

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. 738 of 2024

The Collector of Customs Vs. Fazal-ul-Rehman & another

Date of hearing: 22.09.2026

Date of judgment: 25.09.2026

Applicant: Through Mr. Shahid Ali Qureshi, Advocate.

Respondent No.1: Through Mr. Khalid Nawaz Khan Marwat,
Advocate.

Respondent No.2: *Nemo.*

J U D G 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 06.06.2024 of the Customs Appellate Tribunal, Bench-III, Karachi passed in Customs Appeal No. K-1109 of 2023, whereby the appeal of Respondent No.1 was allowed, Order-in-Original No. 985/2022-23 dated 24.03.2023 passed by the Additional Collector of Customs (Adjudication-I), Karachi was set aside, and the seized fabric and the seized truck were directed to be released unconditionally.

I. FACTS OF THE CASE

2. On 08.12.2022, upon information that a containerised Mazda truck loaded with smuggled cloth was parked on Tariq Road, Karachi for onward delivery, a team of the Anti-Smuggling Organisation of the Collectorate of Customs (Enforcement), Karachi reached the spot at about 06:00 p.m. and found the truck parked there with Respondent No.1 sitting inside it. Asked about the load, he said that it was cloth. Asked for documents of import or lawful possession, he replied, as recorded in the seizure report, “that he is the only driver of the truck, and the goods did not belong to him, I just drove the truck and brought the goods here as per the instructions of the owner”. No one else was present to claim the

- goods. The truck and the goods were taken into possession under a *mushirnama* and escorted to the State Warehouse-III, Keamari, Karachi.
3. Detailed examination at the warehouse disclosed 47 rolls of men's suiting fabric weighing about 1,410 kg, 92 rolls weighing about 1,380 kg, 301 rolls weighing about 1,505 kg and 25 kg of assorted loose fabric. The fabric was valued at Rs.7,545,144/- and the duty and taxes involved at Rs.3,668,849/-; the truck was tentatively valued at Rs.2,000,000/-.¹ The goods were detained pending production of documents. Meanwhile one Faisal Ali Muhammad came forward, declared himself to be the owner of the goods and undertook to produce the import documents within a few days. He did not return and no document was received. The goods and the truck were thereupon seized under section 168 of the Act for violation of section 2(s), read with section 187, punishable under clause (89) of section 156(1) of the Act read with section 3(1) of the Imports and Exports (Control) Act, 1950. The notice under section 171 of the Act dated 15.12.2022 was addressed to Faisal Ali Muhammad as "The Owner of seized goods" and to Respondent No.1 as "The Occupant/Driver".
 4. A show cause notice dated 25.01.2023 was issued to both. They appeared before the adjudicating authority on 20.02.2023 and filed separate replies. Faisal Ali Muhammad, described in the Order-in-Original as "Owner of Cloth", asserted that 70% of the cloth had been purchased from the local market of Karachi and 30% was imported, and filed photocopies of handwritten cash memos together with a copy of Goods Declaration No. KAPE-HC-170562 dated 15.03.2022. Respondent No.1, described as "Claimant/owner of the vehicle", claimed the truck alone. His reply stated that he was its registered owner, that he plied it for carrying goods within the country on rent, and that he had no "link with confiscated goods". In its parawise comments the seizing agency pointed out that the cash memos established no trail between the

¹ The registration number of the truck appears in the record variously as JX-0954 and JX-0594. Nothing turns upon the variance, the identity of the vehicle not being in dispute.

