

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. 51 of 2024

The Collector of Customs (Enforcement) Karachi Vs. Muhammad Rafique & another

Date of hearing: 16.09.2026

Date of decision: 22.09.2026

Applicant: Through Mr. Pervaiz Ahmed Memon, Advocate

Respondent No.1: Through Mr. Basit Umar, Advocate.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference application under section 196 of the Customs Act, 1969 (the “Act”) impugns an order dated 18.10.2023 passed by the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-1461 of 2023. By that order the appeal preferred by the applicant-Department was disposed of, the Order-in-Original No. 135/2022-23 dated 09.08.2023 was upheld, Hino Truck bearing Registration No. TKH-183 was directed to be released against payment of a redemption fine at 20%, and the personal penalty imposed upon Respondent No.1 was reduced from Rs.50,000 to Rs.10,000.

I. THE FACTS

1. On 05.06.2023 the staff of the Anti-Smuggling Organization, Headquarters, Collectorate of Customs (Enforcement), Karachi, posted at the Customs Hamdard Choke Point, received information from SPS/HQ that a Hino truck bearing Registration No. TKH-183, apparently loaded with cement bags, was carrying beneath the upper layer of those bags a quantity of smuggled and non-duty-paid betel nuts and gutkha, together with diesel oil “loaded in extra secret tanks”, and that it would pass through the Northern Bypass. Surveillance was mounted.
2. At about 02:55 p.m. the truck was spotted on the Northern Bypass near the Customs Choke Point and stopped. Its sole occupant introduced himself as Muhammad Rafique son of Nazar Muhammad, Respondent No.1. Asked whether there was any concealment in the truck, he answered in the negative and said that he had taken the truck in a loaded condition, the load being Lucky Cement bags for delivery at Karachi.

3. A search was carried out in the presence of two musheers, Sepoy Faizan Zaidi and Sepoy Muhammad Kamran. Upon the removal of some bags from the upper layer, PP bags containing betel nuts and gutkha of foreign origin were found beneath the cement bags; and, on further checking, in the words of the mushirnama drawn on the spot, “an extra tank was also found specially fabricated in the front side of the body of said truck, containing diesel oil”. Respondent No.1 was called upon to produce documents of lawful importation, procurement or transportation. He produced none, and stated that he was unaware of the presence of the betel nuts, the gutkha and the diesel oil in the extra tank, having received the truck already loaded.
4. The truck was taken to State Warehouse-III, Kemari, where detailed examination and weighment in the presence of the musheers yielded 434 bags of Lucky Cement of 50 kg each, aggregating 21,700 kg, used as a cover load; beneath them 375 PP bags of betel nuts of 12 kg each, aggregating 4,500 kg; 47 PP bags and 80 PP bags of Adab brand gutkha, aggregating 470 kg and 880 kg respectively; and 4,500 litres of diesel oil recovered from the extra tank fabricated in the truck. Representative samples were drawn, sealed and signed by the musheers.
5. On 15.06.2023 the betel nuts, the gutkha and the diesel oil, together with the cement bags used as cover load and the truck itself, were seized under section 168 of the Act, and Seizure Report bearing C.No. ASO-175/2023-HQ was drawn. Column 6 of that report describes the second item of the seized goods as “4500 Liters Diesel Oil recovered from extra tank”, and the brief facts at column 11 record that “4500 liters diesel oil were also recovered from extra tank fabricated in the said truck”. The contravention alleged was of sections 2(s) and 156(2) of the Act, punishable under clause (89) of section 156(1) and sections 156(2) and 157(2) read with section 3(1) of the Imports and Exports (Control) Act, 1950. The aggregate value of the goods and of the conveyance was assessed at Rs.49,520,638, and the duty and taxes involved at Rs.3,559,877.
6. A notice under section 171 of the Act, of even date, was issued to Respondent No.1 and displayed on the notice boards of the ASO Headquarters, NMB Wharf, and of the Custom House, Karachi. It recites that the staff “intercepted a Hino Truck bearing Registration No. TKH-183, and recovered foreign origin Betel Nuts, Gutkha concealed beneath the load of Cement bags and diesel oil concealed in a fabricated extra tank”.
7. Show cause notice dated 12.07.2023 was issued by the learned Additional Collector of Customs (Adjudication-I), Karachi, reciting the same facts in the same terms. Respondent No.1 filed a written reply through counsel. He denied knowledge of the contraband, saying that the vehicle had been

