is apparent.

38. With regard to section 171 of the Act, the contention rests upon a misreading of the section. Section 171 provides that when anything is seized, the officer making the seizure "*shall, as soon as may be, inform in writing the person so arrested or the person from whose possession the things are seized of the grounds of such seizure or arrest*". The statutory obligation is therefore owed to the person *from whose possession* the thing is seized. The section does not, as the memorandum of the Reference Application asserts, require that notice be given to the owner where he is a person other than the possessor. In the present case the goods and the conveyance were seized from the possession of the driver, Zahid Khan, who was on the spot, who was associated with the mushirnama, who was released on a personal bond, who was named as the respondent in the show cause notice and who appeared and filed his own reply. The requirement of section

171 was thus satisfied on its own terms; and the Department went further, causing the notice to be displayed upon the notice boards of the Custom House and of the ASO Headquarters, NMB Wharf, Karachi, so as to bring the seizure to the notice of any claimant.

39. In any event, whether such notice was issued and upon whom it was served are questions of fact. The learned Tribunal recorded no finding that it was not served, and the Department's parawise comments asserted service. The applicant did in fact learn of the seizure, did appear, did claim ownership on behalf of M/s Muhammad Shafi, Abdul Wasay & Co., and did contest the matter on the merits at every tier. Where the person claiming the benefit of notice has in fact appeared and contested without demonstrating prejudice, an irregularity in the mode of notice does not, without more, vitiate the proceedings.

40. The authorities pressed before the learned Tribunal, namely *Messrs Sikandar A. Karim v. The State*[15] and *Assistant Director, Intelligence and Investigation v. Messrs B.R. Herman*[16], are distinguishable, and were rightly held by the learned Tribunal to be so. The presumption of lawful importation recognised in *Sikandar A. Karim* arises in respect of freely importable goods "*unless contrary was shown*". In the present case the contrary *was* shown, by positive documentary proof that the import document tendered in support of the consignment had already been consumed for an earlier clearance. *B.R. Herman* condemns the roving or fishing inquiry launched without definite material; it has no application where, as here, the action rested upon prior specific information corroborated by the Department's own contemporaneous official record. Whether a precedent is attracted to a given set of facts is itself, in the first instance, a matter for the forum seised of those facts, and the view taken by the learned Tribunal is a legitimate one.

41. Question (c), in truth, asks this Court to certify that a substantial question of law arises. That is a matter for our own determination upon the material, and for the reasons given, we are unable to so certify.

VI. MISREADING, NON-READING AND PERVERSITY

42. We have anxiously examined the impugned judgment against the narrow criteria which alone would permit interference. We find that the learned Tribunal has thoroughly examined the evidence produced by the appellant before it. It has set out the grounds of appeal and the Department's parawise comments at length; it has framed the question that truly arose; it has identified the two pieces of official

[15] *Messrs Sikandar A. Karim v. The State* [1995 SCMR 387].
[16] *Assistant Director, Intelligence and Investigation v. Messrs B.R. Herman* [PLD 1992 SC 485].

documentary evidence upon which the Department relied, the check-post entry register of 07.07.2024 and the WeBOC verification, and recorded that these were neither disputed nor rebutted by any cogent or convincing evidence; it has dealt with the document produced for the first time at the appellate stage, and given intelligible reasons for declining to act upon it; and it has addressed the precedents cited and explained why they did not advance the appellant's case.

43. Neither in the memorandum of the Reference Application nor in the submissions at the Bar has any instance of misreading or non-reading of the record been identified. No finding has been shown to be unsupported by evidence, contrary to the record, or founded on surmise or conjecture. In short, nothing has been placed before us which would open the narrow window described earlier in this order.

44. We consider it necessary to add a word upon the conduct disclosed by the record. The document first tendered in support of the consignment was one which had already served its purpose upon an earlier clearance a month previously. The applicant, far from disowning it as the act of an inadvertent driver, adopted it as his own in his reply to the show cause notice. It was only after that document stood demonstrably exhausted that a second and unconnected Goods Declaration, of a different date, a different vehicle and a different quantity, made its first appearance at the appellate stage. Such a course reflects a want of *bona fides* on the part of the applicant. A party who seeks the answer of questions in his favour in the reference jurisdiction of this Court must approach it with clean hands; the applicant has not done so, and is on that count also undeserving of any indulgence.

VII. THE ANSWERS TO THE QUESTIONS

45. For the foregoing reasons, we hold that no question of law, and no mixed question of law and fact, much less a substantial one, arises out of the judgment dated 30.07.2026 passed by the learned Customs Appellate Tribunal, Bench-I, Karachi, in Customs Appeal No. K-3267 of 2024. The learned Tribunal, being the last fact-finding forum, possessed the exclusive jurisdiction to determine and settle the questions of fact that arose; it did so upon a thorough examination of the evidence; and in the exercise of the reference jurisdiction under section 196 of the Act we are concerned with questions of law and with mixed questions of law and fact, and not with a re-appraisal of the facts so found. No case of misreading, non-reading or perversity has been made out. The proposed questions are answered as follows:

(a) In the **negative**; against the applicant and in favour of the respondent-Department. Section 26 of the Act, in its present form, is an obligation-imposing provision ancillary to audit, inquiry and investigation, and is not a condition precedent to seizure under section 168 or to a show cause notice under section 180. Its non-invocation does not render the confiscation proceedings illegal, void *ab initio* or without lawful authority, no prejudice having been shown.

(b) In the **negative**; against the applicant and in favour of the respondent-Department. The learned Tribunal did not refuse to exercise its jurisdiction; it considered Goods Declaration No. QCSI-HC-9682 dated 17.01.2024 and, for reasons founded upon the record, declined to act upon it. The complaint is one against the appreciation of evidence, and is therefore neither a question of law nor a mixed question of law and fact entertainable in this jurisdiction.

(c) In the **negative**; against the applicant and in favour of the respondent-Department. No question of law, and no mixed question of law and fact, requiring authoritative interpretation by this Court arises.

VIII. ORDER

46. This Special Customs Reference Application, being wholly devoid of merit, is accordingly dismissed *in limine*, along with the applications pending therein, if any, with no order as to costs.

47. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, in terms of section 196(10) of the Customs Act, 1969.

J U D G E

J U D G E

Karachi,
Dated: 11th day of September 2026
Ayaz P.S.