

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Spl. Customs Reference Application N

o. 228 of 2026

Karim Bux Vs. Collectorate of Customs (Enforcement), Hyderabad & another

Date of hearing: 16.09.2026

Date of decision: 16.09.2026

Applicant: Through Mr. Basit Umar, Advocate.

Respondent: *Nemo*

J U D G E M E N T

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 22.07.2026 of the Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal No. H-1121 of 2025, whereby the appeal maintained by the Applicant was dismissed and Order-in-Original No. 18580 of 2025 dated 24.07.2025 passed by the Additional Collector of Customs (Adjudication), Quetta Camp Office at Hyderabad was upheld. The reference application describes the order impugned as a “consolidated Order-in-Appeal No. H-1121 of 2025”. It is in truth the judgment of the learned Tribunal in that appeal, delivered along with Customs Appeal No. H-1120 of 2025, and we have treated it as such.

I. FACTS OF THE CASE

1. Upon information that a Hino truck bearing Registration No. TAE-996, laden with non-duty-paid Border Tiles of Iranian origin concealed beneath pieces of local marble, was standing at the Pehalwan Hotel near the N-5 Highway at Kamu Shaheed, Ubauro, for onward carriage and sale up-country, the staff of the Customs Check Post, Kot Sabzal reached that place on 04.05.2025 at about 20.30 hours and found the truck parked before the hotel, its cabin locked and no person in or about it. Enquiry of the hotel staff disclosed that the person who had parked the vehicle some two or three hours earlier had left as the Customs staff approached.
2. A cursory examination disclosed cartons of Border Tiles of Iranian origin beneath the pieces of marble. The truck was taken into possession under a mushirnama, opened with the assistance of a technician, and found to contain no document of lawful possession or transportation, save a national identity card recovered from the cabin and belonging prima facie to the driver, one

Zaffarullah son of Allah Dad. Upon detailed examination at the State Warehouse, Sukkur, 525 cartons of Border Tiles, approximately 498 square metres, were found concealed under 740 pieces of white marble of local origin. Nobody having come forward with documents of lawful import, the goods and the vehicle were seized on 09.05.2025 under section 168 of the Act for violation of sections 2(s) and 16, the tiles being assessed at Rs.2,221,298 and the vehicle at Rs.2,877,702, with duty and taxes of Rs.2,935,459. Notice under section 171 was issued to the owner and the driver and was also affixed upon the notice board of the office in terms of section 215(b). The seizure report named as offenders the unknown owner of the goods, the driver, and the Applicant as the registered owner of the vehicle.

3. Upon a show cause notice dated 21.06.2025 the Additional Collector of Customs (Adjudication), Quetta Camp Office at Hyderabad, heard the matter upon four dates, the Applicant appearing in respect of the vehicle and one Waheedullah son of Ameer Muhammad claiming the marble and the tiles. By Order-in-Original No. 18580 of 2025 dated 24.07.2025 the adjudicating authority recorded that the claimant of the goods had produced no evidence of their legal import or lawful possession and had asked that they be released upon payment of duty and taxes, a request which the officer took to amount to an admission that they were smuggled and non-duty-paid; confiscated the goods outright under clauses (8) and (89) of section 156(1); and confiscated the vehicle outright under section 157(2), holding that it *"has been used for carriage removal of offending /contraband goods which exclusively used for transportation of foreign Origin/ smuggled good"*. No personal penalty was imposed upon the Applicant.
4. The Applicant appealed to the learned Customs Appellate Tribunal under section 194-A. His case was that no *mens rea* had been brought home to him; that he was the registered owner and a transporter by occupation and the vehicle his only source of livelihood; that the word used in the notification is "cavity" and the truck had none, the manner of carriage being no more than a change in the mode of transport; that the show cause notice had not charged concealment in a cavity; and that the property of an innocent owner ought not to be forfeited, for which he relied upon the decision reported as PLD 1974 SC 5 and upon a judgment of the Hon'ble Lahore High Court in Customs Reference No. 52 of 2015. The Department, by its parawise comments, maintained that the vehicle had been used exclusively for the carriage of smuggled goods cleverly concealed beneath local marble; that no document of lawful possession or transportation had ever been produced; and that a consignment of that magnitude could not have been loaded without the knowledge and consent of the registered owner.

