

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. 229 of 2026

Noor Ullah 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.

Respondents: *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 passed in Customs Appeal No. H-1120 of 2025, which was heard and decided by a common judgment with Customs Appeal No. H-1121 of 2025, whereby the appeal maintained by the Applicant was dismissed and Order-in-Original No. 18576 of 2025 dated 24.07.2025 passed by the Additional Collector of Customs (Adjudication), Quetta Camp Office at Hyderabad was maintained.

I. FACTS OF THE CASE

1. Upon information that a Hino truck bearing Registration No. NAC-296, laden with non-duty-paid border tiles concealed beneath pieces of local marble, was parked at the Pehalwan Hotel near the N-5 Highway at Kamu Shaheed, Ubauro for onward transportation and sale up-country, the Assistant Collector of Customs (Enforcement), Sukkur directed the staff of the Anti-Smuggling Unit, Kot Sabzal to intercept it. On 04.05.2025 at about 2000 hours the staff found the truck parked before the hotel, its cabin locked and no person in or about it. Enquiry made of the hotel staff elicited that a person had parked the truck some two or three hours earlier and had left as the Customs staff approached. A cursory examination disclosed cartons of Iranian-origin border tiles lying beneath the pieces of marble, whereupon the truck was taken into possession under a *mushirnama*, opened with the assistance of a mechanic and searched. No document of lawful possession or transportation was found within the cabin, save a computerised national

- identity card issued to one Azizullah son of Sher Jan, *prima facie* the driver.
2. The truck was escorted to the State Warehouse, Sukkur, where detailed examination disclosed 620 cartons, measuring some 582 square metres, of Iranian-origin border tiles concealed under 750 pieces of local white marble. The tiles were detained for the production of documents of lawful import or possession; none was produced and no one claimed them. On 09.05.2025 the goods and the truck were seized under section 168 of the Act for contravention of sections 2(s) and 16 thereof, punishable under clauses (8) and (89) of section 156(1), read with section 3(1) of the Imports and Exports (Control) Act, 1950 and with S.R.O. 499(I)/2009 dated 13.06.2009. The assessed value of the tiles was Rs.2,598,276/-, of the marble Rs.495,140/- and of the truck Rs.4,176,366/-, the duty and taxes upon the tiles being Rs.3,433,637/-.
 3. A show cause notice was issued on 21.06.2025 and the matter was adjudicated by the Additional Collector of Customs (Adjudication), Quetta Camp Office at Hyderabad. Hearings were held on 01.07.2025 and 10.07.2025, at which the Applicant appeared in respect of the vehicle and one Waheedullah son of Ameer Muhammad in respect of the goods. By the Order-in-Original the adjudicating authority recorded that the claimant of the goods had failed to produce any evidence of lawful import or lawful possession and had sought their release upon payment of leviable duty and taxes, which it treated as an admission that the goods were smuggled and non-duty-paid; confiscated the goods outright under clauses (8) and (89) of section 156(1) of the Act; and confiscated the truck outright under section 157(2) of the Act read with S.R.O. 499(I)/2009, upon the finding that it had “been used for carriage removal of offending / contraband goods which exclusively used for transportation of foreign origin / smuggled good”.
 4. The Applicant preferred Customs Appeal No. H-1120 of 2025 before the learned Customs Appellate Tribunal, Bench-I, Karachi, which was taken up with Customs Appeal No. H-1121 of 2025, preferred by the owner of another truck seized in like circumstances, the learned Tribunal recording that the two appeals raised identical issues of fact and of law. By the impugned judgment the learned Tribunal framed a single question for determination, namely whether the outright

confiscation of the subject 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*; traced the successive 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, the seizure having been effected in May 2025, the notification as it then stood governed the case; recorded that the confiscation of the goods had not been separately appealed and had attained finality; held that the burden of establishing the absence of knowledge, connivance or involvement lay upon the owner of the conveyance and had not been discharged; and dismissed the appeals, the findings recorded in Customs Appeal No. H-1121 of 2025 being applied *mutatis mutandis* to the appeal of the present Applicant.

II. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

5. The Reference Application proposes two questions for the opinion of this Court, and they are reproduced verbatim from the memorandum:
 - a. "Whether, in the facts and circumstances of the case, the Customs Appellate Tribunal was justified in upholding the outright confiscation of the Applicant's vehicle under Section 157(2) of the Customs Act, 1969, without adequately considering the lack of knowledge or connivance on the part of the bona fide owner/lessor and the burden of proof required to establish such knowledge, thus precluding the option of a redemption fine under Section 181 of the said 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?"
6. Mr. Basit Umar, learned counsel for the Applicant, was heard. His submissions, shortly stated, were these. That the "exclusive use" contemplated by clause (b) of the preamble to S.R.O. 499(I)/2009 had been misapplied, the truck having carried 750 pieces of local marble valued at Rs.495,140/-, which was lawful cargo, so that it could not be said to have been used exclusively or wholly for the transportation of offending goods. That no false cavity or structural modification was found in the vehicle, from which it followed that it had not been adapted for smuggling. That the goods were claimed by a third party,

Waheedullah, so that the confiscation of the Applicant's vehicle rested upon the act of another. That the Applicant is the bona fide registered owner, who had let the vehicle out in the ordinary course of business and had neither knowledge of nor connivance in the carriage of the tiles, the burden of establishing such knowledge lying upon the Department and never having been discharged. And that the option of a fine in lieu of confiscation under section 181 of the Act ought in these circumstances to have been extended to him, the vehicle being his sole means of livelihood.

7. 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

8. Before coming to the questions it is necessary to recall the character and the limits of the jurisdiction we exercise. Section 196(1) of the Act, as substituted by the Finance Act, 2024, 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 so raised and to pass judgment thereon specifying the grounds upon which it is based, whereupon the order of the Tribunal stands modified accordingly. The jurisdiction is thus a limited and statutory one, confining 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 of law and fact" by the amendment of 2024 has widened the field, but it has not converted this Court into a second appellate forum upon the facts. A question of fact asks what happened; a question of law asks what the legal rule is; a mixed question asks whether the facts as found by the Tribunal satisfy the legal standard, correctly understood. The last of these presupposes that the primary facts have been found, and takes them as found.
9. That the remedy is appellate rather than advisory in nature is settled by the decision of the Hon'ble Supreme Court in *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax*; but *Squibb* is quite as important for what it leaves untouched, for the Court was at pains to say that "the facts as stated in the Tribunal's order have to be taken as recorded". 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 has been applied by this Court upon the amended text of section 196 in *Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir*. We have at the same time kept in view the caution administered by the Hon'ble Supreme Court 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" as a means of declining jurisdiction. Where the construction of a statutory provision or of a notification is genuinely in issue, and the legal consequence of primary facts not in dispute has to be ascertained, the question falls to be answered; and both the questions now before us, so far as they raise points of construction, have been answered upon their merits.

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 that its findings of fact are conclusive, the High Court being unable to disturb them unless there was no evidence upon which the Tribunal could arrive at its conclusion, or the findings are perverse or based upon surmise and conjecture; and the same principle has been applied to section 196 of this Act by the Hon'ble Supreme Court and by this Court.¹ The window through which a factual finding may be examined in this 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 which no reasonable forum instructed in law could have reached.

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

11. Neither question can be answered without first setting the statutory scheme in order, for much of the argument at the Bar 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.”

¹ *T & N Pakistan (Pvt.) Limited v. The Collector Customs* [2022 SCMR 1119]; *Collector of Customs, Customs House, Peshawar v. Zarshad* [2006 SCMR 973], where the High Court was held to have exceeded its jurisdiction in deciding a customs matter upon the facts and substituting the findings of the fora below; and *The Collector of Customs, Enforcement, Customs House, Karachi v. Abdul Razzaq* [2024 PTD 1205].

12. The proviso to that sub-section permits the appropriate officer, in such circumstances as may be prescribed by rules, to order the release of a seized conveyance pending adjudication upon a sufficient guarantee from a scheduled bank. Section 181 of the Act then provides:

“Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may 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:

Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given ...”

13. In exercise of the power conferred by the first proviso the Board issued Notification S.R.O. 499(I)/2009 dated 13.06.2009, directing that no option to pay fine in lieu of confiscation 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);”

and providing, by clause 2(f) of the Table appended to the proviso to that notification, for release against a redemption fine at the prescribed rate in the case of a lawfully registered conveyance “not covered under clause (b) of the preamble of this notification, found carrying offending goods under section 2(s) of the Customs Act, 1969”.