booked as a bilty carrier and loaded in his absence; and, as to the diesel, he pleaded that “it was an open tank for the fuel usage of the vehicle because it is a transport vehicle and its diesel average is very low. That’s why, diesel was stored to refill the tank during the journey of the vehicle without any trouble.” His prayer, in the alternative, was that the vehicle be released on 20% redemption fine and that a minimum penalty be imposed. A separate reply was filed by one Tarique son of Shafi Muhammad, claimant of the 434 bags of cement. In its rejoinder the Department described the tank as “a cavity made in a way that from bottom/base of the vehicle up to the maximum height of the vehicle just behind the show/seating side an extra secret tank to carry and conceal diesel is affixed to the vehicle and for which there is no justification”, and invoked clause (b) of the preamble to S.R.O. 499(I)/2009 dated 13.06.2009.

8. By Order-in-Original No. 135/2022-23 dated 09.08.2023, made after hearings on three dates, the learned Additional Collector held the charge under sections 2(s), 16 and 178 of the Act to be established, confiscated the betel nuts, the gutkha and the diesel oil together with the seized vehicle under clause (89) of section 156(1), and released the 434 bags of cement unconditionally, the charge of smuggling not having been proved in respect of locally produced cement. As to the vehicle he proceeded thus:

“However, considering the over all aspects of the case and the fact that seized / confiscated vehicle, as per the seizing agency, there is nothing on their record about repeated use of seized vehicle previously, in transporting of smuggled goods, an option in terms of Section 181 of the act ibid read with SRO.499 (I)/2009 dated 13-06-2009 further read with Board’s letter C.NO. 10(17) L&P/05 dated 26.06.2006 is hereby given to the lawful owner of the seized vehicle to redeem the same against payment of redemption fine equivalent to 20% of Customs value (to be ascertained by the appropriate customs officer of the Collectorate) subject to the condition that the seized/confiscated vehicle is lawfully registered in the country and has not been involved previously in transportation of smuggled goods ... For violating aforementioned provisions of law, a penalty of Rs. 50,000/- in terms of clause (89) (1) of the act ibid is imposed on the claimant / owner of the vehicle.”

9. Respondent No.1 did not appeal. The Department appealed under section 194-A, its grievance being confined to the grant of the option of redemption, which, it said, clause (b) of the preamble to the notification forbade.
10. By the impugned order the learned Tribunal disposed of that appeal. The reasoning upon which the order proceeds is contained in a single paragraph, which is set out in full:

“In view of foregoing discussion the appellant department has failed to prove his contentions regarding the false cavities and the

arguments of the Respondent's counsel merits consideration as the impugned vehicle is a plain body truck as per photos provided by the appellant department. Besides, there is no allegation of false cavity in the seizure report. In the same way, the learned Additional Collector was also dissatisfied with the allegation leveled by the appellant department regarding false cavity. As far as the allegation of wholly and exclusively is concerned, appellant has also overlooked the fact that there were 434 bags of lucky cement (Pak-Origin) were also loaded in the impugned vehicle. Hence the Order-in-Original is upheld and the Respondent is found lawful owner of the Vehicle Truck Bearing Registration No. TKH-183 ... Therefore, the said vehicle is ordered to be released on payment of redemption fine @ 20%. The imposed personal penalty is reduced from Rs. 50,000/- to 10,000/- in the circumstances of the case."

II. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

11. The applicant has invited this Court to answer the following two questions, which are reproduced verbatim from the memorandum of the Reference Application:
 - (i) *"Whether the vehicle used for transportation of smuggled goods in fabricated cavities can be allowed to be released on payment of redemption fine in lieu of confiscation under section 181 of the Customs Act, 1969 read with SRO-499(I)/2009 dated 13.06.2009?"*
 - (ii) *"Whether the Member Judicial-III of Customs Appellate Tribunal, Karachi is justified in holding that the smuggled high speed diesel was not recovered from secret tank/false cavity and the vehicle does not fall under the domain of para (b) of SRO 499(I)/2009 dated 13.06.2009?"*
12. Mr. Pervaiz Ahmed Memon, learned counsel for the applicant-Department, submitted that the existence of a specially fabricated extra tank stands recorded in the mushirnama, in the seizure report, in the notice under section 171 and in the show cause notice, and was in substance admitted in the reply filed before the adjudicating authority; that clause (b) of the preamble to the notification withdraws the option of redemption altogether where a conveyance is found carrying smuggled goods in false cavities; and that neither the adjudicating officer nor the learned Tribunal retained any discretion to grant it.
13. Mr. Basit Umar, learned counsel for Respondent No.1, supported the impugned order. He submitted that whether the truck contained a false cavity is a question of fact concluded by the findings of the last fact-finding forum; that the truck is a plain-bodied vehicle in which no cavity is visible; that the tank was an ordinary reserve for fuel, the vehicle being an old model of low average; and that the presence of 434 bags of lawfully carried cement shows that the vehicle was not wholly or exclusively used for the transportation of offending goods.

14. We have heard learned counsel for the parties, perused the impugned order and the Order-in-Original, and examined the record.

III. THE COMPASS OF THE ENQUIRY

15. The reference was presented on 17.06.2024, when section 196(1) of the Act permitted an aggrieved person to state “any question of law arising out of such order”; it has been heard after the substitution of that section by the Finance Act, 2024,¹ which admits also a “mixed question of law and fact”. Nothing turns upon the difference. The true construction of section 181 of the Act, and of the notification issued under its first proviso, is a question of law upon any view of the section; whether the facts found answer the description in clause (b) of the preamble to that notification is, at the least, a mixed question of law and fact; and a finding of fact may in either case be examined in this jurisdiction where it is shown to rest upon no evidence, or to proceed upon a misreading or non-reading of the material on the record.²
16. We have therefore taken the primary facts exactly as they appear upon the record which was before the learned Tribunal. We have not looked at the photographs filed in this Court with the statement of 07.11.2024, that material not having been before the fora below, and it being no part of our function to ascertain the facts afresh upon material of our own gathering.³

IV. QUESTION (i): SECTION 181 AND THE NOTIFICATION

17. Section 157(2) of the Act provides that “every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation”. That provision fixes liability. What is to follow upon liability is governed by section 181, which is in these terms:

“181. Option to pay fine in lieu of confiscated goods.— 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:

Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under section 16, or any other law for the time being in force.”

¹ Section 196 of the Customs Act, 1969 was substituted in its entirety by the Finance Act, 2024.

² The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd. [2023 SCMR 939]; Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir [2026 PTD 770].

³ Middle East Construction Company, Karachi v. The Collector of Customs, Karachi [2023 SCMR 838].

