

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. 184 of 2026

Liaquat Ali Khan VS Customs Appellate Tribunal, Bench-II, Karachi & others

Date of hearing: 15.09.2026

Date of decision: 15.09.2026

Applicant: Through M/s. Binish Fatima & Muhammad Usman,
Advocates.

Respondents: Nemo.

ORDER

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 13.07.2026 of the Customs Appellate Tribunal, Bench-II, Karachi in Customs Appeal No. K-1559 of 2025, whereby the appeal maintained by the Applicant was dismissed and Order-in-Original No. 1259/2023-24 dated 22.05.2024 passed by the Collector of Customs (Adjudication-I), Custom House, Karachi was maintained *in toto*.

I. FACTS OF THE CASE

1. On 24.01.2024 the Directorate of Intelligence and Investigation-Customs, Karachi searched Warehouse No. W3/13, North West Industrial Zone, Port Qasim, in terms of section 163 of the Act, upon information that petroleum products were being drawn from the White Oil Pipeline of M/s Pak-Arab Pipeline Company Limited (PAPCO), operated by M/s Pak-Arab Refinery Company Limited (PARCO), through an illegal pipeline concealed beneath those premises.
2. The search disclosed a tunnel 174 feet in length running from the warehouse to the White Oil Pipeline. Within the premises were three vehicles, namely (i) Hino Trailer bearing Registration No. E-1425 loaded with a 40-foot container, (ii) Mazda Truck bearing Registration No. TKV-528 and (iii) Mazda Truck bearing Registration No. TKE-088, each fitted with concealed tanks and laden with stolen, non-duty-paid high speed diesel, together with a Suzuki Swift car bearing Registration No. BXJ-330 said to have served as a pilot vehicle. The quantity recovered was 58,667 litres. A mushirnama cum inventory was drawn on the spot in the presence of witnesses, and the goods, the three vehicles, the container and the car were seized under section 168 of the Act.

3. Upon a show cause notice dated 19.03.2024, the Collector of Customs (Adjudication-I), Karachi confiscated the three vehicles and the container outright under section 157(2) of the Act, recording that no one had come forward to claim ownership of those vehicles or to defend the charges in respect of them, and finding that they *“were used in the removal of stolen diesel oil and were found carrying non-duty paid warehoused diesel oil pilfered / stolen from the white oil pipeline of M/s PAPCO, and they had also hidden cavities to transport such stolen products by hoodwinking the law enforcement agencies”*. M/s PAPCO and M/s PARCO were exonerated. As to the Suzuki Swift car, the adjudicating authority found it to be locally manufactured and that it *“was not used for removal or carriage of stolen / pilfered diesel oil”*, and directed that it might be released to its lawful owner after approval of the concerned court of law, all the seized property being case property in two First Information Reports.
4. The Applicant, describing himself as the registered owner and authorised person in respect of the three vehicles, preferred Customs Appeal No. K-1559 of 2025 on 05.11.2025, being 471 days beyond the period prescribed by section 194-A(3). The delay was explained upon the ground that the vehicles had been let out on hire to one Habib Khan son of Gul Khan under a rent agreement dated 01.11.2023, and that Habib Khan died on 28.04.2025 without having informed the Applicant of the seizure. By order dated 27.04.2026 the learned Tribunal condoned the delay under section 194-A(5) and heard the appeal upon its merits.
5. By the impugned judgment the learned Tribunal framed a single question, namely whether the vehicles were used for the transportation and removal of stolen or non-duty-paid diesel oil and whether their outright confiscation was justified. It set out clause (b) of the preamble to S.R.O. 499(I)/2009 dated 13.06.2009 and clause 2(f) of the Table thereto as they stood on the date of seizure; held that the seizure report and the show cause notice had alleged that the vehicles had concealed tanks and that the allegation stood un rebutted; concluded that the vehicles, though lawfully registered, had been found carrying stolen duty-unpaid goods in concealed tanks and so attracted clause (b); and dismissed the appeal.

II. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

6. The Reference Application as presented set out, under the heading *“Question of Law”*, twelve paragraphs which were in substance grounds of appeal. On 01.09.2026 this Court granted the learned counsel time to reformulate them, and a statement was filed on 14.09.2026 annexing fifteen reformulated questions, which are reproduced verbatim:

- (i) *“Whether, in the facts and circumstances of the case, the Learned Customs Appellate Tribunal erred in law in maintaining outright confiscation of the Applicant’s lawfully registered vehicles under Section 157(2) of the Customs Act, 1969 read with Clause (b) of the Preamble to SRO 499(I)/2009, without recording a legally sustainable finding that the vehicles fell within the precise statutory conditions prescribed by the said provision?”*
- (ii) *“Whether the expression ‘false cavities’ occurring in Clause (b) of the Preamble to SRO 499(I)/2009 can, in law, be equated with or extended to allegedly ‘concealed tanks’ without establishing, through cogent and legally admissible evidence, that such tanks constituted false cavities within the meaning of the notification?”*
- (iii) *“Whether mere recovery of offending goods from a vehicle is, in law, sufficient to attract outright confiscation under Clause (b) of SRO 499(I)/2009, particularly where the registered owner was neither present at the time of seizure nor shown by any independent evidence to have knowledge of, consented to, or connived in the alleged unlawful use of the vehicle?”*
- (iv) *“Whether the Learned Tribunal erred in law in holding that knowledge, consent or connivance of the registered owner is not relevant or necessary for confiscation of a lawfully registered conveyance under Section 157(2) of the Customs Act, 1969, notwithstanding the penal and confiscatory nature of the proceedings?”*
- (v) *“Whether the burden of establishing the facts necessary to attract the penal consequence of outright confiscation under Section 157(2) read with SRO 499(I)/2009 lies upon the Customs Department, and whether the Learned Tribunal erred in law by effectively shifting such burden upon the Applicant to disprove the Department’s allegation regarding concealed tanks/cavities?”*
- (vi) *“Whether, in the absence of any finding that the Applicant himself used, controlled or knowingly permitted the subject vehicles to be used for transportation of offending goods, the Learned Tribunal could legally maintain their outright confiscation merely on the basis of the Applicant’s ownership/registration of the vehicles?”*
- (vii) *“Whether the Learned Tribunal, having found that the vehicles were lawfully registered in the name of the Applicant, was required in law to consider the statutory alternative of release against redemption fine under Clause 2(f) of SRO 499(I)/2009, and whether failure to consider such alternative constitutes an error of law?”*

- (viii) *“Whether the Learned Tribunal erred in law in treating the subsequent pronouncement of the Hon’ble Supreme Court and the amendment introduced through Notification No. 1619/2024 dated 03.10.2024 as relevant to a seizure which admittedly took place on 24.01.2024, prior to the said amendment?”*
- (ix) *“Whether a subsequent amendment to a confiscatory/penal regime can, in law, be applied directly or indirectly to a seizure and alleged contravention which had already taken place before the amendment, so as to prejudice the vested or accrued rights of the owner of the conveyance?”*
- (x) *“Whether the Learned Tribunal, after expressly holding that the provisions of SRO 499(I)/2009 applicable on the date of seizure governed the matter, could legally rely upon the subsequent amended regime or subsequent judicial interpretation without first determining its applicability to the Applicant’s case?”*
- (xi) *“Whether the Learned Tribunal was legally required to consider the effect of the subsequent acquittal of all accused persons in FIR No. 207/2023, arising from the same alleged theft/siphoning of diesel which constituted the factual foundation of the seizure and confiscation proceedings, and whether failure to consider such material subsequent development amounts to an error of law?”*
- (xii) *“Whether, where the criminal proceedings arising from the very incident resulted in acquittal of all accused persons, the Customs authorities and the Appellate Tribunal could, in the absence of independent and legally sufficient evidence against the registered owner, continue to sustain the confiscation of his vehicles on the same factual allegation?”*
- (xiii) *“Whether the Learned Tribunal’s failure to reconcile its finding regarding confiscation of the Applicant’s three vehicles with the treatment accorded to the co-seized Suzuki Swift Car, particularly where the Order-in-Original itself directed that the fate of that vehicle should depend upon the outcome of the criminal proceedings, constitutes an error of law and a legally impermissible inconsistency?”*
- (xiv) *“Whether the impugned judgment is vitiated in law by non-reading and misreading of material evidence and subsequent events, particularly the acquittal judgment dated 30.06.2026, and whether such non-reading/misreading has materially affected the ultimate conclusion regarding confiscation?”*
- (xv) *“Whether, in the circumstances of the case, continued outright confiscation of the Applicant’s lawfully registered vehicles, without a specific finding of his knowledge, consent, connivance or culpable*

involvement, is legally sustainable in view of the protection afforded to property and lawful treatment under Articles 4, 24 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973?”