- seller and the purchaser, that the Goods Declaration was not filed in the name of the claimant, and that no document under rule 126 of the Customs Rules, 2001 or any sales tax invoice had been produced.
5. By the Order-in-Original the adjudicating authority held that the claimants had failed to discharge the burden cast upon them by sections 156(2) and 187 of the Act, confiscated the fabric outright under clauses (8)(i) and (89)(i) of section 156(1), and, the truck not having been found involved in smuggling earlier, gave its owner the option under section 181 of the Act, read with S.R.O. 499(I)/2009 dated 13.06.2009, to redeem it on payment of a fine equal to 20% of its value, besides imposing a penalty of Rs.25,000/-.
 6. Faisal Ali Muhammad did not appeal. Respondent No.1 alone preferred Customs Appeal No. K-1109 of 2023, in which, for the first time, he described himself as “Claimant of Cloths & Vehicle” and prayed for the release of both. By the impugned judgment the learned Tribunal recorded that the appellant had claimed to have purchased the seized goods from various importers and from the local market, which was evident from copies of Goods Declarations and cash memos available on the case file; relied upon the observation of the Hon’ble Supreme Court in *Sikander Karim v. Federation of Pakistan*² that a presumption of lawful import arises where an article whose import is not banned is freely available in the market; held that the appellant had discharged the burden under section 156(2) read with section 187 of the Act; and directed the release of the truck and the goods unconditionally to their lawful owner(s).

II. THE QUESTIONS AND THE SUBMISSIONS

7. The memorandum of reference proposes the following questions:
 1. “Whether, on the facts and circumstances of the case, the learned Customs Appellate Tribunal misinterpreted the evidence provided by the respondent and erroneously

² *Sikander Karim v. Federation of Pakistan* [1995 SCMR 387].

concluded that the burden of proof was discharged under section 156(2) read with section 187 of the Customs Act, 1969, thereby releasing the smuggled cloth in violation of the law?”

2. “Whether the learned Customs Appellate Tribunal in Karachi erred in law by not considering the fact that the respondents failed to produce manual or electronic accounts of import as required under Rule 126 of the Customs Rules, 2001, before the learned Collector of Customs Adjudication-1?”
 3. “Whether the learned Appellate Tribunal was justified in releasing vehicle bearing registration number JX-0954 which was allegedly used in transporting of smuggled goods?”
8. On 22.01.2026 this Court proposed the following question for determination:

“Whether the Customs Tribunal has committed a stark misappraisal of the facts/evidence by ordering the release of the confiscated goods (fabrics) to an appellant who before the Collector (Adjudication-I) identified and presented himself only as driver of the seized vehicle carrying such goods and categorically denied the ownership of the goods which was rather claimed by another applicant in the adjudication proceedings who neither produced any evidence in the adjudication proceedings nor subsequently filed any appeal against confiscation of the goods before the Customs Tribunal?”

9. Mr. Shahid Ali Qureshi, learned counsel for the applicant-Department, submitted that Respondent No.1 had disowned the goods at the time of seizure and again before the adjudicating authority, where the goods were claimed by another person who produced no document of lawful import and accepted the Order-in-Original; that the learned Tribunal had nonetheless released the goods to Respondent No.1 upon a claim of purchase which he had never made before the adjudicating authority; and that the burden under sections 156(2) and 187 of the Act had not been discharged by anyone.
10. As to the vehicle, we specifically and repeatedly asked the learned counsel whether the Department was pursuing this reference in

respect of the seized goods alone, and thereby not pursuing its case against the vehicle. He submitted that before the learned Tribunal Respondent No.1 had claimed both the seized goods and the vehicle, and that his instructions were to pursue the case to the extent of the seized goods only. Upon the submissions of the learned counsel for Respondent No.1 noticed below, the learned counsel for the applicant reiterated that the Department's case is not against the vehicle.

11. Mr. Khalid Nawaz Khan Marwat, learned counsel for Respondent No.1, submitted that his client is the owner of the vehicle alone and has nothing to do with the seized goods; that Respondent No.1 is not an educated person, and the claim to both the goods and the vehicle made in the memorandum of appeal before the learned Tribunal was not made under his instructions; and that Respondent No.1 has requested the Customs authorities, and has given in writing, that he is not claiming the seized goods and seeks the release of the vehicle only, but that the vehicle has not yet been released.
12. We have considered the submissions of the learned counsel and examined the record.