18. Two things follow from the text. First, the option is not a right of the owner but a concession in the discretion of the officer, the word employed being “may”; the discretion is to be exercised judicially and not capriciously, but it is a discretion.⁴ Secondly, and decisively for the present case, the discretion exists only so long as the Board has not, by an order under the first proviso, specified the goods or class of goods in respect of which the option “shall not be given”. Once such an order is made, the matter passes out of the field of discretion altogether. The requirement to give an option is therefore not absolute; it is subject to the notification issued by the Board under section 181.⁵
19. In exercise of that power the Board issued S.R.O. 499(I)/2009 dated 13.06.2009, in supersession of S.R.O. 487(I)/2007 dated 09.06.2007. Its preamble directs that no option shall be given to pay fine in lieu of confiscation in respect of the goods or classes of goods enumerated, of which the first two are these:
- “(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).”*
20. The Table appended to the notification then prescribes the rates of redemption fine for the cases in which the option survives. Entry 2(f) of that Table, which is the entry under which the option of 20% was in fact granted in this case, reads: “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”. **The words “not covered under clause (b) of the preamble” are words of exclusion, and they are conclusive upon the structure of the instrument. The 20% rate is available to a conveyance which falls outside clause (b) and to no other. Where clause (b) applies, the Table is never reached.**
21. The Hon’ble Supreme Court has construed the predecessor notification, S.R.O. 574(I)/2005, in identical terms. In Wali Khan’s case⁶ the Court held that where the goods were covered by the notification, “the imposition of redemption fine at 30% by the Collector Customs (Appeals) and 15% by the learned Tribunal is in violation of section 181 of the Customs Act and SRO No.574 issued thereunder”, and set aside the orders of the High Court, of the Tribunal and of the Collector (Appeals).

⁴ Abu Bakar Siddique v. Collector of Customs, Lahore [2006 SCMR 705].

⁵ The Collector of Customs, Enforcement, Custom House, Karachi v. Abdul Razzaq [2024 PTD 1205].

⁶ Collector of Customs, Peshawar v. Wali Khan [2017 SCMR 585 = 2017 PTD 1244].

22. The position under the present notification has very recently been placed beyond argument. In Muhammad Ishaq's case⁷ the Hon'ble Supreme Court, restating what it had held in Bashir Ahmed's case, took the words of the first proviso to their conclusion: "When the Board has exercised its power and issued an order under section 181, the Tribunal is bereft of jurisdiction to order release of such conveyance by giving an option under that section." The notification, it was held, "creates a statutory bar, leaving no discretion with the adjudicating officer or the Tribunal to grant release on redemption fine" where the case falls within clauses (a) and (b); upon its promulgation the Board, acting under the first proviso, "divested itself of the authority to grant an option of fine in lieu of confiscation" in respect of such conveyances; and "neither the adjudicating officer nor the appellate fora retained jurisdiction to order release of a vehicle" so covered, confiscation being "the only course permissible under the law". The orders of the High Court and of the Tribunal were set aside and the order-in-original of outright confiscation was restored.
23. This Court has applied the same rule to conveyances carrying smuggled high speed diesel in specially constructed tanks. In Niaz Muhammad's case⁸ a dumper truck was found with "a concealed specially designed tank" laden with smuggled diesel; it was held that the notification "expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein", and that in view of the factum that the truck was found carrying smuggled diesel in false or concealed cavities no case was made out for extending the benefit of the notification. In the case of an oil tanker carrying 35,000 litres of Iranian-origin high speed diesel⁹ it was similarly held that once it was not denied that the vehicle was carrying smuggled diesel, "then it was liable to be confiscated out rightly. It could not, even be released against payment of any redemption fine."
24. Two subsidiary matters may be disposed of here. The first is the reliance placed by the adjudicating authority upon the Board's letter C.No. 10(17)/L&P/05 dated 26.06.2006. An executive instruction of that kind operates within the space which the statute and the notification leave open; it cannot restore a discretion which a notification issued under the first proviso to section 181 has taken away. Read with the notification, the letter can only govern conveyances in respect of which the option is available at all, that is to say, conveyances outside clause (b). It may be noticed that S.R.O. 499(I)/2009 itself issued under the same file number, C.No. 10(17)L&P/05, and in supersession of the notification then in the field; the letter of 2006

⁷ Director, Intelligence and Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq [2026 SCMR 885 = 2026 PTD 1077], following Bashir Ahmed v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar [2025 SCMR 684].