7. Ms. Binish Fatima, learned counsel for the Applicant, assisted by Mr. Muhammad Usman, Advocate, was heard at length. Her submissions were, in substance, these: that the allegation of concealed tanks rested upon the *ipse dixit* of the seizing agency, and that a concealed tank is in any event not a “false cavity” within clause (b); that the Applicant was absent at the seizure, had let the vehicles out on hire, and was never shown to have had knowledge of or connivance in the offence; that the alternative of release against redemption fine under clause 2(f) ought to have been considered, as the Hon’ble Peshawar High Court held in the judgment reported as 2022 PTD 477; that the amending Notification S.R.O. 1619(I)/2024 dated 03.10.2024 and the pronouncement made in its wake could not govern a seizure of 24.01.2024; that all the accused in F.I.R. No. 207 of 2023 stood acquitted on 30.06.2026, so that the foundation of the confiscation had gone; and that the release of the co-seized Suzuki Swift car disclosed an inconsistency. We have considered these submissions, perused the impugned judgment and the Order-in-Original, and examined the record.

III. THE SCOPE OF THE REFERENCE JURISDICTION

8. Section 196(1) of the Act, as substituted by the Finance Act, 2024, permits a reference “*stating any question of law or a mixed question of law and fact arising out of such order*”, and section 196(3) requires this Court to decide that question and pass judgment, whereupon the order of the Tribunal stands modified accordingly. The jurisdiction is thus confined in two respects: the question must answer the statutory description, and it must arise out of the order of the Tribunal. The admission of a mixed question has widened the field but has not made this Court a second appellate forum upon the facts. A question of fact asks what happened; a question of law asks what the rule is; a mixed question asks whether the facts as found satisfy the legal standard, and it takes those facts as found.
9. That the remedy is appellate rather than advisory is settled by *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax*, which is equally important for what it leaves untouched, namely that “*the facts as stated in the Tribunal’s order have to be taken as recorded*”. This Court has applied that distinction upon the amended text in *Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir*, holding that a question involving an inquiry into facts is not a question of law. We have equally kept in view the caution in *Commissioner Inland Revenue, Zone-II, Large Taxpayer Unit, Karachi v. M/s*

Bawany Sugar Mills Ltd. against the too ready use of the label “question of fact” to decline jurisdiction, and have accordingly construed and answered upon their merits those of the fifteen questions which do raise a point of construction.

10. Subject to that, the province of the Tribunal remains its own. In *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd.* it was held that the Tribunal is the final fact-finding body and its findings of fact are conclusive unless there was no evidence to support them, or they are perverse or founded upon surmise. The same principle has been applied to section 196 by the Hon’ble Supreme Court in *T & N Pakistan (Pvt.) Limited v. The Collector Customs*¹ and by this Court in *The Collector of Customs, Enforcement, Customs House, Karachi v. Abdul Razzaq*², and its application was illustrated in *Middle East Construction Company, Karachi v. The Collector of Customs, Karachi*. The window through which a factual finding may be examined is therefore narrow, and it opens only where the finding rests upon no evidence, or proceeds upon a misreading or non-reading of material evidence, or is perverse, or is founded upon surmise and conjecture.

IV. THE STATUTORY SCHEME

11. Much of the argument proceeded as though the discretion to release a conveyance against a fine were at large. Section 157(2) of the Act provides:

“(2) Every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation.”

12. The proviso to that sub-section permits the appropriate officer to release a seized conveyance pending adjudication upon a sufficient bank guarantee. Section 181 then empowers the officer passing an order of confiscation to “give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit”, subject to the first proviso, by which “the Board may, by an order, specify the goods or class of goods where such option shall not be given”. In exercise of that power the Board issued Notification S.R.O. 499(I)/2009 dated 13.06.2009, directing that no such option shall be given in respect of, among other things,

“(b) lawfully registered conveyance including packages and containers found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969);”

¹ *T & N Pakistan (Pvt.) Limited v. The Collector Customs* [2022 SCMR 1119].

² *The Collector of Customs, Enforcement, Customs House, Karachi v. Abdul Razzaq* [2024 PTD 1205].

while clause 2(f) of the Table provides for release against a redemption fine in the case of a

“(f) lawfully registered conveyance including packages and containers, not covered under clause (b) of the preamble of this notification, found carrying offending goods under section 2(s) of the Customs Act, 1969 (IV of 1969).”