5. By the impugned judgment the learned Tribunal framed a single question, namely whether the outright confiscation of the vehicle under section 157(2) read with S.R.O. 499(I)/2009 was justified in the light of the judgment of the Hon'ble Supreme Court in *Director, Intelligence and Investigation (Customs) v. Muhammad Ishaq*. It traced the amendments made to that notification by S.R.O. 1280(I)/2024 dated 20.08.2024, S.R.O. 1619(I)/2024 dated 03.10.2024 and S.R.O. 586(I)/2025 dated 09.04.2025; held that a seizure effected in May 2025 was governed by the notification as so amended; set out the relevant passage from *Muhammad Ishaq*; observed that the confiscation of the goods had gone unchallenged and had attained finality; held that a conveyance used for the transportation of such goods cannot be delinked from the offence unless the owner establishes the absence of knowledge, connivance or involvement, a burden lying squarely upon him and not discharged; and dismissed the appeal.

II. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

6. Two questions are proposed, and they are reproduced verbatim:
 - (a) *“Whether the learned Customs Appellate Tribunal erred in law by confirming the outright confiscation of the Petitioner’s Vehicle under the provisions of the Customs Act, 1969, without recording any specific finding as to the owner’s knowledge or connivance in the alleged smuggling activity, thereby misinterpreting and misapplying the mandatory requirements of Section 157(2) of the Act?”*
 - (b) *“Whether, for the purpose of outright confiscation of a conveyance under Section 157(2) of the Customs Act, 1969, it is mandatory for the Customs authorities and the Tribunal to establish the direct knowledge or connivance of the owner of the conveyance, especially when the goods are claimed by a third party and no false cavities or modifications for smuggling were found?”*
7. Mr. Basit Umar, learned counsel for the Applicant, was heard at length. His submissions were, in substance, these: that section 157(2) is penal in its operation and cannot be applied against a registered owner without a finding of knowledge or connivance, the burden of establishing which rests upon the Department; that neither a false cavity nor any modification for smuggling was found in the truck, so that clause (b) of the preamble to S.R.O. 499(I)/2009 was never attracted; that the vehicle carried a substantial consignment of local marble, which shows that it was not used exclusively or wholly for the carriage of offending goods; that the goods were claimed before the adjudicating authority by a third party, so that the Applicant stood disconnected from them; that he had entrusted the truck to a driver for what appeared to be a lawful

engagement and could not be expected to unearth the concealment practised by others; and that outright confiscation of the means by which he lives is, in the absence of any finding of complicity, a disproportionate consequence. He asked that the impugned judgment be set aside and the matter remanded.

8. We have considered these submissions, perused the impugned judgment, the Order-in-Original, the show cause notice and the seizure report, and examined the record.

III. THE SCOPE OF THE REFERENCE JURISDICTION

9. 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 to pass judgment, whereupon the order of the Tribunal stands modified accordingly. It was by that last feature that the Hon’ble Supreme Court identified the remedy as appellate rather than advisory in *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax*, holding that all questions “arising” out of the order may be referred and not merely those argued below, but holding with equal clearness that “the facts as stated in the Tribunal’s order have to be taken as recorded”.¹ The admission of a mixed question has accordingly 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.
10. Subject to that, the province of the learned Tribunal remains its own. It is the last forum for the determination of facts, and it is no part of the jurisdictional domain of this Court to determine the facts for itself.² A finding of fact may be examined here only upon a demonstration, from the record itself, that it 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 upon surmise and conjecture.³ It is within that narrow window that the two questions before us fall to be answered.

IV. THE STATUTORY SCHEME AS IT STOOD AT THE DATE OF SEIZURE

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:

¹ *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax* [2017 SCMR 1006 = 2017 PTD 1303], at paragraphs 48 to 50, lately reaffirmed in *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan* [2026 SCMR 833].