⁸ Collector of Customs, Model Collectorate of Customs (Preventive), Custom House, Karachi v. Niaz Muhammad [2022 PTD 1174]; Director, Intelligence and Investigation (Customs) v. Nasir Ul Haq [2022 PTD 1193].

⁹ The Director, Directorate General of Intelligence and Investigation-FBR v. Customs Appellate Tribunal, Bench-II, Karachi [2024 PTD 325].

cannot be read as surviving to qualify the instrument which came after it. The second is that the amendments made to the notification by S.R.O. 1280(I)/2024 dated 20.08.2024 and S.R.O. 1619(I)/2024 dated 03.10.2024 post-date the seizure, the adjudication and the impugned order alike, and have no application to this case. The notification as originally framed governs it.

25. Question (i), as framed, asks whether a vehicle used for the transportation of smuggled goods in fabricated cavities can be allowed to be released on payment of a redemption fine under section 181 read with the notification. Upon the above, the answer is that it cannot. Where a lawfully registered conveyance is found carrying smuggled goods in false cavities, the option under section 181 stands withdrawn by clause (b) of the preamble to the notification, and no adjudicating or appellate forum has the power to grant it.

V. QUESTION (ii): CLAUSE (b) AND THE IMPUGNED FINDINGS

26. Question (ii) requires us to consider whether the facts of this case attract clause (b), and whether the reasons given for holding that they do not can be reconciled with the record. We take first the construction of the clause, then the reasons, and then the legal character of the facts which survive.

(a) *The two limbs of clause (b)*

27. Clause (b) describes a lawfully registered conveyance in two alternative characters, disjoined by the word “or”: one “found carrying smuggled goods in false cavities”, and the other “being used exclusively or wholly for transportation of offending goods”. The adverbs “exclusively or wholly” belong to the second limb alone. They qualify the manner of use; they do not qualify the carriage of goods in false cavities, which is the subject of the first limb. A conveyance therefore falls within clause (b) if it answers either description, and it is not necessary that it answer both.
28. The purpose of the clause confirms what its grammar indicates. A false cavity is made precisely so that a conveyance may go about its ordinary business, and carry ordinary cargo openly, while the contraband travels out of sight. If the presence of legitimate cargo were to take a vehicle out of clause (b) altogether, the first limb would be self-defeating, for the very concealment at which it is directed almost always accompanies an innocent-looking load. The 434 bags of Lucky Cement, which the record describes throughout as a “cover load”, are therefore an answer, if they are an answer at all, to the second limb only. They say nothing about the first. The point is illustrated by Niaz Muhammad’s case (*supra*), where the specially designed tank was concealed under a load of sand and gravel, and the presence of that innocent load was not treated as taking the conveyance out of clause (b).

(b) The reasons given for finding no false cavity

29. The impugned order gives three reasons for holding that the false cavity was not proved. Each has been examined against the record.
30. The first is that “there is no allegation of false cavity in the seizure report”. The seizure report of 15.06.2023 describes the second item of the seized goods, at column 6, as “4500 Liters Diesel Oil recovered from extra tank”, and its narrative at column 11 records that “4500 liters diesel oil were also recovered from extra tank fabricated in the said truck”. The mushirnama of 05.06.2023 records that “an extra tank was also found specially fabricated in the front side of the body of said truck, containing diesel oil”. The notice under section 171 of 15.06.2023 recites the recovery of “diesel oil concealed in a fabricated extra tank”. The show cause notice of 12.07.2023 repeats that “an extra tank was also found secretly designed in the front side of the body of said truck, containing diesel oil”. The allegation was thus made at the earliest moment and repeated at every stage. This reason cannot survive the documents.
31. The second is that “the learned Additional Collector was also dissatisfied with the allegation ... regarding false cavity”. The Order-in-Original contains no such finding. It neither mentions clause (b) nor addresses the existence of the tank. The option was granted upon a wholly different consideration, namely that there was “nothing on their record about repeated use of seized vehicle previously, in transporting of smuggled goods”. Silence upon a question is not a finding upon it, and the adjudicating authority’s omission to consider clause (b) could not be converted into a finding that clause (b) was not attracted. It may be added that the condition which the adjudicating authority attached to the option, that the vehicle be “lawfully registered in the country”, is in truth one of the very ingredients upon which clause (b) operates to withhold the option.
32. The third is that the vehicle “is a plain body truck as per photos provided by the appellant department”, and that no cavity could be designed upon a plain-bodied truck. This meets a case which was never made. The Department did not allege a hidden compartment within the cargo body of the truck. What it alleged, from the mushirnama onwards, was an additional tank fabricated in the front portion of the body, behind the cabin, and its rejoinder before the adjudicating authority described that tank with some particularity as running “from bottom/base of the vehicle up to the maximum height of the vehicle just behind the show/seating side”. A finding that the cargo body was plain does not touch that allegation.
33. We have also noticed that paragraph 4 of the impugned order attributes to “the counsel for the Appellant” a willingness “to exercise the right of redemption” and an agreement to pay a redemption fine at 20% if the truck