13. The effect of these provisions read together has been declared by the Hon'ble Supreme Court in *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq*³. Setting aside an order which had released a vehicle against a redemption fine of 40 per cent, the Court held that the notification of 2009 “creates a statutory bar, leaving no discretion with the adjudicating officer or the Tribunal to grant release on redemption fine” in a case falling within clauses (a) and (b); that the Board had thereby “divested itself of the authority to grant an option of fine in lieu of confiscation in respect of conveyances employed for the transportation of smuggled or non-custom-paid goods”; and that in such circumstances confiscation “was the only course permissible under the law”. To the same effect, upon the substituted clause (ba), is *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan*⁴. Shortly before, in *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar*⁵, it was held that sections 157 and 181 are independent of one another in this context, the former having no overriding effect upon the latter, and that where clause (b) is attracted the option under section 181 “could not have been given”.
14. Two propositions follow, and they govern the greater part of this reference. The first is that the liability of a conveyance under section 157(2) attaches by reason of the use to which it has been put, and not by reason of the state of mind of its owner. The second is that where a conveyance answers clause (b), the discretion conferred by section 181 has been withdrawn by the Board, and no forum can restore it. The contrary reasoning, that the words “liable to confiscation” leave the matter at large, was held to be misconceived in *Muhammad Ishaq*.⁶

V. QUESTIONS (i), (ii), (iii), (v) AND (vi): THE CONCEALED TANKS AND THE BURDEN OF PROOF

15. Of this group, question (ii) alone raises a point of construction. The expression “false cavities” is not a term of art and the notification does not define it. Read

³ *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq* [2026 SCMR 885 = 2026 PTD 1077].

⁴ *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan* [2026 PTD 298].

⁵ *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar* [2025 SCMR 684].

⁶ Cf. *Jabanzaib v. Additional Collector of Customs (Adjudication), Collectorate of Adjudication, Dry Port, Faisalabad* [2026 PTD 738], which proceeded upon that reasoning and was decided before *Muhammad Ishaq*.

in the light of the mischief at which the clause is aimed, which is the use of a lawfully registered conveyance as an instrument of concealment, a false cavity is a space in or upon a conveyance which forms no part of its ordinary design or lawful employment and which has been constructed, adapted or used to conceal goods from view or detection. Whether a given space answers that description is a question of fact; whether the description is in law capable of embracing a concealed tank is a question of law, and we answer it in the affirmative. A tank built into a trailer or a truck, serving no purpose in the vehicle's lawful employment and fabricated so that the product it carries shall pass unseen, is a cavity and a false one. It would be a strange construction which allowed the smuggler who conceals goods in a welded compartment to escape a consequence which overtakes the smuggler who conceals them behind a false panel. Such a case has been treated as falling within clause (b) by this Court in *Director, Directorate General, Intelligence and Investigation (Customs) v. Aurangzaib*⁷, where a truck was found with a concealed cavity loaded with Iranian-origin high speed diesel, and by the Hon'ble Balochistan High Court in *Collector, Model Customs Collectorate, Custom House Gawadar at Gaddani v. Abdul Raheem*⁸.

16. Clause (b) is besides framed in the alternative, covering a conveyance “*found carrying smuggled goods in false cavities*” or one “*being used exclusively or wholly for transportation of offending goods*”. This Court has held, in *Messrs Panjgoor Goods Transport Co. v. Federation of Pakistan*⁹, that the two limbs are not mutually exclusive compartments, and in *The Director, Directorate General of Intelligence and Investigation-FBR v. Messrs Customs Appellate Tribunal Bench-II, Karachi*¹⁰, a case of a tanker carrying 35,000 litres of Iranian-origin high speed diesel, that once a vehicle is found carrying smuggled diesel it follows as a corollary that it was engaged in the exclusive transportation of smuggled goods. Three heavy vehicles found within a warehouse built over a 174-foot tunnel driven into a strategic pipeline, laden between them with 58,667 litres of diesel drawn from it, answer the second limb as plainly as the first, so that the conclusion under clause (b) rests upon two independent footings.
17. The premise of question (i), that no legally sustainable finding was recorded, does not accord with the record. Paragraph 17 of the impugned judgment reads:

“The seizure report as well as the Show-Cause Notice mention that the subject seized vehicles had concealed tanks. This allegation has

⁷ *Director, Directorate General, Intelligence and Investigation (Customs) v. Aurangzaib* [2021 PTD 1026].

⁸ *Collector, Model Customs Collectorate, Custom House Gawadar at Gaddani v. Abdul Raheem* [2021 PTD 1035].

⁹ *Messrs Panjgoor Goods Transport Co. v. Federation of Pakistan* [2022 PTD 59].

¹⁰ *The Director, Directorate General of Intelligence and Investigation-FBR v. Messrs Customs Appellate Tribunal Bench-II, Karachi* [2024 PTD 325].

not been rebutted by the Appellant with any plausible evidence, which proves the contention of the Respondent department. Therefore, the subject vehicles attract the provisions of Clause (b) of the preamble to the Notification 499(i)/2009.”

and paragraph 18 concludes that the vehicles, “*though lawfully registered, w[ere] found in carrying of stolen duty unpaid goods (smuggled goods) in concealed/hidden tanks*”. The adjudicating authority had found to the same effect. A finding was therefore made, at both tiers, in the very terms of the clause.