III. THE SCOPE OF THE REFERENCE JURISDICTION

13. The reference was presented on 04.09.2024, after the substitution of section 196 of the Act by the Finance Act, 2024, and it lies upon "any question of law or a mixed question of law and fact arising out of" the order of the Tribunal. The remedy is appellate in nature, but the facts as stated in the Tribunal's order have to be taken as recorded.³ The Tribunal remains the last forum for the determination of facts, and it is no part of the jurisdictional domain of this Court to determine the facts for itself.⁴ Its findings may be examined in this jurisdiction only where they rest upon no evidence, proceed upon a misreading or non-reading of material

³ *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax* [2017 SCMR 1006 = 2017 PTD 1303], at paragraphs 48 to 50, lately reaffirmed in *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan* [2026 SCMR 833].

⁴ *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838], a case arising under this very Act.

on the record, or are such as no forum properly instructed in law could have reached.⁵ The same principle has been applied to section 196 of the Act by the Hon'ble Supreme Court and by this Court.⁶ The boundary cuts both ways. Just as it forbids this Court to re-weigh evidence in order to reach a conclusion of its own, it requires this Court to intervene where the conclusion of the Tribunal is shown, from the record itself, to rest upon a premise which the record does not contain. The question proposed by this Court lies within that window. It does not invite us to weigh the evidence afresh; it asks whether the conclusion of the learned Tribunal rests upon the record as it stood before it.

IV. THE VEHICLE

14. In view of the unequivocal statement made at the Bar on behalf of the applicant-Department, recorded in paragraph 10 above, question (3) was not pressed and we do not answer it. The judgment of the learned Tribunal, to the extent that it directs the release of the truck, is not under challenge before us and remains undisturbed. We express no view upon whether the release of the truck, whether against the redemption fine allowed by the adjudicating authority under serial 2(f) of the Table appended to S.R.O. 499(I)/2009 or unconditionally as directed by the learned Tribunal, was in accordance with that notification, the question not having been pressed. We have noticed the submission of the learned counsel for Respondent No.1 that the vehicle has not yet been released. That part of the order of the learned Tribunal having been left unchallenged, it is for the Department to give effect to it in accordance with law.

V. THE CLAIM TO THE GOODS

15. The question proposed by this Court and question (1) may be taken together, for both turn upon the same feature of the record:

⁵ *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd., Lahore* [2023 SCMR 939], collecting *Pakistan Match Industries (Pvt.) Ltd. v. Assistant Collector, Sales Tax and Central Excise, Mardan* [2019 SCMR 906] and *Commissioner Inland Revenue, Lahore v. Messrs Sargodha Spinning Mills (Pvt.) Ltd., Faisalabad* [2022 SCMR 1082].

⁶ *T & N Pakistan (Pvt.) Limited v. The Collector Customs* [2022 SCMR 1119]; *The Collector of Customs, Enforcement, Customs House, Karachi v. Abdul Razzaq* [2024 PTD 1205]; *Director, Directorate Intelligence and Investigation (Customs) v. Muhammad Sabir* [2026 PTD 770].

- the person to whom the learned Tribunal released the goods, and the footing upon which it did so.
16. An appeal under section 194-A of the Act lies at the instance of a person aggrieved by the order appealed against. A person is aggrieved by an order of confiscation when it deprives him of something to which he lays claim; the right to contest the confiscation of goods, and to be heard upon their lawful import or possession, belongs to the person who claims them. Respondent No.1 did not claim the goods. He disclaimed them at the time of seizure, when he told the seizing officer that he was only the driver and that the goods belonged to another; the notice under section 171 of the Act and the show cause notice were addressed to him in that capacity; and in his written reply before the adjudicating authority he claimed the truck alone and denied any link with the goods. The person who did claim the goods before the adjudicating authority was Faisal Ali Muhammad. He filed the cash memos and the copy of the Goods Declaration upon which reliance was later placed, he was heard upon them, and he did not appeal against the Order-in-Original. The protection which section 180 of the Act affords, that no order of confiscation is to be made until the owner of the goods has been informed of the grounds and heard, was thus extended to the very person who asserted ownership; the principle that no person is to be condemned unheard in a matter in which he has an interest⁷ was satisfied in respect of the goods by hearing the person who claimed them.⁸ As regards the goods, the Order-in-Original therefore attained finality at the instance of the only person who had claimed them.
17. The memorandum of appeal before the learned Tribunal described Respondent No.1 as “Claimant of Cloths & Vehicle”, but it did not say how, when or from whom he had become the owner of goods which he had twice disowned. The forum at which a case of lawful acquisition falls to be made is the forum which finds the facts, and

