

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. 526 of 2019

The Collector of Customs, Model Collectorate of Customs (Preventive),
Customs House Karachi Vs. Syed Yasir Ahmed & another

Date of hearing : 21.09.2026

Date of decision : 21.09.2026

Applicant : Through Pervaiz Ahmed Memon, Advocate.

Respondent: *Nemo*

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — Through this Special Customs Reference Application under Section 196 of the Customs Act, 1969, the applicant, Collector of Customs, Model Collectorate of Customs (Preventive), Custom House, Karachi, has impugned the judgment dated 15.04.2019 passed by the Customs Appellate Tribunal, Bench-III, Karachi, in Customs Appeal No.K-1555/2017, whereby the appeal filed by respondent No.1 was allowed and Order-in-Original No.215/2017-18 dated 22.09.2017, passed by the Collector of Customs (Adjudication-I), Karachi, ordering outright confiscation of a Toyota Surf Jeep bearing Registration No.BF-6761, Chassis No.VZN215-0002322, Engine No.5VZ-FE000978, Model 2002 (“the vehicle”), was set aside with a direction that the vehicle be released to respondent No.1.

2. Briefly, the facts are that on 14.06.2017 a team of the Anti-Smuggling Organization, MCC (Preventive), acting on intelligence, intercepted the vehicle near Tooba Masjid, DHA, Karachi. The occupant, respondent No.1, produced photocopies of an auction certificate under Rule 72, a delivery order, a tax payment receipt and bank payment vouchers said to relate to a public auction held at Port Muhammad Bin Qasim on 10.06.2014, together with a provincial registration coupon showing one Muhammad Asif Mughal as the registered owner. On verification, M/s PRAL confirmed that no import record existed against the vehicle; the Principal Appraiser (Auction), Port Muhammad Bin Qasim, vide letter dated 19.06.2017, confirmed that the auction documents produced had

- not been issued by that Collectorate and were fake, forged and fabricated, and that the vehicle had, in any event, not been auctioned against the delivery order relied upon; and a forensic report confirmed that the chassis number bore no sign of tampering. The vehicle was accordingly seized, and a show-cause notice was issued to three notices, namely, the registered owner Muhammad Asif Mughal, one Muhammad Umar (through whom respondent No.1 claimed to have purchased the vehicle), and respondent No.1 himself. None of the notices appeared despite three opportunities of hearing, and the Adjudicating Authority, by the Order-in-Original dated 22.09.2017, held the vehicle to be a smuggled vehicle and ordered its outright confiscation under clauses (8) and (89) of sub-section (1) of Section 156 of the Customs Act, 1969, read with SRO 499(I)/2009.
3. Respondent No.1 alone carried the matter in appeal before the Customs Appellate Tribunal. The learned Tribunal, by the impugned judgment, held, in substance, that no notice under Section 26 of the Customs Act, 1969 had been issued to respondent No.1 or to the Motor Registration Authority, which, relying on the principles laid down in PTCL 1993 CL 539, it treated as a material omission; that the charge under clause (8) of Section 156(1), being founded on knowing participation in dealing with smuggled goods, could not be sustained in the absence of any finding of *mens rea* against respondent No.1, who was found to be a subsequent purchaser for value; that the department had not independently verified the bank payment vouchers said to evidence the purchase, nor adequately investigated a discrepancy in the description of the vehicle across the documents on record; and that, in the further view expressed at paragraph 9 of the impugned judgment, a finding that the documents produced were “*found to be fake*” was not, without more, sufficient evidence under any standard of statutory obligation to sustain a case against respondent No.1. On this reasoning, the Tribunal set aside the Order-in-Original and directed release of the vehicle to respondent No.1.
 4. The applicant, aggrieved, filed the present reference. Although the memorandum proposed eight questions, this Court, by order dated 11.11.2025, admitted the reference confined to the following four questions:

- i. Whether under the facts and circumstances of the case, the Customs Appellate Tribunal has erred in law by not considering that the Applicant has not appeared before the Adjudicating Authority to submit legal documents or evidence to prove lawful possession of the seized vehicle.
 - ii. Whether issuance of notice in terms of section 26 of the Customs Act, 1969, in the offence committed in terms of section 2(s) of the Customs Act, 1969 is mandatory and non-compliance of which can vitiate the gravity of such offence?
 - iii. Whether the Customs Appellate Tribunal erred in law by considering that the respondent No.1 is under statutory obligation in terms of section 211 of the Customs Act, 1969, to keep import documents of the impugned vehicle upto 5 years in the case falls under section 2(s); and whether invocation of section 211 ibid nullifies the operation of section 156(1)(89)?
 - iv. Whether the registration book of vehicle issued on false documents can be considered as legal and lawful document and holds the equal status with regard to documents as mentioned in Section 79 of the Customs Act, 1969?
5. By the same order, operation of the impugned judgment was suspended and notice was issued to respondent No.1. Pending the reference, the vehicle came to be provisionally released to respondent No.1 in C.P. No.D-6535 of 2019, by order dated 13.02.2020, upon an undertaking recorded before the Nazir of this Court that no third-party interest would be created in respect of the vehicle till final decision of the present reference.
6. Mr. Pervaiz Ahmed Memon, learned counsel for the applicant, has been heard, and the record has been perused. None has entered appearance on behalf of respondent No.1.
7. Before proceeding to answer the questions framed above, we consider it necessary to record the standard this Court has applied in reviewing the reasoning of the learned Tribunal. An appellate or reference forum that takes a view different from the forum below may not do so by mere disagreement; it must identify the specific grounds on which the forum below proceeded, weigh those grounds on their own terms, and record,

- in a speaking order, sound reasons for accepting or rejecting them.¹ The Supreme Court has disapproved, in the plainest terms, of an appellate or revisional authority disposing of a matter in a perfunctory and slipshod manner, mechanically subscribing to the reasoning of the forum below, or brushing it aside, without engaging with the specific findings under challenge and the material on which they rest, and has, in such cases, set aside the order and remitted the matter for a fresh, speaking decision.² Exercise of appellate power divorced from stated and sustainable reasons is not an exercise of jurisdiction properly so called, whether the forum concerned is administrative or judicial in character.³
8. This Court's own precedent speaks to the same effect. It has been held that the orders and judgments of judicial and quasi-judicial officers must be well reasoned, that a *lis* pending before them has to be disposed of by way of a speaking order, and that no matter may be disposed of by simply jumping to a conclusion without first recording detailed reasons for reaching it, an order that does so being liable to be treated as a nullity.⁴ That discipline applies with even greater force where, as here, the forum under review is not one forming a *prima facie* or administrative view at the threshold of proceedings, but an appellate Tribunal purporting to overturn, on facts, findings of the Adjudicating Authority that were themselves arrived at after verification obtained directly from the very Collectorate whose documents were said to be relied upon.
9. It is against this standard that we have, in the discussion that follows, examined question by question the specific grounds on which the learned Tribunal proceeded, namely, its treatment of Section 26, the evidentiary status of the registration book, the interplay of Sections 211 and 156(1)(89), and the non-appearance of respondent No.1 before the

1 *Mollah Ejahar Ali v. Government of East Pakistan*, PLD 1970 SC 173, holding that a Court disposing of an order must do so by way of a speaking order manifesting that it has applied its mind.

2 *Naveed Rauf v. Board of Intermediate and Secondary Education, Lahore*, 2003 SCMR 1250, setting aside an appellate committee's order for having disposed of an appeal 'in perfunctory and slipshod manner' by mechanically subscribing to the reasoning of the forum below without independently examining the grounds raised, and directing a fresh decision 'by means of a speaking order'; following *University of Dacca v. Zakir Ahmad*, PLD 1965 SC 90.

3 See *Amanullah Khan v. Federal Government of Pakistan*, PLD 1990 SC 1092, on the requirement that discretionary and appellate power be exercised in a structured manner, supported by legally sustainable reasoning, and not left to unguided or unreasoned choice.

4 *Karachi Chamber of Commerce and Industry v. Muhammad Farooq Khan Ghor*i, 2013 PLC 282 [Sindh], read with section 24-A of the General Clauses Act, 1897, holding that an order recording no more than a bare, cursory conclusion is a nullity in the eyes of law; to like effect, 2025 PLD 351 [Sindh].

Adjudicating Authority, rather than setting aside the impugned judgment upon a general or summary assessment. We have, with respect, found the Tribunal's reasoning on each of these points to be unsustainable in law, for the reasons separately recorded below; but the same obligation, to engage with, and not merely to disagree with, the reasoning of the forum below, binds this Court when it now remits the matter, and it will equally bind the learned Tribunal in arriving at its fresh decision.

