

IN THE HIGH COURT OF SINDH AT KARACHI.

Present:

Justice Mohammad Abdur Rahman
Justice Dr. Shah Nawaz Memon.

Special Customs Reference Application No. 661 of 2023

The Collector of Customs Vs Syed Shahid Ali & another

Date of hearing 21.09.2026.

Date of judgment 29.09.2026.

Applicant Through Mr. Imran Khan, Advocate.

Respondent Through Sajjad Ahmed, Advocate.

JUDGMENT

Dr. Shah Nawaz Memon-J.:- This Special Customs Reference Application under section 196 of the Customs Act, 1969 (hereinafter referred to as the “Act”) has been maintained by the Collector of Customs, Collectorate of Customs (Enforcement), Karachi against the judgment dated 29.09.2022 of the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-594 of 2022, whereby Order-in-Original No. 626/2021-22 dated 23.02.2022, ordering the outright confiscation of a Toyota Coaster, was set aside and the vehicle was directed to be released to respondent No.1.

I. FACTS OF THE CASE

2. On 11.06.2021, upon information, the staff of the Anti-Smuggling Organization of the applicant Collectorate intercepted a used Toyota Coaster bearing Registration No. JF-8072, Chassis No. HDB50-0100372, Engine No. 1-HDFT4163, model 1996 (the “vehicle”), parked under the Liaquatabad Flyover, Karachi. Respondent No.1, who was found sitting in it, produced copies of the certificate of registration issued by the Motor Registration Authority, Karachi, a contract carriage permit, receipts of motor vehicle tax paid to the Excise and Taxation Department, Government of Sindh, and a no objection certificate of the Chief Admin and

Security Officer, Army Public School and College, Saddar, Karachi, recording that the vehicle, the property of that institution, had been sold by auction on 30.01.2016. No document of import was produced, and the vehicle was detained.

3. The Forensic Division, Sindh Police, by its report dated 23.06.2021, found that no other number had been deciphered under the present chassis serial. M/s PRAL replied by email that no data was found against the chassis number. The letters addressed to the Motor Registration Authority and to the Army Public School, requesting verification of the sale and the furnishing of import documents, drew no reply. On 11.11.2021 the vehicle was seized under section 168 of the Act for an offence under section 2(s), and a show cause notice was issued to respondent No.1. In his reply he placed the transfer documents and tax receipts on record and invited the department to re-verify them. By the Order-in-Original the vehicle was confiscated outright under clauses (8)(i) and (89)(i) of section 156(1) of the Act.
4. Before the learned Tribunal respondent No.1 relied upon the chain of title from the Army Public School to one Muhammad Shahid son of Muhammad Sagheer, whose purchase the Motor Registration Authority had twice verified from the school in 2016 before registering the vehicle, and thereafter to one Anwar Ali Khan, from whom respondent No.1 claims it. No parawise comments were filed by the department. The learned Tribunal found that respondent No.1 had acquired the vehicle from the open market upon documents issued by the Excise and Taxation Department, and that the departmental representative had himself obtained verification of those documents from that Department by letter No. ETO/MRA/KHI/1265 dated 22.08.2022, which he placed on record and which, in the Tribunal's words, "proves the case of the Appellant conclusively". Holding that respondent No.1 had satisfactorily discharged the onus of bona fide ownership lying

upon him under section 187 of the Act, the learned Tribunal set aside the confiscation and directed release of the vehicle.

II. THE QUESTIONS PROPOSED

5. The applicant has proposed the following questions of law, which are reproduced verbatim:

I. Whether on the facts and the circumstances of the case, the learned Member Judicial-III of the Customs Appellate Tribunal has justified while deciding the controversy by the impugned judgment dated 29.09.2022 that the subject vehicle was purchased by the respondent after taking due care and complying with the requirement of law and discharged the burden of proof under sections 196(2) read with 187 of the Customs Act?

II. Whether the learned Member Judicial-III of the Customs Appellate Tribunal has erred in law and decided the instant case by relying on photo-state copies of documents issued by the office of Excise Taxation & Narcotics officer, Karachi pertaining to sale of impugned vehicle whereas no import document(s) as mentioned vide section 2(kka) read with section 79 of the Customs Act, 1969 was ever provided by the respondent which may show that the impugned vehicle was legally imported into the country and customs duty and other taxes had been paid in accordance with law?

III. Whether the learned Customs Appellate Tribunal, Karachi has justified in holding that the impugned vehicle was legally imported by Army Public School, Saddar, Karachi and subsequently disposed of through public auction in accordance with the provisions of law?"