18. The complaint is in substance that the evidence supporting that finding was insufficient, which is a complaint against the appreciation of evidence and cannot be entertained in this jurisdiction. The boundary cuts both ways, and has recently been applied against the Department upon this very clause: in *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali*¹¹ a reference was dismissed because the Tribunal had found that the vehicle possessed no false or secret cavity, and that finding was one of fact. Nor is the finding here without foundation. It rests upon the seizure report, the show cause notice, a mushirnama and inventory drawn on the spot in the presence of witnesses, and the physical recovery of 58,667 litres of diesel from within the vehicles themselves. Diesel does not travel in a container or upon the flat bed of a Mazda truck unless something has been fitted to hold it.
19. Question (v) asserts that the burden was reversed. The burden of establishing the facts which attract a confiscatory provision does lie upon the Department, and to that extent the question answers itself; but a burden once discharged does not remain suspended over the party who has discharged it. The Department produced contemporaneous official documents and a physical recovery, and that material, standing unexplained, was sufficient to sustain the finding, the evidential burden of displacing it then lying upon the appellant. Section 187 of the Act itself places upon the person concerned the burden of proving lawful authority or possession where the question arises, and the Hon'ble Supreme Court has held, in a case to which we come presently, that the burden of proving that the owner had no nexus with the smuggled goods lies upon the owner. What the learned Tribunal did was to hold that a case established upon contemporaneous documents had gone unanswered.
20. Questions (iii) and (vi) rest upon the want of a finding as to the Applicant's own knowledge or user. As to the record, the Applicant did not appear before the adjudicating authority, which recorded that no one came forward to claim ownership of these vehicles or to defend the charges in respect of them; no

¹¹ *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali* [2025 PTD 65].

finding could be recorded upon a case which was not made at the tier at which the facts fell to be found. As to the law, that is the subject of question (iv).

VI. QUESTION (iv): KNOWLEDGE AND CONNIVANCE OF THE REGISTERED OWNER

21. This is a question of law and is properly raised. Section 157(2) fastens upon the conveyance: the criterion is the use to which it has been put, and there is in the sub-section no word importing knowledge, consent or connivance upon the part of the owner. The liability is one which the statute attaches to the thing by reason of its employment in the offence, and the confiscation which follows is not a punishment for a delinquency of the owner but a consequence which the law visits upon property so employed, for the protection of the revenue and the suppression of a traffic which cannot be carried on without conveyances.
22. That is not to say that the innocence of an owner counts for nothing under the Act; but the scheme provides for it elsewhere, in the proviso to section 157(2) and, principally, in the discretion conferred by section 181. It is in the exercise of that discretion that the circumstances of an owner who has been imposed upon may properly weigh. Want of knowledge thus goes to the relief and not to the liability, as appears from the observation of this Court in *Collector of Customs, Model Collectorate of Customs (Preventative), Custom House, Karachi v. Mehraj*¹² that the option is available to an owner who is said not to have been aware that smuggling was being carried on in his vehicle.
23. The answer to question (iv) therefore follows upon two independent footings. The first is that where the Board, acting under the first proviso to section 181, has withdrawn the discretion in respect of a class of conveyances, the state of mind of the owner of a conveyance within that class cannot revive a discretion which no longer exists: *Muhammad Ishaq*. Clause (b) having been found to be attracted, no question of the Applicant's knowledge arises for the purpose of relieving the vehicles from confiscation.
24. The second footing assumes the contrary and asks upon whom the burden of establishing want of knowledge lies. That question has been answered, upon facts for practical purposes indistinguishable from these, in *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi*¹³. An LPG bowser was there found carrying foreign-origin high speed diesel in hidden cavities and in a hole made in its roof, and the registered owner's only defence, as here, was that the vehicle had been given to another under an agreement for transportation and that he was unaware of the smuggling. The Hon'ble Supreme Court held:

¹² *Collector of Customs, Model Collectorate of Customs (Preventative), Custom House, Karachi v. Mehraj* [2025 PTD 626].

¹³ *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi* [2025 SCMR 1912].

“A hire agreement produced at the Tribunal stage is only a contract between two private persons and would not be convincing for the Court to take any different view, however, under the reference jurisdiction the High Court rightly discarded the effect of such agreement as nothing was produced in the two forums below. The burden to prove that the owner had no nexus with the smuggled goods or with such transaction and transportation is on the petitioner himself and this has not been discharged satisfactorily at all. ... He has also not satisfactorily discharged the burden that the hidden cavities or the separate hole made in the roof of LPG bowser for such purposes of transporting goods was not in his knowledge ...”

