

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. 450 of 2024

(The Collector of Customs, Karachi VS Saeed Ahmed & another)

Date of hearing: 24.09.2026

Date of decision: 02.10.2026

Applicant: Through Mr. Khalid Mahmood Siddiqui,
Advocate.

Respondents: *Nemo.*

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference application, maintained under section 196 of the Customs Act, 1969 (hereinafter referred to as “the Act”), impugns the order dated 04.07.2024 of the Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-2319 of 2024, whereby the appeal preferred by the applicant Department against Order-in-Original No. 1070/2023-24 dated 19.03.2024 passed by the Collector of Customs (Adjudication-I), Karachi was dismissed, and the option granted by that order to redeem the confiscated conveyance upon payment of a fine was maintained.

I. THE CONTROVERSY

1. A conveyance was intercepted carrying smuggled gutka. The goods were confiscated outright, and that confiscation has never been assailed. The conveyance was likewise held liable to confiscation, but the adjudicating officer gave its owner an option to redeem it upon payment of a fine of twenty per cent of its customs value. The Department says that the first proviso to section 181 of the Act, read with S.R.O. 499(I)/2009 dated 13.06.2009, forbade the grant of that option.

2. The question is therefore one of the reach of that notification. It is not in doubt that where a conveyance answers the description contained in clause (b) of the preamble to the notification, no option may be given and no discretion survives. What falls to be decided is whether that clause is attracted by the bare fact that a conveyance is found carrying smuggled goods, or whether it requires something more; and, if it requires something more, whether that something more has been found.

II. FACTS OF THE CASE

3. On 05.01.2024 at about 9:00 p.m., acting upon prior information, the staff of the Collectorate of Customs (Enforcement), Karachi signalled a Toyota Prado sport utility vehicle bearing registration No. BK-0965 to stop on the Northern Bypass near the Hamdard Customs Choke Point. The driver, instead of stopping, accelerated. A chase followed, in the course of which he abandoned the vehicle and made good his escape, and the efforts made to apprehend him did not succeed. A cursory examination disclosed gutka in polypropylene bags lying in the vehicle, and a *mushirnama* was drawn on the spot.
4. Upon detailed examination at the State Warehouse-III, Keamari, Karachi, the vehicle was found to contain 19 polypropylene bags of “Royal King” gutka, 10 such bags of “Safina” gutka and 5 such bags of “Z21” gutka, all of Indian origin, each bag containing 50 packets and each packet 110 pouches; in all 34 bags comprising 1,700 packets of an approximate gross weight of 374 kilograms, valued at Rs. 3,740,000. Representative samples were drawn and sealed and the goods were detained under Detention Receipt No. ASO-26/2024-HQ. The vehicle was valued at Rs. 8,000,000.
5. No person came forward at that stage to claim either the goods or the conveyance. The goods being of Indian origin and unclaimed, they were treated as smuggled within the meaning of clause (s) of section 2 of the Act, and they, together with the conveyance, were seized under section 168 of the Act for contravention of sections 2(s), 16, 17, 157(2) and 178 thereof, punishable under clauses (8) and (89) of section 156(1) read with section 157(2) of the Act and section 3(1) of the Imports and Exports (Control) Act, 1950. A notice under section 171 of the Act dated 13.01.2024 was displayed upon

the notice boards of the Custom House and of the A.S.O. Headquarters, N.M.B. Wharf, Karachi.

6. A show cause notice was issued on 08.03.2024 and the case was heard on 15.03.2024 and 19.03.2024. The respondent No. 1, Saeed Ahmed son of Bakhtiar Khan, appeared through counsel and claimed to be the lawful owner of the conveyance, a Toyota Land Cruiser Prado of 1998 model bearing registration No. BK-0965 and chassis No. VZJ95-0719678, producing the registration documents. He pleaded that the goods belonged to a passenger who had asked his driver to drop him together with his luggage; that neither he nor his driver had any knowledge of what the packages contained; that the vehicle was a lawfully registered passenger vehicle which had never previously been used in the transportation of smuggled goods; that it contained no hidden cavity and its chassis frame had not been tampered with; and that he was not present at the time of the occurrence and no connivance was alleged against him.
7. By Order-in-Original No. 1070/2023-24 dated 19.03.2024 the learned Collector of Customs (Adjudication-I) held the charge in respect of the goods to be established and confiscated the entire quantity outright. He held the conveyance also to be liable to confiscation under section 157(2) of the Act. He then recorded, in terms, that the seized vehicle was a lawfully registered passenger carrier, *“having no hidden or false cavities, not used previously for transportation of smuggled goods, and not covered under clause (b) of preamble”* of the notification; that the connivance of the owner had not been substantiated and there was no evidence of any previous involvement of the vehicle in smuggling; and, upon those findings, gave the owner an option under section 181 of the Act read with clause (f) of Serial No. 1 of the Table to the notification to redeem the vehicle upon payment of a fine equal to twenty per cent of its customs value, to be re-assessed fairly by the appropriate officer. A penalty of Rs. 50,000 was imposed upon the owner under clause (89) of section 156(1), and he was cautioned that a repetition would attract outright confiscation.
8. The Department, aggrieved by the grant of the option alone, preferred Customs Appeal No. K-2319 of 2024. The respondent No. 1 filed parawise comments in which he took the position that the