III. SUBMISSIONS

6. Mr. Imran Khan, learned counsel for the applicant, submitted that the learned Tribunal erred in law and on facts in releasing a vehicle which was smuggled; that inquiry was made from M/s PRAL, which reported that no entry or record of the vehicle was available; and that, there being no record of payment of duties and taxes, the vehicle is to be presumed smuggled, the burden of proving otherwise lying upon

respondent No.1. Upon a query from the Bench as to the genuineness of the registration book and of the registration of the vehicle and its subsequent transfer, learned counsel stated candidly that the department does not dispute those documents. Asked whether the department had itself verified the documents placed by respondent No.1, he reiterated that the department's concern is only that it was the obligation of respondent No.1 to produce import documents showing that duties and taxes had been paid, and that he had failed to do so.

7. Mr. Sajjad Ahmed, learned counsel for respondent No.1, submitted that the vehicle is duly registered and is an old vehicle of 1996 model; that the PRAL system was developed at a much later date, so that the absence of an entry of such a vehicle in it signifies nothing; and, taking us through the registration book and the receipts of tax paid to the Excise and Taxation Department, that all these documents were produced before the adjudicating authority as well as before the learned Tribunal, and that it is upon these documents that the learned Tribunal decided the appeal in favour of respondent No.1.
8. In rebuttal, learned counsel for the applicant submitted that the department wrote letters to the Army Public School for verification of the auction documents but received no response, and that the vehicle is therefore to be presumed smuggled.
9. We have heard learned counsel for the parties and perused the record with their assistance.

IV. THE SCOPE OF THE REFERENCE JURISDICTION

10. The jurisdiction under section 196 of the Act is appellate in character, but it extends only to questions of law, and mixed questions of law and fact, arising out of the order of the Tribunal; the facts as stated in the Tribunal's order are to be

taken as recorded.¹ The learned Tribunal is the last forum for the determination of facts, and it does not lie within the jurisdictional domain of this Court to determine the facts for itself or to substitute its own appreciation of the evidence for that of the Tribunal.² A finding of fact recorded by the Tribunal may be examined in this jurisdiction only where it is shown, from the record itself, that it rests upon no evidence, or proceeds upon a misreading or non-reading of material evidence, or is perverse, or is founded upon surmise and conjecture.³ Nor can a question of fact be converted into one of law by asking whether, as a matter of law, the Tribunal came to a correct conclusion upon it.⁴

V. THE FINDING OF THE LEARNED TRIBUNAL

11. The first two questions, though framed as questions of law, are in substance directed against the conclusion of the learned Tribunal that respondent No.1 had discharged the onus lying upon him under section 187 of the Act. Whether, in a given case, the person in possession of a vehicle has discharged that onus depends upon the documents he produces, their genuineness, the verification to which they have been subjected, and the material, if any, brought by the department in answer. That is an inquiry into facts, and each case must be decided upon its own facts.⁵ The learned Tribunal undertook that inquiry, and the question for us is only whether the finding it reached can be said to rest upon no evidence, or to suffer from misreading or non-reading of material evidence, or to be perverse.

¹*Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax* [2017 SCMR 1006], reaffirmed in *Haseeb Waqas Sugar Mill Ltd. v. Government of Pakistan* [2026 SCMR 833].

²*Middle East Construction Company v. Collector of Customs* [2023 SCMR 838]; *Collector of Customs v. Zarshad* [2006 SCMR 973]; *Packages Ltd. v. Customs Appellate Tribunal* [2024 PTD 1532].

³*Collector of Sales Tax v. Qadbros Engineering (Pvt.) Ltd.* [2023 SCMR 939]; *T & N Pakistan (Pvt.) Ltd. v. Collector Customs* [2022 SCMR 1119]; *Collector of Customs v. Abdul Razzaq* [2024 PTD 1205]; *Director I&I (Customs) v. Muhammad Sabir* [2026 PTD 770].

⁴*Haji Ibrahim Ishaq Johri v. Commissioner of Income Tax* [1993 SCMR 287].

⁵On the incidence of the burden under section 187 and clause (89) of section 156(1), see *Shahzad v. Collector of Customs* [2025 SCMR 1912]; *Intelligence Officer, I&I, FBR v. Abdul Karim* [2025 SCMR 969], where, at paragraph 22, the Supreme Court treated the matter as a question of fact not to be determined afresh; and *Director I&I (Customs) v. Zaman Khan* [2026 SCMR 816].