14. That notification has since been amended, and the amendments are material because the detention and the seizure in this case took place on 04.05.2025 and 09.05.2025 respectively. By S.R.O. 1280(I)/2024 dated 20.08.2024 a new clause (ba) was inserted in the preamble, withholding the option in the case of a “lawfully registered conveyance including packages and containers other than in clause (b), found carrying smuggled goods if seized for the third time”, and the fine prescribed by clause 2(f) of the Table was raised from 20 to 40 per cent, with an Explanation as to the depreciated value upon which it was to be computed. That clause (ba) remained in the field only until it was substituted by S.R.O. 1619(I)/2024 dated 03.10.2024, which put in its place the following:

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

The substitution rendered clause (f) of the Table and the Explanation appended to it redundant, and by S.R.O. 586(I)/2025 dated 09.04.2025 both were omitted.

15. The position obtaining upon the date of this seizure was therefore this. Clause (b) of the preamble withheld the option in the case of a lawfully registered conveyance found carrying smuggled goods in false cavities, or used exclusively or wholly for the transportation of offending goods. Clause (ba) withheld it in the case of every other lawfully registered conveyance seized and found carrying smuggled goods. Between them the two clauses left no lawfully registered conveyance carrying smuggled goods outside the prohibition. And clause 2(f) of the Table, the single provision under which such a conveyance might have been released against a redemption fine, had ceased to exist a month before the truck was seized. It is against that scheme that the argument addressed to us has to be measured.
16. The effect of these provisions has very recently been declared by the Hon'ble Supreme Court in *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq*.² Dealing with an order of the Customs Appellate Tribunal which had modified an outright confiscation and directed release of a vehicle against a redemption fine, the Hon'ble Supreme 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) thereof; that upon its promulgation the Board, acting under the first proviso to section 181, "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"; that the reasoning which treats the words "liable to confiscation" in section 157(2) as importing a discretion is misconceived; and that in such circumstances "confiscation ... was the only course permissible under the law". Their Lordships added that the concession introduced by S.R.O. 1280(I)/2024 stood rescinded by S.R.O. 1619(I)/2024, "thereby restoring the original and complete prohibition", so that the adjudicating fora have "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

² *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq* [2026 SCMR 885 = 2026 PTD 1077], being the judgment dated 29.10.2025 in Civil Petitions Nos. 2853 and 2854 of 2025.

law”. To the same effect, upon the substituted clause (ba), is the decision of the Hon’ble Lahore High Court in *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan*.³

17. The relationship between the two sections had already been settled, shortly before, in *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar*,⁴ where it was held that in the context of giving an option to release goods in lieu of payment of fine sections 157 and 181 are independent of one another, the former not being capable of construction as having an overriding effect upon the latter, and that where the vehicle was found carrying smuggled goods and used exclusively for their transportation, the case being covered by clause (b) of the preamble, “the option contemplated under section 181 of Customs Act, 1969 could not have been given for its release”.
18. A word should be added upon the date of that pronouncement. *Muhammad Ishaq* was decided on 29.10.2025, which is after the Order-in-Original in this case, and the question might be asked whether the learned Tribunal was entitled to decide the appeal upon it. The answer lies in what a judgment does. Restating the Blackstonian principle in a customs matter, the Hon’ble Supreme Court held in *Collector of Customs, Collectorate of Customs (Appraisement) (West), Lahore v. Muhammad Rizwan*⁵ that the courts “do not make laws” but “only declare what the law has been”, so that when a court interprets a statute its construction “is deemed to be a true meaning from the date of statutes’ existence”, and that “[j]udicial interpretation of a statute thus ordinarily applies and operates retrospectively”. *Muhammad Ishaq* did not alter clause (b) of the preamble to the notification of 2009; it declared what that clause has meant since 13.06.2009. It is besides to be noticed that *Muhammad Rizwan* was itself a case upon section 181 of the Act and that notification, in which orders directing release against a redemption fine of 35 per cent were set aside and the orders of outright confiscation restored.
19. Two propositions follow, and they govern this reference. The first is that the liability of a conveyance to confiscation under section 157(2)

³ *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan* [2026 PTD 298].

⁴ *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar* [2025 SCMR 684].