² *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838]; *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadros Engineering (Pvt.) Ltd.* [2023 SCMR 939].

³ *The Collector of Customs, Enforcement, Customs House, Karachi v. Abdul Razzaq* [2024 PTD 1205]. The formulation is that adopted by this Bench in Spl. Customs Reference Application No. 230 of 2026, decided on 11.09.2026.

“(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”. The option is thus not a right of the owner but a concession in the discretion of the officer, and it is a discretion which exists only so long as the Board has not withdrawn it. S.R.O. 499(I)/2009 dated 13.06.2009, issued in exercise of that power, is accordingly not a source of the power to confiscate. It is the instrument by which the Board has withdrawn the discretion to relieve against a confiscation which the Act itself imposes.

13. The preamble to that notification, as it stood on 04.05.2025, directed that no such option shall be given in respect of, among other things,

“(a) smuggled goods falling under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969);

(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);

(ba) lawfully registered conveyance including packages and containers, other than in clause (b), if seized and found carrying smuggled goods; or”

14. Clause (ba) was introduced by S.R.O. 1280(I)/2024 dated 20.08.2024 in a qualified form, withholding the option only where the conveyance was “seized for the third time”, and was substituted in the unqualified terms set out above by S.R.O. 1619(I)/2024 dated 03.10.2024. Clause (f) of the Table, which had provided for release against a redemption fine in the case of a lawfully registered conveyance not covered by clause (b) of the preamble, was omitted, together with the Explanation appended to it, by S.R.O. 586(I)/2025 dated 09.04.2025, as the learned Tribunal has recorded. Each of these changes was in the field before the detention of 04.05.2025 and the seizure of 09.05.2025, and it is the notification in that shape which governs this case. No question of the retrospective application of a confiscatory provision therefore arises.

15. The effect of section 157(2), section 181 and the notification read together has been declared by the Hon’ble Supreme Court in *Director, Intelligence and*

*Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq.*⁴ Setting aside an order which had released a vehicle against a redemption fine, the Court held:

“In view of the statutory framework and the authoritative pronouncement of this Court in Bashir Ahmad (supra), it stands settled that upon the promulgation of SRO, 2009, the Board acting under the first proviso to section 181 of the Act 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. ... This statutory embargo remained in force continuously, except for a brief and limited relaxation introduced through S.R.O. 1280(I)/2024 dated 20.08.2024, which conditionally permitted release of certain vehicles not falling within clause (b), seized for the first or second time. The said concession, however, stood rescinded by S.R.O. 1619(I)/2024 dated 03.10.2024, thereby restoring the original and complete prohibition with insertion/inclusion of (ba). Consequently, the adjudicating fora, including the Board itself, have had no lawful competence to order release of any conveyance used for the transportation of smuggled goods against payment of fine, and confiscation in such circumstances is mandatory in law.”

16. It was held in the same case that where the Board has exercised its power and issued an order under section 181, the forum below “is bereft of jurisdiction to order release of such conveyance by giving an option under that section”. Shortly before, in *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar*, 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 the preamble applies the option under section 181 “could not have been given”; the same had been held upon the predecessor notification.⁵ Clause (ba), as substituted, has been applied to the like effect by the Hon’ble Lahore High Court in *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan*.⁶
17. Two propositions follow, and they govern 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 the preamble to the notification, the discretion conferred by section 181 has been withdrawn by the Board, and no forum can restore it.

⁴ *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq* [2026 SCMR 885 = 2026 PTD 1077], at paragraph 7.

⁵ *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar* [2025 SCMR 684]. Upon S.R.O. 574(I)/2005, the predecessor notification in materially identical terms, see *Collector of Customs, Peshawar v. Wali Khan* [2017 SCMR 585 = 2017 PTD 1244].

⁶ *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan* [2026 PTD 298].