12. No such case has been made out. The finding rests upon the certificate of registration, the transfer of ownership recorded by the registering authority, the receipts of motor vehicle tax, the no objection certificate of the Army Public School and the contract carriage permit, all of which were produced at the time of interception and again before the adjudicating authority. It rests, further, upon the verification of the Excise and Taxation Department dated 22.08.2022, which was obtained and placed before the learned Tribunal by the department itself. The report of the Forensic Division disclosed no tampering with the chassis.⁶ Before us, learned counsel for the applicant did not dispute the genuineness of the registration or of the transfer, and was unable to point to any material on the record suggesting that the documents were forged, that they related to some other vehicle, or that they had been obtained unlawfully.
13. What the applicant places against that finding is the report of M/s PRAL that no import data was found, and the absence of any reply from the Army Public School to the letters addressed to it. Both were before the adjudicating authority and before the learned Tribunal, and the weight to be given to them, as against the documentary material produced by respondent No.1 and the verification obtained by the department itself, was a matter for the forum of fact. A finding does not become perverse because another view of the same material was possible, and it is not for this Court, in reference jurisdiction, to re-weigh the evidence and prefer the view urged by the applicant.⁷ The applicant has not shown that any material piece of evidence was overlooked or misread by the learned Tribunal; its grievance is with the conclusion drawn from the evidence that was read.

⁶The case is therefore not one of a tampered chassis, as to which see *Ch. Maqbool Ahmed v. Customs, Excise and Sales Tax Appellate Tribunal* [2009 SCMR 226]; *Noor Muhammad v. Customs Appellate Tribunal* [2020 SCMR 246]; *Director I&I (Customs) v. Aurangzaib* [2021 PTD 1026].

⁷*Middle East Construction Company* (supra); *Qadbros Engineering* (supra).

14. Question II proceeds on the footing that the learned Tribunal relied upon photocopies. The complaint is one against the appreciation of evidence, and it is besides not borne out: the Tribunal relied principally upon the verification obtained by the department itself from the Excise and Taxation Department, and the genuineness of the documents was not disputed before us. The further premise of that question, that only documents of import within section 2(kka) read with section 79 could be looked at, does not arise upon the finding actually recorded, which was a finding of bona fide ownership reached upon the whole of the material produced.
15. Question III proceeds upon a premise which the impugned judgment does not bear. The learned Tribunal did not hold that the vehicle had been lawfully imported by the Army Public School; it held that respondent No.1 had discharged the onus lying upon him under section 187 as a subsequent purchaser. The question accordingly does not arise from the order of the Tribunal.
16. The memorandum of reference also questions the standing of respondent No.1, on the footing that the vehicle was not registered in his name. No question of law has been proposed on the point and it was not pressed before us. It may nonetheless be observed that the show cause notice was addressed to respondent No.1 alone, as the occupant and claimant, and that it was he whom the adjudicating authority heard and against whom it passed its order, the registered owner, whose particulars were known to the department, not having been made a noticee.⁸
17. We should not be understood to lay down that the production of a registration book will, in every case, discharge the burden cast by section 187 of the Act, or that the department is disabled from establishing that a registered vehicle is

⁸Compare *Collector Customs, Peshawar v. Muhammad Ismail* [2023 SCMR 1319], where confiscation of a vehicle was held unsustainable because no show cause notice had gone to its owner.

smuggled. Our decision rests on the narrower ground that the learned Tribunal, upon the material before it, recorded a finding of fact that the onus had been discharged, and that no ground has been made out which would permit this Court to disturb that finding in its reference jurisdiction.

VI. THE ANSWERS TO THE QUESTIONS

18. For the foregoing reasons, the questions are answered as follows, in each case against the applicant and in favour of respondent No.1:

Question I is answered in the affirmative. The conclusion that respondent No.1 had discharged the onus lying upon him under section 187 of the Act is a finding of fact, founded upon evidence on the record, which is not shown to be perverse or to suffer from misreading or non-reading of material evidence.

Question II is answered in the negative. It is directed against the appreciation of evidence, and in any event the learned Tribunal relied principally upon the verification obtained by the department itself from the Excise and Taxation Department.

Question III does not arise from the order of the learned Tribunal, which made no finding as to the lawfulness of the original import.

VII. ORDER

19. This Special Customs Reference Application is accordingly dismissed, along with the pending application(s), if any. There shall be no order as to costs.
20. 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, Karachi, as required by section 196(10) of the Customs Act, 1969.

J U D G E

J U D G E

Karachi, dated: 29th day of September 2026