party which alleges must prove; that the seizing agency had produced no evidence, and no previous record of the vehicle, in support of its assertion that the conveyance had been wholly and exclusively used for smuggling; and that no false cavity had been found.

9. By the impugned order dated 04.07.2024 the learned Tribunal set out section 181 of the Act and the notification, including the Table thereto, held the Order-in-Original to be unexceptionable and calling for no interference, found the respondent No. 1 to be the lawful owner, directed release of the vehicle upon payment of the redemption fine at twenty per cent of a value to be re-assessed in its present condition, and waived the personal penalty of Rs. 50,000. This reference followed.

III. THE QUESTIONS PROPOSED AND THE SUBMISSIONS

10. The applicant has invited this Court to answer the following questions, which are reproduced verbatim from the memorandum of the Reference Application:
 - I. *“Whether the private Cars (Corolla, Honda, Swift etc) and double cabin conveyance used wholly and exclusively in the smuggling of contraband goods can be released on redemption fine in violation of the provisions of section 157(2) of the Customs Act, 1969, and clause (b) of SRO 499(I)/2009 dated 13.06.2009?”*
 - II. *“Whether the Customs Appellate Tribunal has erred in releasing the vehicle on payment of redemption fine in lieu of confiscation, which was wholly used for transporting of smuggled betel nuts, in violation of provisions of section 181 of the Customs Act, 1969 and SRO 499(I)/2009 dated 13.06.2009?”*
11. The reference to “smuggled betel nuts” in the second question is evidently a slip, the goods seized in this case being gutka, and we read the question as relating to the goods actually seized.
12. Mr. Khalid Mahmood Siddiqui, learned counsel for the applicant Department, submitted that section 157(2) of the Act renders every conveyance used in the removal of goods liable to confiscation itself liable to confiscation; that the discretion conferred by section 181 is expressly subject to its first proviso, under which the Board has issued the notification; and that the learned Tribunal erred in law in giving the option to redeem the vehicle. He further submitted that no

reasoning had been articulated by the learned Tribunal in support of the view it took.

13. Notice was issued to the respondents, who are not represented before us. We have accordingly examined the matter with the care which the absence of the other side requires, and we have perused the impugned order, the Order-in-Original, the show cause notice, the seizure documents, the memorandum of appeal filed before the learned Tribunal and the parawise comments thereto.

IV. THE JURISDICTION UNDER SECTION 196

14. Section 196(1) of the Act, as substituted by the Finance Act, 2024, permits an aggrieved person to state “*any question of law or a mixed question of law and fact arising out of such order*”, and section 196(3) requires this Court to decide that question and to pass judgment thereon, whereupon the order of the Tribunal stands modified accordingly. The remedy so conferred is appellate in nature.¹
15. The width so recognised is a width of law and not of fact. The liberality with which the section is to be read attaches to the *source* of the question, not to its *character*: it frees a litigant from the requirement that his question should have been argued below, but it does not free him from the findings. The Appellate Tribunal remains the last fact-finding forum, and its findings of fact are not open to re-examination here save upon a demonstration, from the record itself, that they rest upon no evidence, or proceed upon a misreading or non-reading of material evidence, or are perverse, or are founded upon surmise and conjecture.²
16. We should notice at once a difficulty which attends both the questions as they are framed. Each of them assumes, as its premise, that the conveyance was “used wholly and exclusively” in the smuggling of contraband goods. That is not a fact found by the

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

² *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838] and *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd.* [2023 SCMR 939]. The position was lately restated by this Bench in Spl. Customs Reference Application No. 230 of 2026 (*Naqeeb Ullah v. Collector of Customs (Enforcement), Karachi & others*), decided on 11.09.2026.

learned Tribunal. It is the very assertion which the forums below considered and did not accept. A question which proceeds upon a premise contrary to the findings does not arise out of the order; it invites this Court to substitute a different finding, which in this jurisdiction it may not do. We have nevertheless examined both questions upon their merits, because the point of construction which underlies them is one of law and is capable of being answered upon the facts as they have been found.