25. The features which the Hon'ble Supreme Court found wanting in that case are wanting in this. The Applicant produced a rent agreement said to have been made on 01.11.2023, and nothing besides. No explanation was offered of how concealed tanks came to be built into three of his vehicles, or of why vehicles so rebuilt remained fit for the lawful carriage for which he says he let them out. He did not appear before the adjudicating authority, and he came to the Tribunal 471 days late. Upon *Shahzad* the burden of proving the absence of any nexus lay upon him and was not discharged. The plea of ignorance was besides an assertion of fact which the learned Tribunal did not accept, and whether it ought to have been accepted is not a matter upon which we can enter.

VII. QUESTION (vii): THE ALTERNATIVE OF REDEMPTION FINE UNDER CLAUSE 2(f)

26. This question is disposed of by the language of the notification. Clause 2(f) applies, in terms, to a conveyance *“not covered under clause (b) of the preamble of this notification”*. The two provisions are made mutually exclusive by express words, and once clause (b) was found to be attracted, clause 2(f) stood excluded by its own terms. There was accordingly no statutory alternative available to be considered, and had release been granted against a redemption fine the course would have been that which was disapproved in *Muhammad Ishaq*.
27. The decision of the Hon'ble Peshawar High Court in *Collector of Customs, FBR Peshawar v. Siraj Wali*¹⁴, relied upon as the principal authority, does not carry the matter further. There the adjudicating authority had itself given the owner the option to redeem at 20 per cent, and the Tribunal had modified that order by computing the 20 per cent upon the value of the offending goods rather than of the vehicle. The sole question, as recorded at paragraph 5 of that judgment, was which of the two bases was correct. The case was therefore one under clause 2(f), a clause which applies only where the

¹⁴ *Collector of Customs, FBR Peshawar v. Siraj Wali* [2022 PTD 477].

conveyance is “*not covered under clause (b) of the preamble*”, and the Court so held at paragraph 10. *Siraj Wali* decides nothing about a conveyance which is covered by clause (b); and read more widely it could not stand with *Bashir Ahmad* and *Muhammad Ishaq*, by which we are bound.

VIII. QUESTIONS (viii), (ix) AND (x): THE AMENDING NOTIFICATION AND RETROSPECTIVITY

28. These three questions proceed upon a reading of the impugned judgment which the judgment as a whole does not bear. Paragraph 15 observes that the controversy had been resolved in the wake of the amending Notification No. 1619(I)/2024 dated 03.10.2024, but that is a remark upon the history of the subject. Paragraph 16 opens with the words “[a]t the time of seizure dated 24.01.2024, the following two provisions of SRO 499(I)/2009 had covered penal action against the vehicle”, and sets out clause (b) of the preamble and clause 2(f) of the Table; and paragraphs 17 and 18, which contain the operative reasoning, apply clause (b) and nothing else. Clause (b) has stood in the notification since 13.06.2009 and was touched by neither amendment of 2024. The confiscation was therefore sustained under the law as it stood at the date of seizure, which is what the Applicant contends ought to have been done.
29. The proposition advanced by question (ix), that a penal or confiscatory provision does not operate upon a transaction completed before it came into force, is unexceptionable as an abstract proposition, but it has no occasion to operate where no amended provision was applied.
30. Question (x) objects to reliance upon “*subsequent judicial interpretation*”. The answer has lately been given by the Hon’ble Supreme Court, in a customs matter, in *Collector of Customs, Collectorate of Customs (Appraisement) (West), Lahore v. Muhammad Rizwan*¹⁵. Restating the Blackstonian principle, the Court held that courts do not make law but declare what the law has been, that the meaning a court places upon a statute is deemed to be its true meaning from the date of the statute’s existence, and that “*interpretation and judicial pronouncement is always retrospective in its operation*”. When the Hon’ble Supreme Court in *Muhammad Ishaq* construed clause (b), it therefore declared what that clause has meant since 13.06.2009. It may be added that the brief relaxation introduced by S.R.O. 1280(I)/2024 dated 20.08.2024 would not have availed the Applicant in any event, for it excluded vehicles falling within clause (b), and it stood rescinded by the notification of 03.10.2024.

IX. QUESTIONS (xi) AND (xii): THE EFFECT OF THE ACQUITTAL

¹⁵ *Collector of Customs, Collectorate of Customs (Appraisement) (West), Lahore v. Muhammad Rizwan* [2026 PTD 909].