18. There is a further feature of the notification, as it stood at the date of this seizure, which must be noticed at the outset, because it disposes of a great deal of the argument. Clauses (b) and (ba) between them exhaust the field. Clause (b) covers a lawfully registered conveyance found carrying smuggled goods in false cavities, or used exclusively or wholly for the transportation of offending goods. Clause (ba) covers a lawfully registered conveyance “other than in clause (b)” which is seized and found carrying smuggled goods. A lawfully registered conveyance seized and found carrying smuggled goods must therefore fall within one clause or the other, and in either event the Board has directed that no option be given. The submissions addressed to us assumed throughout that the Applicant’s truck might be taken outside clause (b) for want of a false cavity or for want of exclusive user. Upon the notification as it stood on 04.05.2025 nothing would turn upon that, for clause (ba) would then apply, and the consequence for the vehicle would be precisely the same. That is a sufficient answer to this reference. We proceed nevertheless to deal with the questions as they were argued.

V. QUESTION (b): KNOWLEDGE AND CONNIVANCE OF THE REGISTERED OWNER

19. 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.
20. It was urged that the provision is penal in its operation and that *mens rea* must therefore be established. The presumption for which the argument contends is well established, and we do not doubt it: even in the case of a statutory offence the presumption is that *mens rea* is an essential ingredient unless the statute creating the offence, by express terms or by necessary implication, rules it out, as the Hon’ble Supreme Court held in *Hardcastle Waud*, and as this Court has lately applied in declining to sustain a penalty imposed under section 33 of the Sales Tax Act, 1990 upon a taxpayer against whom no guilty mind was shown.⁷ But the presumption belongs to the field in which it grew, that of an offence charged against a person and of a penalty visited upon him. Section 157(2) creates no offence and imposes no penalty upon anybody. It attaches a liability to a thing by reason of the use to which the thing has been put; and the

⁷ *Pakistan through the Secretary, Ministry of Finance, Rawalpindi v. Hardcastle Waud (Pakistan) Ltd., Karachi* [PLD 1967 SC 1]; *Messrs New Era Fabrics v. Appellate Tribunal Inland Revenue* [2025 PTD 1519].

order under challenge imposes no personal penalty upon the Applicant at all, but confiscates the conveyance. Where a personal penalty is laid under section 156(1) the considerations to which the argument appeals will have their proper place. They do not arise here. It may be added that where the legislature has intended the knowledge of an owner to be an ingredient of the liability of a conveyance, it has said so in terms: the proviso to section 32 of the Control of Narcotic Substances Act, 1997 provides that no vehicle shall be liable to confiscation “unless it is proved that the owner thereof knew that the offence was being, or was to be, committed”.⁸ Section 157(2) of the Act contains no such proviso, and the omission is not to be supplied by construction.

21. 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, as appears from the observation of this Court in *Collector of Customs, Model Collectorate of Customs (Preventative), Custom House, Karachi v. Mehraj* 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.⁹ Want of knowledge thus goes to the relief and not to the liability; and 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.
22. The protection which the Act gives to the owner of a conveyance is in the main procedural, and it is exacting. By section 180 no order of confiscation may be made unless the owner of the goods is informed in writing of the grounds upon which it is proposed to confiscate them and is given an opportunity of making a representation and of being heard. Where a vehicle was confiscated although no show cause notice had gone to its owner, whose name appeared in the inventory memo, the Hon’ble Supreme Court declined to disturb its unconditional release.¹⁰ Nothing of that kind occurred here. The Applicant was named in the seizure report as the registered owner of the vehicle; notice under section 171 was issued to the owner and the driver and was affixed upon the notice board of the office in terms of section 215(b); the show cause notice called upon the owner of the vehicle to show cause against its confiscation; and the Applicant appeared before the adjudicating authority in

⁸ *Amjad Ali Khan v. The State* [PLD 2020 SC 299].

⁹ *Collector of Customs, Model Collectorate of Customs (Preventative), Custom House, Karachi v. Mehraj* [2025 PTD 626].

¹⁰ *Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail* [2023 SCMR 1319].

that character and was heard upon four dates. He had, and he used, the opportunity which section 180 secures.