10. Question No.(ii) may be taken up first. Section 26 of the Customs Act, 1969 is an investigative provision: it empowers an authorized officer to call for information or documents from an importer or exporter for the specific purpose of determining the legality of an importation, and, as the very authority relied upon by the Tribunal, PTCL 1993 CL 539, makes clear, it exists to guard against roving or fishing inquiries, and it does not purport to be the exclusive or mandatory mode by which the genuineness of import documents may be tested. The department here did not proceed on a "*shooting in the dark*" basis of the kind that provision guards against; it obtained, independently, confirmation from PRAL that no import record existed against the vehicle, and a direct communication from the Principal Appraiser of the very Collectorate whose documents were relied upon, stating that those documents had not been issued by it and were fake and fabricated. Verification obtained from the issuing authority itself goes to the root of the matter in a manner a general information notice under Section 26 could not have improved upon. With respect, the Tribunal appears to have treated Section 26 as a mandatory precondition to any finding on the legality of import, when the provision, on its own terms and on the authority cited for it, is an enabling power the department may use in aid of an inquiry it is not otherwise disabled from conducting through other lawful means. Question No.(ii) is answered in the negative.
11. One further aspect of the record calls for specific mention, since it bears directly on the genuineness of the very auction documents on which respondent No.1's claim to lawful acquisition of the vehicle rests, and on the manner in which the learned Tribunal dealt with that material. The verification obtained from the Principal Appraiser (Auction), Port Muhammad Bin Qasim, vide letter No.S/Misc/Auc/02/2017-PQ dated 19.06.2017, appearing at Annex-I to the memorandum of reference and at page 55 of the paper book, records as follows:

“It is pointed out that letter bearing Lot No.Q-46/Aug/2013 dated 20.06.2014 is not issued by this Collectorate and the same is found fake/forged and fabricated. The same shall not be entertained.”

12. This letter formed part of the material placed before the Adjudicating Authority and was again pressed before the learned Tribunal on behalf of the applicant. At paragraph 9 of the impugned judgment, invoking Section 178 of the Customs Act, 1969, the learned Tribunal discarded it in the following terms:

“In the absence of such evidence if any case had been made out against the appellant/owner merely on the findings that the provided documents are ‘found to be fake’ is not the sufficient evidence under any standard of statutory obligations.”

13. With respect, this reasoning does not withstand scrutiny. The letter of 19.06.2017 was not a bare or unsubstantiated assertion of impropriety by the seizing agency; it was direct confirmation, obtained from the very Collectorate under whose purported authority the auction documents bearing Lot No.Q-46/Aug/2013 were said to have been issued, that it had issued no such document and that the document was fake, forged and fabricated. A finding of that nature, made by the issuing authority in respect of its own record, goes to the root of the question whether the vehicle was lawfully imported, and is not of the same character as the general and unproved allegation of knowledge contemplated by Section 178 of the Customs Act, 1969, on which the Tribunal placed reliance. To set aside a letter of this description on the ground that a finding of the documents being *“found to be fake”* does not, without more, meet the standard of proof required by Section 178, without addressing why verification obtained directly from the issuing Collectorate was itself insufficient, is to overlook the department's case on this point rather than to answer it. This is a further, and material, respect in which the impugned judgment falls short of the standard of a reasoned, speaking order discussed above, and it reinforces the answer already recorded to Question No.(ii).
14. Question No.(iv) may conveniently follow. A provincial registration coupon or registration book, issued under the Motor Vehicles Ordinance, 1965 (West Pakistan Ordinance XIX of 1965), serves an entirely different statutory purpose from a goods declaration or import