⁷ *Mst. Zahida Sattar v. Federation of Pakistan* [PLD 2002 SC 408].

⁸ Compare *Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail* [2023 SCMR 1319], where the confiscation of a conveyance could not stand because no show cause notice had gone to its owner, the notice having been issued to the driver and to the owner of the goods alone. The converse is the position here: the notice went to the owner of the goods as owner, and to Respondent No.1 as driver.

a case not made there, and developed for the first time in appeal, is of little assistance; the Hon'ble Supreme Court so held where the owner of a vehicle had had ample opportunity before the adjudicating officer and the appellate fora and had failed to meet the case against him at any of them.⁹ The learned Tribunal proceeded upon the footing that the appellant had purchased the goods from importers and from the local market, and that this was evident from the Goods Declarations and cash memos on the file. That footing is not borne out by the record. The cash memos and the Goods Declaration were produced by Faisal Ali Muhammad in support of his own claim; they were not the appellant's documents, and the appellant had, in terms, denied any connection with the goods to which they were said to relate. The difference is not one of emphasis. It goes to the root of the conclusion, for the learned Tribunal held the burden under sections 156(2) and 187 of the Act to have been discharged by the appellant upon documents which the appellant had never produced in respect of goods which he had never claimed. With respect, a finding so reached proceeds upon a reading of the record which the record does not bear, and it falls within the class of findings which this Court is bound to examine in its reference jurisdiction.

18. Any doubt upon the matter is removed by the stand taken before us on behalf of Respondent No.1 himself. His learned counsel stated in terms that Respondent No.1 has nothing to do with the seized goods, that the claim to them in the memorandum of appeal was not made under his instructions, and that he has so stated in writing to the Customs authorities. We have taken that statement as made at the Bar, the writing referred to not having been before the fora below and forming no part of the record upon which the reference falls to be decided.¹⁰ Even so taken, it does no more than confirm what the record already shows. The position is therefore that the goods were released to a person who does not

⁹ *Noor Muhammad v. Customs Appellate Tribunal, Peshawar Bench* [2020 SCMR 246].

¹⁰ *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838], where it was held that it does not lie within the jurisdictional domain of the High Court to determine the facts for itself.

claim them, upon the strength of documents belonging to a person who did not appeal.

VI. THE BURDEN OF PROOF

19. Clause (89) of section 156(1) of the Act fastens its consequence upon a person concerned in carrying, removing, keeping, concealing or otherwise dealing with smuggled goods “without lawful excuse, the proof of which shall be on such person”; section 156(2) places upon the person from whose possession goods seized in the reasonable belief that they are smuggled were taken the burden of showing that they are not smuggled; and section 187 requires a person who asserts that he acted or possessed anything with lawful authority, or under a permit, licence or other document, to prove it. The Hon’ble Supreme Court has held that “lawful excuse” is an expression of wider import and of lesser burden than “lawful authority”,¹¹ but even upon the lesser standard an excuse must be put forward and must be shown to be lawful. The burden so cast is a burden upon the person who asserts the lawful character of the goods, and it is to be discharged before the forum which finds the facts.¹² It is not a burden which can be discharged by one who disclaims them, and the observation in *Sikander Karim*, which raises a presumption in favour of a person found in possession of an article freely available in the market, can avail only a person who claims to have come by the article lawfully. Respondent No.1 made no such claim before the adjudicating authority.
20. The claimant who did make that claim was heard upon his documents. The adjudicating authority recorded that the cash memos established no trail between seller and purchaser, that the single Goods Declaration was not in the claimant’s name and was not shown to correspond with the seized fabric, and that no document under rule 126 of the Customs Rules, 2001 or any sales tax invoice had been produced; and it held the burden

¹¹ *The Intelligence Officer, Directorate of Intelligence and Investigation, FBR v. Abdul Karim* [2025 SCMR 969].