31. It is convenient to assume in the Applicant's favour, although the record does not show when or how the judgment of acquittal dated 30.06.2026 was brought to the notice of the learned Tribunal, that it was before it. Upon that assumption the questions still fail, and they fail upon a ground of law.
32. The Act provides two distinct sets of consequences for the same course of conduct, through two distinct machineries. Adjudication under Chapter XVIII is directed against the goods and the conveyance, and asks whether the goods are liable to confiscation and whether the conveyance was used in their removal. Prosecution before the Special Judge under section 185 is directed against named persons, and asks whether a particular accused committed a particular offence. The two differ in their object, their parties, the forum which decides them and, decisively, the standard by which they are decided. The governing principle was stated in *Faraz Naveed v. District Police Officer Gujrat*¹⁶:

"It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. ... In the departmental inquiry, the standard of proof is that of 'balance of probabilities or preponderance of evidence' but not 'proof beyond reasonable doubt', which strict proof is required in criminal trial because the potential penalties are severe."

33. To the same effect is *The District Police Officer, Mianwali v. Amir Abdul Majid*¹⁷, where it was observed that "procedural loopholes or absence of evidence at times resulted in failure to sustain the charge essentially to maintain safe administration of criminal justice out of abundant caution". These authorities arise in the field of service law, but the principle for which they stand is not peculiar to it. It rests upon the coexistence of two jurisdictions over the same facts, decided by different fora upon different standards of proof, and it applies with the same force to an adjudication under the Customs Act running alongside a prosecution before the Special Judge.
34. There is an exception, which we have considered although it was not cited. In *Ghulam Murtaza v. District Police Officer, Gujrat*¹⁸ it was held that where the proceedings in the other forum were founded solely upon the registration or pendency of the criminal case, without any distinct charge, an acquittal extinguishes that foundation. The exception has no application here. The confiscation was founded not upon F.I.R. No. 207 of 2023 or upon the pendency of any prosecution, but upon the interception of the three vehicles

¹⁶ *Faraz Naveed v. District Police Officer Gujrat* [2022 SCMR 1770].

¹⁷ *The District Police Officer, Mianwali v. Amir Abdul Majid* [2021 SCMR 420]. See also Muhammad Nawaz Khan v. Inspector General of Police, Punjab, Lahore [2022 SCMR 2147].

¹⁸ *Ghulam Murtaza v. District Police Officer, Gujrat* [2026 SCMR 843 = 2026 PLC (C.S.) 805].

inside the warehouse, the mushirnama and inventory, the concealed tanks, and the 58,667 litres of diesel recovered from the vehicles. That is independent material of precisely the kind which, upon *Ghulam Murtaza* itself, leaves the adjudication untouched by the acquittal.

35. It follows that an acquittal, whatever the grounds upon which it proceeded, is not a finding that the diesel was duty-paid, or that it had not been siphoned from the pipeline, or that the vehicles had not carried it. The Applicant was moreover not among the accused in that F.I.R., and the liability of his vehicles, attaching by reason of their use, is not displaced by the failure of a prosecution against others. Questions (xi) and (xii) are accordingly answered against the Applicant.

X. QUESTION (xiii): THE CO-SEIZED SUZUKI SWIFT CAR

36. The inconsistency complained of does not arise. The adjudicating authority dealt with the Suzuki Swift upon a ground unconnected with the criminal proceedings, recording that it was locally manufactured and “*was not used for removal or carriage of stolen / pilfered diesel oil*”. Section 157(2) fastens upon a conveyance “*used in the removal*” of the offending goods: the three vehicles carried the diesel in concealed tanks and the car did not carry it at all. The direction that the car might be released after approval of the criminal court was a direction as to custody, the car being case property in two First Information Reports, as the Order-in-Original records the three confiscated vehicles equally to be. The point of difference was therefore not the criminal proceedings, which touched all four alike, but the finding as to user. Nor is the Applicant the owner of that car.

XI. QUESTIONS (xiv) AND (xv): MISREADING, NON-READING AND THE CONSTITUTIONAL PLEA

37. We have examined the impugned judgment against the narrow criteria which alone would permit interference. The learned Tribunal set out the facts, the grounds of appeal and the Department’s comments, decided limitation in the appellant’s favour upon reasons given, framed the question which arose, identified the provisions as they stood at the date of seizure, recorded its finding upon the concealed tanks, and stated its conclusion. Beyond the complaint regarding the acquittal, with which we have dealt, no instance of misreading or non-reading was identified at the Bar, and no finding has been shown to be unsupported by evidence or founded upon surmise.
38. The constitutional plea in question (xv) is shortly answered. Article 4 guarantees treatment in accordance with law, and a confiscation effected under section 157(2) upon a finding of fact reached after a show cause notice,

an adjudication, an appeal and a reference is treatment in accordance with law. Article 24(1) forbids deprivation of property “*save in accordance with law*”, and the qualification is satisfied for the same reason, while Article 24(2), which relates to compulsory acquisition for a public purpose against compensation, has no application to confiscation imposed as a consequence of the use of property in an offence. As to Article 25, no comparator similarly placed and differently treated has been shown, the position of the Suzuki Swift having been explained. Neither the vires of section 157(2) nor those of the notification were called in question. As to hardship, there is no right to employ property in an unlawful purpose, and the circumstance that a conveyance is the means by which its owner lives cannot exempt it from a liability which the statute attaches to the use made of it.