⁵ *Collector of Customs, Collectorate of Customs (Appraisement) (West), Lahore v. Muhammad Rizwan* [2026 PTD 909].

attaches by reason of the use to which the conveyance has been put, and not by reason of the state of mind of its owner. The second is that where a conveyance answers the description in clause (b) or in clause (ba) of the preamble to the notification of 2009, the discretion conferred by section 181 has been withdrawn by the Board, and neither the adjudicating officer nor the Tribunal nor this Court possesses a power to restore it.

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

20. The first question raises, at its centre, a point of law which is properly taken, and we answer it upon its merits. Section 157(2) fastens upon the conveyance. Its words are that “[e]very conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation”. The criterion is the use to which the conveyance has been put. There is in the sub-section no word importing knowledge, consent or connivance upon the part of the owner, and we are unable to read one in. 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 inflicted upon the owner for a delinquency of his own 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.
21. That is not to say that the innocence of an owner is a matter of no account under the Act. The scheme provides for it, but it provides for it elsewhere: in the proviso to section 157(2), which permits the release of a seized conveyance pending adjudication upon a bank guarantee, and principally in the discretion conferred upon the adjudicating officer by section 181 to give an option to pay a fine in lieu of confiscation. 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*⁶ 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.

⁶ *Collector of Customs, Model Collectorate of Customs (Preventative), Custom House, Karachi v. Mehraj* [2025 PTD 626].

22. From this the answer to the question follows upon two independent footings. The first has already been given. 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 falling within that class cannot revive a discretion which no longer exists; that is what was held in *Muhammad Ishaq*. In the present case the point is a short one, because upon the date of seizure clauses (b) and (ba) of the preamble between them covered every lawfully registered conveyance found carrying smuggled goods, and clause 2(f) of the Table stood omitted. There was accordingly no discretion in the adjudicating authority or in the learned Tribunal to release this truck against a redemption fine, however innocent its owner may have been, and the absence of a finding upon his knowledge could not have altered the result.
23. 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 which are for practical purposes indistinguishable from these, in *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi*.⁷ There a bowser was found carrying foreign-origin high speed diesel in hidden cavities, and the registered owner's only defence, as here, was that the vehicle had been given to another under an arrangement for transportation and that he was unaware of the smuggling. The Hon'ble Supreme Court 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, 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.”
24. That burden was not discharged here. The Applicant appeared before the adjudicating authority in respect of the vehicle, and the occasion to make out his case upon the facts was therefore open to him at the tier at which the facts fell to be found. He produced no agreement of hire or of lease, no record of the consignment he says his truck was lawfully carrying, no *bilty*, and nothing to identify the person to whom he says he

⁷ *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi* [2025 SCMR 1912].

- entrusted it. The assertion that the vehicle had been let out in the ordinary course of business rests upon his own word and upon nothing else. The learned Tribunal was not bound to accept it and did not accept it, holding that the appellant had failed to produce convincing evidence that the vehicle was used without his knowledge or consent, or that due diligence had been exercised to prevent its misuse. Whether that assessment ought to have been made differently is not a matter upon which we can enter. The forum at which a case of this kind falls to be made is the forum which finds the facts, and a plea developed afterwards is of little assistance: so much was held, upon a comparable record, in *Noor Muhammad v. Customs Appellate Tribunal, Peshawar Bench*,⁸ where the owner of a vehicle had had ample opportunity before the adjudicating officer, the Collector (Appeals) and the Tribunal and had failed to meet the case against him at any of them.
25. Nor does the letting out of a vehicle relieve its owner of responsibility for what is done with it. In *Syed Adil Ahmed v. Deputy Collector Customs and Central Excise*⁹ an oil tanker was found loaded with contraband and its registered owner sought its release upon the plea that the show cause notice had been served upon the driver and not upon himself. Leave to appeal was refused, the driver being a paid driver who plied the vehicle on the owner's behalf, so that the owner was answerable for the acts of commission or omission relating to the vehicle which he had entrusted to him. An owner who places his conveyance in the hands of another does not thereby place it beyond the reach of section 157(2) of the Act.
26. It may be added that the confiscation of the goods themselves was not separately assailed and has attained finality. The character of the tiles as smuggled goods is therefore no longer open, and the only question which remained before the learned Tribunal was whether the conveyance which carried them was liable under section 157(2). Upon the finding of user, it was.
- VI. QUESTION (b): THE ABSENCE OF A CAVITY, THE COVER LOAD AND THE CLAIM OF A THIRD PARTY**
27. The second question puts the same point of law with three additional elements: that direct knowledge or connivance must be established;

⁸ *Noor Muhammad v. Customs Appellate Tribunal, Peshawar Bench* [2020 SCMR 246].