- document under Section 79 of the Customs Act, 1969. The former regulates the plying of a vehicle on the road and the levy of motor vehicle tax; it is not, and was never intended to be, proof of lawful importation or of payment of customs duty. That distinction assumes particular importance on the facts of this case, where the very auction documents on the strength of which the vehicle came to be registered were, on verification with the issuing Collectorate, found to be fake and fabricated. A registration book procured on the foundation of forged customs documents cannot be elevated to the evidentiary status of the documents mentioned in Section 79 merely because a provincial authority accepted it at face value; once the underlying documents are shown to be forged, the registration that rests upon them is equally undermined. Question No.(iv) is answered in the negative.
15. Question No.(iii) concerns the interplay between Section 211 and clause (89) of Section 156(1) of the Customs Act, 1969. Section 211 casts a record-keeping obligation, for a period of five years, upon an importer or exporter; it says nothing about the consequence, for confiscation proceedings, of the absence of contemporaneous import documents in the hands of a person who is neither the importer nor the exporter, nor does it excuse the production of proof of lawful origin merely because five years have elapsed since a claimed transaction. Clause (89) of Section 156(1), for its part, attaches to the status of the goods, that is, whether the vehicle answers the description of a “smuggled vehicle” within the meaning of Section 2(s), and does not stand or fall with compliance or non-compliance with the record-retention obligation placed on importers by Section 211. The two provisions operate on different planes, and the non-availability of years-old records, whatever bearing it may have on a separate consequence under Section 211 itself, does not answer the distinct question whether the vehicle in question was in fact smuggled. To the extent the impugned judgment treated Section 211 as bearing upon, or nullifying, the operation of clause (89), that approach cannot be sustained. Question No.(iii) is accordingly answered by holding that the Tribunal did err in the manner noted, and that invocation of Section 211 does not nullify the operation of clause (89) of Section 156(1).
16. Question No.(i), as framed in the order dated 11.11.2025, refers to the “Applicant” not having appeared before the Adjudicating Authority. Having regard to the record, it being respondent No.1, and not the

- applicant/Collector, who was called upon to establish lawful possession before that forum, the question is evidently intended, and is treated by us, as directed to the non-appearance of respondent No.1. On that footing, the record shows that respondent No.1, despite notice and three opportunities of hearing before the Adjudicating Authority, never appeared to place before that authority the very documents and explanation he subsequently placed before the learned Tribunal for the first time in appeal, including his account of purchase through Muhammad Umar and his claim to be a *bona fide* purchaser for value. It is that omission, and not merely the sufficiency of the material eventually placed on the appellate record, that the Tribunal was required to weigh. An appellate forum is certainly not disabled from taking its own view of documents that were before the original authority; but where a party has, without explanation, kept away from the forum of first instance despite due notice, and the appellate authority proceeds to accept an account of the transaction, including bank payment vouchers never independently confirmed with the concerned banks, and a discrepancy in the description of the vehicle across the very documents relied upon, without any exercise of verification of its own, a degree of caution is called for before displacing findings that were themselves based on a verification report obtained from the issuing Collectorate. The impugned judgment does not reflect that such caution was applied. Question No.(i) is answered in the affirmative.
17. It does not, however, follow from the foregoing that this Court, sitting in reference jurisdiction under Section 196 of the Customs Act, 1969, is the appropriate forum to itself weigh the genuineness of the payment vouchers, resolve the discrepancy in the description of the vehicle, or otherwise record findings of fact on whether the vehicle answers the description of a smuggled vehicle. Those remain matters for the Customs Appellate Tribunal, exercising its ordinary appellate jurisdiction, upon a correct appreciation of the law as answered above. The ends of justice would accordingly be met by setting aside the impugned judgment and remitting Customs Appeal No.K-1555/2017 to the Tribunal for decision afresh, in light of the answers recorded above, after affording an opportunity of hearing to the parties, including an opportunity to respondent No.1 to place on record such material, in particular, verification of the payment vouchers from the concerned

banks, as he may be advised, and to the department to respond thereto.

18. The undertaking recorded before the Nazir of this Court, against which the vehicle was released to respondent No.1 on 18.02.2020, shall continue to hold the field, and no third-party interest shall be created in respect of the vehicle, until the Customs Appellate Tribunal decides the appeal afresh in terms of this judgment.
19. For the reasons recorded above, the questions of law are answered as follows: Question No.(i) is answered in the affirmative; Question No.(ii) is answered in the negative; Question No.(iii) is answered by holding that the Tribunal did err in the manner noted, and that invocation of Section 211 does not nullify the operation of clause (89) of Section 156(1); and Question No.(iv) is answered in the negative. The impugned judgment dated 15.04.2019 passed in Customs Appeal No.K-1555/2017 is set aside, and the said appeal is remitted to the Customs Appellate Tribunal, Karachi, for decision afresh in light of the foregoing, within a period of four months from receipt of this judgment. No order as to costs.

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

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Karachi,

Dated: 21ST day of September 2026

M. Khan