23. The second footing assumes the contrary and asks upon whom the burden of establishing want of knowledge lies. That question has been answered by the Hon'ble Supreme Court in *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi*,¹¹ where the registered owner of a bowser found carrying foreign-origin high speed diesel pleaded, as here, that the vehicle had been made over to another for carriage and that he was unaware of the smuggling. It was held:

“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 ... 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.”

24. The Act is to the same effect in two places. Section 187 places upon the person concerned the burden of proving lawful authority or possession wherever the question arises; and clause (89) of section 156(1), under which the goods in this case were confiscated, fastens its consequence upon a person concerned in carrying, removing, keeping, concealing or otherwise dealing with smuggled goods “without lawful excuse, the proof of which shall be on such person”. The Hon'ble Supreme Court has held that “lawful excuse” is an expression of wider import and of lesser burden than “lawful authority”,¹² but even upon the lesser standard an excuse must be put forward and must be shown to be lawful. The Applicant placed before the two fora below no agreement of hire, no transport contract, no bilty or other document of consignment, and no goods declaration. It is said before us that he entrusted the truck to a licensed driver for what appeared to be a legitimate engagement; the record does not show that any such material was produced below, nor was the person who is said to have engaged the vehicle identified. No step, civil or criminal, is shown to have been taken by the Applicant against the driver whose identity card was recovered from the cabin. Upon *Shahzad* the burden of proving the absence of any nexus lay upon him, and the learned Tribunal cannot be said to have erred in holding that it was not discharged. The features which the Hon'ble Supreme Court found wanting in that case are wanting in this: nothing has been disclosed as to the terms of the engagement or the consideration received under it, and no registering authority was informed of any such arrangement. Nor is an owner who puts his vehicle into the hands of a driver thereby removed from its employment; leave to appeal

¹¹ *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi* [2025 SCMR 1912].

¹² *The Intelligence Officer, Directorate of Intelligence and Investigation, FBR v. Abdul Karim* [2025 SCMR 969].

was refused in *Syed Adil Ahmed*, where an oil tanker was found loaded with contraband and the owner pleaded want of notice, upon the footing that the paid driver plied the vehicle on the owner's behalf and the owner was answerable for the acts and omissions relating to the vehicle entrusted to him.¹³ Whether the plea of ignorance ought upon the evidence to have been accepted is, besides, a matter upon which we cannot enter.

VI. QUESTION (b) CONTINUED: THE FALSE CAVITY, THE COVER LOAD AND THE CLAIM OF A THIRD PARTY

25. Question (b) carries two premises with it: that no false cavity or modification for smuggling was found, and that the goods were claimed by a third party. Both are borne out by the record, and we accept the first of them without qualification. Neither assists the Applicant.
26. The Department did not allege a false cavity. The show cause notice dated 21.06.2025 charged concealment of the tiles beneath pieces of local marble, and the Order-in-Original proceeded upon exclusive user for the carriage of smuggled goods and not upon any cavity. Had such an allegation been made, it would not upon this record have been made out. The expression "false cavities" is not defined in the Act or in the notification, but it has been construed by a Division Bench of the Hon'ble Lahore High Court to mean "a cavity made for the time being or a cavity artificially made", the Court adding that "the space behind a truck for loading goods does not fall within the definition".¹⁴ We respectfully adopt that construction. The tiles in this case lay in the ordinary load space of the truck, beneath the marble; nothing was fabricated, adapted or added to the vehicle. The first limb of clause (b) is accordingly not attracted, and the complaint pressed before the learned Tribunal upon the meaning of "cavity", however well founded in itself, was directed against a case which had not been made.
27. It does not follow that the Applicant succeeds. Clause (b) describes a lawfully registered conveyance in two alternative characters, disjoined by the word "or": one "found carrying smuggled goods in false cavities", the other "being used exclusively or wholly for transportation of offending goods". The adverbs "exclusively or wholly" belong to the second limb alone and qualify the manner of use; a conveyance falls within the clause if it answers either description, and this Court has held that the two limbs are not mutually exclusive compartments.¹⁵ We should add that the boundary between what is charged and what is found must be observed, and observed against the Department as readily as against an owner: references by the Department have been declined

¹³ *Syed Adil Ahmed (Minor) v. Deputy Collector Customs and Central Excise* [1991 SCMR 1951].