17. The first question, moreover, is framed in the abstract, and asks whether “private Cars (Corolla, Honda, Swift etc) and double cabin conveyance” may be released on redemption fine. A reference lies against the order of the learned Tribunal in the case before it, and this Court does not pronounce upon classes of vehicle at large. We have read the question as relating to the conveyance which is the subject of these proceedings.

V. THE STATUTORY SCHEME AND S.R.O. 499(I)/2009

18. 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*”. The liability of the conveyance is derivative, and the expression employed is “liable to confiscation”, which is not the same thing as “shall be confiscated”.³
19. Section 181 deals with the consequence. Whenever an order for the confiscation of goods is passed, “*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*”. The first proviso empowers the Board, by order, to “*specify the goods or class of goods where such option shall not be given*”. Where a case falls within a class so specified, nothing is left to be exercised: the discretion is not narrowed or guided, it is withdrawn. That was settled by the Hon’ble Supreme Court in *Director, Intelligence and Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq*, where it was held that the notification “*creates a statutory bar, leaving no discretion with the adjudicating officer or the Tribunal to*

³ *Collector, Collectorate of Customs (Enforcement), Khuzdar v. Muhammad Ali* [2025 PTD 65].

*grant release on redemption fine if it had fallen within frame of (a) and (b) of the SRO 2009”.*⁴

20. The words we have emphasised are the words upon which this reference turns. The bar operates *if the case falls within the frame of the notification*. What the notification prescribes must therefore be read with precision. Its preamble directs that no option shall be given in respect of, at clause (a), smuggled goods falling under clause (s) of section 2 of the Act, and, at clause (b), a lawfully registered conveyance, including packages and containers, found carrying smuggled goods in false cavities, or being used exclusively or wholly for the transportation of offending goods falling under clause (s) of section 2.
21. The two clauses operate upon different subject-matter, and the distinction is not a formal one. Clause (a) is directed at the smuggled goods themselves, and it has been given full effect in this case: the gutka was confiscated outright and no option was given in respect of it. Clause (b) is directed at the conveyance, and it is not attracted by the mere circumstance that smuggled goods have been recovered from a vehicle. It requires one of two things: a false cavity, or use exclusively or wholly for the carriage of the offending goods.
22. That this is the true reading is put beyond argument by the Table to the very same notification. Clause (f) of Serial No. 1 of that Table, which the adjudicating officer applied and which the learned Tribunal reproduced, prescribes a redemption fine of twenty per cent of the customs value for a “*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 Board has thus itself provided, in express terms, for the redemption of a conveyance which is found carrying smuggled goods but which lies outside clause (b), and has fixed the rate at which that redemption is to be allowed. The Department’s contention, carried to its conclusion, would mean that every conveyance found carrying smuggled goods

⁴ [2026 SCMR 885] = [2026 PTD 1077]. To the same effect, in cases falling within the prohibition, *Collector of Customs, Model Collectorate of Customs (Preventive), Custom House, Karachi v. Mehraj* [2025 PTD 626] and *Director Intelligence and Investigation (Customs) v. Nasir ul Haq* [2022 PTD 1193].

is barred; and that reading would leave clause (b) without a function and clause (f) of the Table without a case to operate upon. A notification is to be construed so that all its parts have effect.

23. It follows that the applicability of clause (b) is a question of fact upon which a finding is indispensable, and that the party which asserts the bar must establish the facts which attract it. Section 187 of the Act, upon which the Department's grounds relied, places upon a person the burden of proving lawful authority for his possession of the goods; it does not relieve the Department of establishing that a conveyance belongs to a class which the Board has excluded from redemption. That proposition is well settled, and references by the Department have failed where the requirement was not met.⁵

VI. THE FINDINGS OF THE FORUMS BELOW

24. The enquiry which clause (b) requires was made in this case, and it was made against the Department at both tiers.
25. The adjudicating officer addressed it expressly. He found that the conveyance was a lawfully registered passenger carrier; that it had no hidden or false cavity; that it had not been used previously for the transportation of smuggled goods; that the connivance of its owner had not been substantiated; and that it was accordingly not covered by clause (b) of the preamble. Having so found, he brought the case within clause (f) of Serial No. 1 of the Table and fixed the fine at the rate which that clause itself prescribes. He also adopted the construction, upon the decision relied upon before him, that the expression "wholly or exclusively" connotes the repeated use of a vehicle for the transportation of smuggled goods, and that the object of confiscation is to penalise the perpetrator of the offence rather than the owner of a conveyance whose connivance is not proved. That construction is consistent with what the Peshawar High Court has held upon the same words.