¹² *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi* [2025 SCMR 1912], where it was held that the burden to prove the absence of any nexus with the smuggled goods lay upon the person asserting it, and that the High Court in its reference jurisdiction had rightly discarded an agreement produced only at the Tribunal stage, nothing having been produced before the forums below.

undischarged. That finding was not carried in appeal by the person to whom it related. An appellate forum which takes a view different from that of the forum below is expected to identify the grounds upon which that forum proceeded and to record its reasons for departing from them.¹³ The learned Tribunal, proceeding as it did upon the footing examined above, did not have occasion to engage with the reasons recorded by the adjudicating authority, and the conclusion that the burden stood discharged cannot be sustained.

21. It follows that the confiscation of the fabric is to be outright. Clause (a) of the preamble to S.R.O. 499(I)/2009 dated 13.06.2009, issued under the first proviso to section 181 of the Act, directs that no option to pay fine in lieu of confiscation shall be given in respect of smuggled goods falling under clause (s) of section 2 of the Act. Where goods fall within a class so specified, the discretion under section 181 stands withdrawn, and a redemption fine imposed in respect of them is in violation of that section and of the notification.¹⁴ The adjudicating authority, which confiscated the fabric outright, acted in conformity with it.
22. Question (2) turns upon the documents required under rule 126 of the Customs Rules, 2001. Its subject matter has been taken into account in paragraph 20 above, and in view of the answers given to the question proposed by this Court and to question (1) it does not call for a separate answer.

VII. THE ANSWERS TO THE QUESTIONS

23. The questions are answered as follows:
 - (i) The question proposed by this Court on 22.01.2026 is answered in the affirmative, in favour of the applicant-Department and against Respondent No.1. The release of the confiscated fabric to Respondent No.1 proceeded upon a

¹³ *Mollah Ejahar Ali v. Government of East Pakistan* [PLD 1970 SC 173]; *Naveed Rauf v. Board of Intermediate and Secondary Education, Lahore* [2003 SCMR 1250].

¹⁴ *Collector of Customs, Peshawar v. Wali Khan* [2017 SCMR 585 = 2017 PTD 1244], upon S.R.O. 574(I)/2005, the predecessor notification in materially identical terms, relied upon in the memorandum of reference; and see *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq* [2026 SCMR 885 = 2026 PTD 1077], holding that where the Board has exercised its power under the first proviso to section 181, the adjudicating and appellate fora are left with no discretion to grant release upon a redemption fine.

reading of the record which it does not bear. Respondent No.1 had disowned the goods at the seizure and before the adjudicating authority, and was not a person aggrieved by their confiscation; the only claimant of the goods accepted the Order-in-Original, which to that extent attained finality.

- (ii) Question (1) is answered in the affirmative, in favour of the applicant-Department and against Respondent No.1. The burden under section 156(2) read with section 187 of the Act was not discharged, and the learned Tribunal was not justified in holding otherwise.
- (iii) Question (2) does not call for a separate answer.
- (iv) Question (3) was not pressed and is not answered.

VIII. ORDER

- 24. This Special Customs Reference Application is accordingly allowed. The judgment dated 06.06.2024 passed by the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-1109 of 2023 is set aside to the extent that it directs the release of the seized fabric, and the Order-in-Original No. 985/2022-23 dated 24.03.2023, to the extent of the outright confiscation of the seized fabric, is restored, no option of redemption being available in respect of it. The said judgment, to the extent of the vehicle, is left undisturbed. There shall be no order as to costs.
- 25. 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: 25th day of September 2026