⁹ *Syed Adil Ahmed v. Deputy Collector Customs and Central Excise* [1991 SCMR 1951].

that the goods were claimed by a third party; and that no false cavity or modification was found. The first element has been answered in the preceding section. We take the remaining two, and with them the submission upon “exclusive use”, which was the principal argument pressed before us.

28. As to the want of a false cavity, clause (b) of the preamble is framed in the alternative. It covers a lawfully registered conveyance “found carrying smuggled goods in false cavities” or one “being used exclusively or wholly for transportation of offending goods”. This Court has held that the two limbs are not to be read as mutually exclusive compartments, and that once it is found that a vehicle was carrying smuggled goods it follows as a corollary that it was engaged in their exclusive transportation.¹⁰ Neither the seizing agency nor the adjudicating authority nor the learned Tribunal rested the confiscation upon the first limb; the finding recorded was one of exclusive user for the transportation of smuggled goods, which is the second. The absence of a welded compartment or a false panel is therefore beside the point, and the authorities upon false cavities,¹¹ helpful as they are upon the first limb, have no occasion to operate here.
29. The submission upon “exclusive use” requires a word more. It was said that the truck carried 750 pieces of local marble worth Rs.495,140/-, which was lawful cargo, and that a vehicle carrying lawful cargo cannot be said to have been used exclusively or wholly for the carriage of offending goods. The answer lies in what the marble was there for. The seizure report, the show cause notice and the Order-in-Original are at one in recording that the tiles were found “under concealment” of the marble, that is to say that the marble was laid over the tiles so that they should not be seen. Goods so employed are the instrument of the concealment and form part of the smuggling venture; they are not an independent lawful consignment travelling alongside it. Were it otherwise, clause (b) could be defeated by the simple expedient of laying a layer of lawful goods over the contraband, which is the very device at which the clause is directed. It is besides to be observed that

¹⁰ *Messrs Panjgoor Goods Transport Co. v. Federation of Pakistan* [2022 PTD 59]; *The Director, Directorate General of Intelligence and Investigation-FBR v. Messrs Customs Appellate Tribunal Bench-II, Karachi* [2024 PTD 325].

¹¹ *Director, Directorate General, Intelligence and Investigation (Customs) v. Aurangzaib* [2021 PTD 1026]; *Collector, Model Customs Collectorate, Custom House Gawadar at Gaddani v. Abdul Raheem* [2021 PTD 1035].

the marble was itself seized and confiscated along with the tiles, and that confiscation has not been challenged.

30. The point has been considered under a cognate confiscatory regime, and the answer given there is the same. Section 32(2) of the Control of Narcotic Substances Act, 1997 renders liable to confiscation the receptacles, packages and conveyances used in carrying narcotics along with, or in addition to, drugs and substances lawfully held; and in *Amjad Ali Khan v. The State*¹² the Hon'ble Supreme Court held that conveyances "are liable to confiscation irrespective whether th[ey] are used in carrying narcotics alone or joint category of narcotics and lawful drugs and substance", it being "absurd to imagine" that the conveyance which carries contraband by itself should be forfeit while the conveyance which carries contraband under cover of lawful goods should not. The presence of goods lawfully carried does not, upon that scheme, rescue the conveyance, and we see no reason why the position should be different under section 157(2) of the Act, whose words are if anything wider, fastening as they do upon every conveyance "used in the removal of any goods liable to confiscation".
31. One further feature of that comparison is instructive upon the question of knowledge. The proviso to section 32 of the Act of 1997 exempts a conveyance from confiscation unless it is proved that its owner knew that the offence was being, or was to be, committed. The legislature is therefore perfectly familiar with the device of making the owner's knowledge an ingredient of the liability, and has employed it where it intended it to operate. Section 157(2) of the Customs Act, 1969 carries no such proviso. The omission is not one which can be supplied by construction, and it confirms the view we have taken in Section V above.
32. There is a further and, as it seems to us, conclusive answer. Even upon the Applicant's own construction, and assuming in his favour that the presence of the marble took the vehicle outside clause (b), he would gain nothing by it. A lawfully registered conveyance which falls outside clause (b) and is seized and found carrying smuggled goods falls squarely within clause (ba) as substituted with effect from 03.10.2024; and the only provision under which a redemption fine could have been imposed, clause 2(f) of the Table, stood omitted with effect from

¹² *Amjad Ali Khan v. The State* [PLD 2020 SC 299].