were released “to him”, together with a statement not pressing the ground relating to the confiscated high speed diesel. The appellant before the learned Tribunal was the Department, and the concession so recorded can only, in its terms, have been that of the claimant. We mention the matter because it bears upon the weight which that passage can carry, and for no other reason.

(c) *The facts which remain, and their legal character*

34. When these three reasons are set aside, the primary facts stand untouched. The learned Tribunal nowhere disbelieved the mushirnama, the seizure report or the show cause notice; it did not find that there was no extra tank; and it did not find that the 4,500 litres of diesel had come from the vehicle’s own fuel system. Nor could it well have done so, for the existence of a separate receptacle in which diesel was carried is not in controversy at all: Respondent No.1’s own reply to the show cause notice pleads that “diesel was stored to refill the tank during the journey of the vehicle”. The dispute is not whether there was an additional tank, but what the law makes of it.
35. That is a question of legal characterisation, and it is for this Court. The expression “false cavities” is not defined in the Act or in the notification. It has, however, been construed. In Rehmat Afridi’s case¹⁰ a Division Bench of the Lahore High Court held that the expression “means that a cavity made for the time being or a cavity artificially made”, and that “the space behind a truck for loading goods does not fall within the definition”. We respectfully adopt that construction. It draws the line where the mischief lies: between the spaces with which a conveyance is built for carrying its load, and a space contrived and added so that goods may be carried otherwise than in the ordinary way.
36. Applied to the present facts the test is not difficult. What was found in this truck was not the cargo body, and not the fuel tank with which the vehicle left its manufacturer. It was a tank “specially fabricated” and “secretly designed” in the front of the body behind the cabin, additional to and separate from the vehicle’s fuel system, holding 4,500 litres of non-duty-paid high speed diesel, and lying beneath 21,700 kg of cement carried as a cover load. A receptacle of that description is a cavity artificially made within the meaning adopted above, and the goods within it were being carried in it. Clause (b) is attracted upon its first limb, and the second limb does not arise for decision.
37. The explanation offered, that the tank was an open reserve for fuel, does not meet the case. It is not an answer to the existence of a fabricated additional tank that the fabricator says he meant to keep fuel in it; and the quantity tells against the explanation, 4,500 litres being of a different order altogether from the fuel requirement of the journey in hand. More to the point, the diesel in the

¹⁰ Collector of Customs v. Rehmat Afridi [2010 PTD 2015].