XII. THE ANSWERS TO THE QUESTIONS

39. Of the fifteen questions, those numbered (ii), (iv), (vii), (ix), (x), (xi), (xii) and (xv) raise questions of law or mixed questions and have been answered upon their merits. Those numbered (i), (iii), (v), (vi), (viii), (xiii) and (xiv) are in substance complaints against the appreciation of evidence or rest upon premises which the record does not bear out, and are not questions of law or mixed questions within section 196(1); we have nonetheless indicated our view upon each. The questions are answered as follows, in each case against the Applicant and in favour of the respondent-Department:

- (i) In the negative. A finding in the very terms of clause (b) of the preamble to S.R.O. 499(I)/2009 was recorded at both tiers and is supported by evidence on the record.
- (ii) “*False cavities*” in clause (b) means a space in or upon a conveyance forming no part of its ordinary design or lawful employment which has been constructed, adapted or used to conceal goods from view or detection. It is in law capable of embracing a concealed tank, and whether a given tank answers the description is a question of fact. Such evidence as the law requires was before the learned Tribunal and was not rebutted.
- (iii) In the negative. The confiscation rested not upon mere recovery but upon a finding of user, of concealment in fitted tanks, and of the presence of the vehicles at the site of the tunnel.
- (iv) In the negative. Knowledge, consent or connivance of the registered owner is not an ingredient of the liability created by section 157(2); such matters go to the discretion under section 181, and where the Board has withdrawn that discretion by clause (b) they cannot revive it. In any

event the burden of establishing want of knowledge lay upon the Applicant and was not discharged.

- (v) The first limb is answered in the affirmative: the burden of establishing the facts attracting outright confiscation lies upon the Department. The second is answered in the negative: the learned Tribunal did not shift the legal burden, but held that a case established upon contemporaneous official documents and a physical recovery had gone unrebutted.
- (vi) In the negative. The confiscation rested not upon ownership but upon the user of the vehicles, which was found as a fact.
- (vii) In the negative. Clause 2(f) applies by its own words only to a conveyance "*not covered under clause (b) of the preamble*", and was excluded once clause (b) was found to be attracted.
- (viii) In the negative. The appeal was decided upon clause (b) as it stood on the date of seizure; the reference to the amending notification formed no part of the ratio.
- (ix) In the negative, in the sense that a subsequent amendment to a confiscatory regime cannot be applied to a contravention completed before it; but the principle does not assist the Applicant, no amended provision having been applied to his case.
- (x) In the negative. A judicial exposition of an existing provision declares what that provision has always meant and is not a subsequent regime requiring a separate determination of applicability.
- (xi) In the negative. The confiscation proceedings under Chapter XVIII are independent of the prosecution before the Special Judge, and the acquittal in F.I.R. No. 207 of 2023 did not bear upon the liability of the vehicles.
- (xii) In the affirmative. The confiscation could be and was sustained, the premise of the question as to the absence of evidence not being borne out by the record.
- (xiii) In the negative. There is no inconsistency to reconcile: the Suzuki Swift was dealt with differently because it was found not to have been used for the removal or carriage of the offending goods, and the direction as to the approval of the criminal court related to its custody as case property, a description applying equally to the confiscated vehicles.
- (xiv) In the negative. No instance of misreading or non-reading of the record has been made out.

(xv) In the affirmative. The confiscation is a deprivation of property in accordance with law within Articles 4 and 24 of the Constitution, and no case of discrimination under Article 25 has been made out.

40. No question of law, and no mixed question of law and fact, has accordingly been made out which would justify interference with the judgment dated 13.07.2026 passed by the learned Customs Appellate Tribunal, Bench-II, Karachi in Customs Appeal No. K-1559 of 2025.

XIII. ORDER

41. This Special Customs Reference Application, being devoid of merit, is accordingly dismissed *in limine*, along with the applications pending therein, if any, with no order as to costs.
42. 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: 15th day of September 2026

Ayaz PS.