¹⁴ *Collector of Customs v. Rehmat Afridi* [2010 PTD 2015].

¹⁵ *Messrs Panjgoor Goods Transport Co. v. Federation of Pakistan* [2022 PTD 59].

where the show cause notice spoke of a cavity which the learned Tribunal found did not exist.¹⁶

28. The substantial point is therefore the second limb. It was urged that the truck carried 740 pieces of local marble, a lawful cargo, so that it cannot be said to have been used “exclusively or wholly” for the transportation of offending goods. The answer is that upon the findings of both fora the marble was not an independent consignment which happened to share the vehicle with contraband. It was the means by which the contraband was hidden, the 525 cartons of tiles having been found “concealed under the pieces of local marble”. A cover load is part of the apparatus of concealment and not a competing lawful user of the conveyance. Were it otherwise, the clause would be defeated by the simple expedient of loading a quantity of stone above the contraband, and the smuggler who took the greater pains to disguise his cargo would earn the greater immunity. The marble was besides itself seized and confiscated along with the tiles, and that order has not been challenged. A cognate confiscatory provision has been construed to the same effect, the Hon’ble Supreme Court holding in *Amjad Ali Khan* that a conveyance is liable to confiscation under section 32(2) of the Control of Narcotic Substances Act, 1997 “irrespective whether [it is] used in carrying narcotics alone or joint category of narcotics and lawful drugs and substance”.
29. That approach is not new. This Court has held, in a case of a tanker carrying smuggled high speed diesel, that once a vehicle is found carrying smuggled goods it follows as a corollary that it was engaged in the exclusive transportation of such goods; and where a specially designed tank was concealed beneath a load of sand and gravel, the presence of that innocent load was not treated as taking the conveyance out of clause (b) at all.¹⁷ Whether, upon the facts, a particular vehicle was so used is in any event a question upon which the finding of the learned Tribunal is not lightly to be disturbed, and the finding here rests upon the seizure report, the mushirnama and inventory, the recovery of 525 cartons from beneath the marble, and the entire absence of any document of lawful carriage. It is not a finding which can be said to rest upon no evidence or upon surmise.
30. The judgment of the Hon’ble Lahore High Court in Customs Reference No. 52 of 2015, relied upon below for the proposition that a vehicle with no previous record of involvement in smuggling cannot be said to have been used exclusively for the carriage of offending goods, does not carry the matter further. It was a decision upon the notification as it stood long before the

¹⁶ *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali* [2025 PTD 65]; *Collector of Customs (Enforcement), Quetta v. Arz Muhammad* [2026 PTD 900].

¹⁷ *The Director, Directorate General of Intelligence and Investigation-FBR v. Messrs Customs Appellate Tribunal Bench-II, Karachi* [2024 PTD 325]; *Collector of Customs, Model Collectorate of Customs (Preventive), Custom House, Karachi v. Niaz Muhammad* [2022 PTD 1174].

amendments of 2024 and 2025. A criterion of previous involvement was in fact written into the notification by S.R.O. 1280(I)/2024, which withheld the option only where the conveyance was seized for the third time, and it was taken out again some six weeks later by S.R.O. 1619(I)/2024. The notification as it stood at the date of this seizure attaches no consequence to the absence of a previous record. And were the vehicle to be taken outside clause (b) altogether upon that or any other ground, it would fall within clause (ba), with the same result.