- tank was held by the adjudicating authority to be smuggled and was confiscated outright, and that finding was never challenged by Respondent No.1. Whatever the tank may have been intended for, what it was in fact carrying is concluded.
38. It was urged that Respondent No.1 was an innocent carrier who received the vehicle already loaded. Clause (b) is not framed by reference to the state of mind of the owner; it speaks to the character of the conveyance and the manner in which the goods are found to be carried. But in any event the argument is not open upon these facts. Respondent No.1 was the occupant driver at the moment of interception, and the learned Tribunal itself found him to be “lawful owner of the Vehicle Truck Bearing Registration No. TKH-183”. Where the owner is himself at the wheel, it is not easy to accept that he was unaware of a tank of 4,500 litres built into the body of his own vehicle; and this Court has so held upon closely similar facts, where the owner of a bus carrying non-duty-paid diesel in secret inbuilt cavities was himself driving it.¹¹ A tank of that size cannot be fabricated into a vehicle without the knowledge of the person to whom the vehicle belongs.
39. We are conscious that clause (b) is not to be invoked upon assertion alone, and that where the record does not allege a secret or false cavity the Department cannot supply the want by argument. That is the principle upon which references by the Department have been declined in cases where the show cause notice spoke of a cavity but not of a secret or false one, or where the orders-in-original were silent upon the essential ingredient.¹² Those decisions turn upon the state of the record in each, and they do not assist Respondent No.1. Here the fabricated extra tank is described in four contemporaneous documents, was put to Respondent No.1 in the show cause notice, and was answered by him not with a denial of its existence but with an explanation of its purpose.
40. Question (ii) must accordingly be answered against the respondent. The finding that the high speed diesel was not recovered from a secret tank or false cavity proceeds upon a non-reading of the seizure report and the connected documents, and upon a view of the Order-in-Original which that order does not bear; and the conclusion that the vehicle does not fall within clause (b) rests upon reading the words “exclusively or wholly” into the first limb of that clause, where they have no place.

VI. THE PERSONAL PENALTY

¹¹ Collector of Customs, Model Collectorate of Customs (Preventive), Custom House, Karachi v. Mehraj [2025 PTD 626].

¹² Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali [2025 PTD 65]; Collector of Customs (Enforcement), Quetta v. Arz Muhammad [2026 PTD 900].

41. The impugned order also reduced the personal penalty from Rs.50,000 to Rs.10,000 “in the circumstances of the case”, although Respondent No.1 had not appealed against the Order-in-Original and had filed no cross-objection. No question has been proposed to us upon that part of the order, and we say nothing further about it.

VII. THE ANSWERS TO THE QUESTIONS

42. For the foregoing reasons the questions proposed are answered as follows:
- (i) In the negative; in favour of the applicant-Department and against Respondent No.1. Where a lawfully registered conveyance is found carrying smuggled goods in a false cavity, clause (b) of the preamble to S.R.O. 499(I)/2009 dated 13.06.2009 withdraws the option under section 181 of the Customs Act, 1969 altogether, and no adjudicating or appellate forum retains any discretion to release it against payment of a redemption fine. Entry 2(f) of the Table to that notification, under which the fine of 20% was imposed, applies in terms only to a conveyance “not covered under clause (b) of the preamble”.
 - (ii) In the negative; in favour of the applicant-Department and against Respondent No.1. An extra tank specially fabricated in the body of the truck behind the cabin, separate from the vehicle’s fuel system and holding 4,500 litres of non-duty-paid high speed diesel beneath a cover load of cement, is a false cavity within the meaning of clause (b). The contrary finding is not sustainable upon the record, and the presence of the cement carried as a cover load is material, if at all, only to the second limb of that clause.

VIII. ORDER

43. This Special Customs Reference Application is allowed. The order dated 18.10.2023 passed by the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-1461 of 2023 is set aside to the extent that it upholds and directs the release of Hino Truck bearing Registration No. TKH-183, Chassis No. FL177LA-12878, against payment of a redemption fine at 20%. Order-in-Original No. 135/2022-23 dated 09.08.2023 is modified to the extent that the option given therein to redeem that conveyance stands deleted, and the conveyance stands confiscated outright under section 157(2) read with clause (89) of section 156(1) of the Act. The order of the learned Tribunal shall stand modified accordingly. There shall be no order as to costs.
44. 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.

JUDGE

JUDGE

Karachi,
Dated: 22ND day of September 2026