09.04.2025, a month before this seizure. Upon either characterisation of the facts the option was unavailable, and the relief which the Applicant seeks could not lawfully have been granted to him.

33. As to the claim made to the goods by Waheedullah, it does not assist the Applicant. The liability created by section 157(2) attaches to the conveyance by reason of the use to which it has been put; it does not depend upon the identity of the owner of the goods, nor does it require that the goods should belong to the owner of the conveyance. Indeed, if the ownership of the goods were the test, the sub-section would be deprived of its whole utility, for the carrier and the owner of contraband are rarely the same person. That a claimant came forward for the goods and failed to establish their lawful import goes only to confirm the character of what this truck was carrying.
34. One matter we have examined of our own motion, since the liability created by section 157(2) of the Act is severe and the record must show that it was fastened after hearing. In *Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail*¹³ the confiscation of a conveyance was not allowed to stand because no show cause notice had been issued to its owner, whose name appeared in the inventory, the notice having gone to the driver and to the owner of the goods alone. Nothing of that kind has occurred here. The show cause notice dated 21.06.2025 called upon the owners and claimants of the seized goods and of the vehicle alike to show cause why they should not be confiscated; the Applicant appeared before the adjudicating authority upon 01.07.2025 and upon 10.07.2025 in respect of the vehicle; and he was heard upon appeal. The requirements of section 180 of the Act, and of the rule that a person shall be heard before he is condemned, were satisfied.
35. What remains of the two questions is an invitation to re-examine the sufficiency of the material upon which the finding of user was recorded. That is a complaint against the appreciation of evidence, and upon the authorities set out in Section III above it cannot be entertained in this jurisdiction. The boundary cuts both ways, and it has been applied against the Department upon this very clause in *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali*,¹⁴ where a

¹³ *Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail* [2023 SCMR 1319].

¹⁴ *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali* [2025 PTD 65].

reference was dismissed because the Tribunal had found as a fact that the vehicle possessed no false or secret cavity. Nor, we may add, was any feature pointed out to us which distinguishes the Applicant's case upon the facts from that of the connected appeal with which it was heard, and the learned Tribunal's course in disposing of the two together, having recorded that they raised identical issues, is not shown to have occasioned any prejudice.

36. The plea of hardship, that the truck is the Applicant's sole means of livelihood, was pressed with some feeling and we have not been unmindful of it. But there is no right, fundamental or otherwise, 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 to which it has been put. Where the legislature has spoken and the Board has withdrawn the discretion, sympathy furnishes no warrant for a course which the law does not permit.

VII. THE ANSWERS TO THE QUESTIONS

37. Both the questions proposed raise, so far as they raise anything, points of construction upon section 157(2) and section 181 of the Act and upon the preamble to S.R.O. 499(I)/2009, and we have answered them upon their merits. They are answered as follows:

- (a) In the affirmative; against the Applicant and in favour of the respondent-Department. Knowledge, consent or connivance of the registered owner is not an ingredient of the liability created by section 157(2) of the Act. Such matters go to the discretion conferred by section 181, and upon the date of this seizure that discretion stood withdrawn by clauses (b) and (ba) of the preamble to S.R.O. 499(I)/2009, clause 2(f) of the Table having been omitted with effect from 09.04.2025. The burden of establishing the absence of any nexus with the smuggled goods lay in any event upon the Applicant and was not discharged.
- (b) In the negative; against the Applicant and in favour of the respondent-Department. It is not necessary for the purposes of section 157(2) of the Act to establish the direct knowledge or connivance of the owner of the conveyance. Neither the claim made to the goods by a third party nor the absence of a false cavity or structural modification displaces the liability, the

confiscation having rested upon a finding of user which is supported by evidence on the record.

38. For the foregoing reasons we hold that no question of law, and no mixed question of law and fact, has been made out which would justify any interference with the judgment dated 22.07.2026 passed by the learned Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal No. H-1120 of 2025.

VIII. ORDER

39. 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.
40. 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