31. As to the second premise, the claim of the goods by a third party does not disconnect the Applicant from the user of his vehicle. Waheedullah son of Ameer Muhammad appeared before the adjudicating authority and claimed the marble and the tiles. He did not claim to have hired the truck, or to have loaded it without the Applicant's knowledge, or to have engaged the driver; he produced no evidence of lawful import, and asked that the goods be released upon payment of duty and taxes. His claim therefore fixes the character of the goods and leaves the character of the vehicle's employment exactly where it was. It may be added that the confiscation of the goods was never carried in appeal and has become final, so that they are, for the purposes of section 157(2), goods liable to confiscation; and a conveyance used in their removal is by the plain words of that sub-section liable to confiscation also.
32. Nor does the decision reported as PLD 1974 SC 5 assist the Applicant. It was relied upon before the learned Tribunal for the proposition that the words "liable to confiscation" do not mean "shall be confiscated", and that a discretion remains which is to be exercised upon sound judicial principles. So much may be accepted. The discretion of which that decision speaks is the discretion which section 181 confers, and it survives wherever the Board has not withdrawn it. What the decision cannot do is to supply a discretion in a class of case from which the Board, acting under the first proviso to that section, has taken it away. We should add that the reference application cites *Muhammad Ishaq* to distinguish it as a case of proved complicity. The pronouncement is set out above; and it turns not upon the complicity of the owner but upon the want of competence in any forum to grant an option which the Board has withdrawn.

VII. QUESTION (a): THE WANT OF A SPECIFIC FINDING

33. Question (a) complains that the outright confiscation was confirmed without any specific finding as to the Applicant's knowledge or connivance. Upon the view we have taken of section 157(2) and of the notification, no such finding was required. What was required was a finding that the vehicle had been used in the removal of goods liable to confiscation, and a finding in those terms was

recorded at both tiers: by the adjudicating authority, that the vehicle had been used for the carriage and removal of contraband goods and exclusively used for the transportation of smuggled goods; and by the learned Tribunal, in paragraphs 15 and 16 of the impugned judgment, that the confiscation of the goods having become final the conveyance could not be delinked from the offence, and that the confiscation of the truck was lawful and justified.

34. In any event the learned Tribunal did not pass the question of knowledge by. It held in terms that a conveyance used for the transportation of such goods cannot be delinked from the offence “unless the owner of the vehicle establishes absence of knowledge, connivance or involvement, which burden lies squarely upon him”, and that the Applicant had produced no convincing evidence to show that the vehicle had been used without his knowledge or consent, or that due diligence had been exercised to prevent its misuse. That is a finding upon knowledge, reached upon the allocation of the burden which *Shahzad* requires. To the extent that the question complains that the material supporting it was insufficient, the complaint is one against the appreciation of evidence and cannot be entertained in this jurisdiction.
35. We should record that several of the grounds taken in the reference application travel beyond the two questions proposed, touching due diligence, proportionality and the Applicant’s livelihood. Our duty under section 196(3) is to decide the questions referred, and those grounds do not arise for answer. We say only this, that there is no right to employ property in an unlawful purpose, and that the circumstance that a conveyance is the means by which its owner earns his living cannot exempt it from a liability which the statute attaches to the use that has been made of it.

VIII. THE ANSWERS TO THE QUESTIONS

36. Both questions raise points of construction and have been answered upon their merits, in each case against the Applicant and in favour of the respondent-Department:
- (a) In the negative. A finding of knowledge or connivance is not a condition of confiscation under section 157(2); the findings which the section does require were recorded at both tiers and are supported by evidence upon the record; and the learned Tribunal in any event addressed the question of knowledge upon the correct allocation of the burden of proof.
 - (b) In the negative. Knowledge or connivance of the registered owner is not an ingredient of the liability created by section 157(2), which is a liability attaching to the conveyance by reason of its user and not a penalty imposed upon a person; such matters go to the discretion conferred by

section 181, and that discretion stood withdrawn by clauses (b) and (ba) of the preamble to S.R.O. 499(I)/2009 as it stood at the date of seizure. No false cavity was alleged and none is found, but the conveyance answers the second limb of clause (b) and, if it did not, would answer clause (ba); a cover load of local marble carried to hide the contraband is not a competing lawful user; the claim of the goods by a third party does not touch the user of the vehicle; and the burden of establishing the absence of any nexus lay upon the Applicant and was not discharged.

37. 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 22.07.2026 passed by the learned Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal No. H-1121 of 2025.

IX. ORDER

38. 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.
39. 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: 16th day of September 2026
M. Khan