⁵ *Collector Customs MCC, Peshawar v. Painda Noor* [2023 PTD 750], where it was held that to attract clause (b) the authorities had to establish that the goods were concealed in false cavities or that the vehicle was wholly and exclusively used in smuggling, the words "wholly and exclusively" meaning "in its entirety" and "being used for no purpose other than smuggling"; and *Collector of Customs (Enforcement), Custom House Airport Road, Quetta v. Arz Muhammad* [2026 PTD 900], where the references were dismissed because the orders-in-original were silent upon this essential requirement.

26. The learned Tribunal, before whom the point was the sole ground of appeal, set out section 181 and the notification with its Table, considered the parawise comments in which the absence of any evidence upon exclusivity or cavity was pressed, and concluded that the Order-in-Original was unexceptionable. That conclusion, read with the material the learned Tribunal set out immediately before it, is a conclusion upon the applicability of the notification, and we are unable to accept the submission that the order is without reasons. An order is not unreasoned because its reasoning is compressed. The learned Tribunal identified the provision, identified the clause of the Table under which the fine had been fixed, and held the order under appeal to be in conformity with it. We would have wished the reasoning to have been set out at greater length, but the ground upon which the appeal was dismissed is discernible from the order itself, and that is the test.
27. Against those findings the Department has placed nothing before us. It produced no material to show that the conveyance had any false or secret cavity, and the record is to the contrary: the gutka was lying in polypropylene bags, discovered upon a cursory examination at the roadside. It produced no previous record of the vehicle, and the finding that it had never before been apprehended in such a use stands unrebutted. No instance of misreading or non-reading has been identified, and no finding has been shown to rest upon no evidence or upon conjecture.
28. We have given our anxious consideration to the circumstance which is the strongest in the Department's favour, namely that the driver, on being signalled to stop, accelerated away and then abandoned the vehicle and absconded. That is a circumstance of weight, and it was open to the forums below to draw from it such inference as they thought proper. But it goes to the conduct of the man at the wheel. The bar in clause (b) is predicated upon the character of the conveyance and of the use to which it has been put, namely a false cavity or an exclusive or wholesale employment in the carriage of offending goods; it is not predicated upon the conduct of the driver at the moment of interception. Whether that conduct should nevertheless have persuaded the forums below to find exclusivity of use, or connivance on the part of the owner, was a matter for those

forums; they declined to so find, upon material which included the registration documents, the absence of any cavity and the absence of any earlier instance. To hold otherwise here would be to re-appraise the evidence, which is precisely what this jurisdiction forbids.⁶

29. We would add that the requirement of knowledge is not a gloss which the forums below invented. It has lately been held that the confiscation of a conveyance under section 157(2) presupposes the establishment of the constituent elements of the offence, and that the owner of a vehicle who is not shown to have employed it, with knowledge or wilful blindness, in the removal of proscribed goods does not forfeit it.⁷ Upon the findings recorded, this respondent was not shown to have done so.

VII. THE AUTHORITIES PRESSED BY THE DEPARTMENT

30. *Muhammad Ishaq* does not assist the Department, and its language shows why. The bar was there held to arise where the case “*had fallen within frame of (a) and (b)*” of the notification. Their Lordships were not called upon to decide, and did not decide, that a conveyance outside clause (b) may not be redeemed; had they so held, clause (f) of Serial No. 1 of the Table would have been swept away with the discretion. The vice identified in that case was the treatment of the words “liable to confiscation” in section 157(2) as a reservoir of discretion capable of surviving an order made by the Board under the first proviso. No such reasoning was adopted here. Neither forum below held that a discretion survived the notification; each held that the case lay outside the class which the notification excludes and within the class for which the Table provides.
31. The decisions of this Court in *Mehraj* and of the Quetta High Court in *Abdul Raheem* are to the same effect and equally distinguishable. In *Mehraj* the vehicle had secret in-built cavities loaded with non-duty paid diesel and the owner was himself at the wheel; in *Abdul Raheem* the secret cavities of the seized vehicle were found loaded

⁶ *Middle East Construction Company (supra)*, where the Hon’ble Supreme Court disapproved the exercise, undertaken by the High Court, of ascertaining for itself the nature of the imported vehicles, the Tribunal being the last forum for the determination of facts.

⁷ *Collector of Customs v. Aurangzeb* [2026 PTD 1374], where it was also held that notifications issued under section 181 operate at the sentencing stage and cannot dispense with proof of the substantive elements of the offence.

with foreign origin goods in commercial quantity. In each, clause (b) was attracted upon a finding. Here it was not, upon a finding equally recorded.

32. The converse case, and the one which lies closest to these facts, was one of gutka carried openly in polypropylene bags in a hired vehicle, with no false cavity and no history of previous use, where the outright confiscation of the conveyance was set aside and redemption at twenty per cent allowed.⁸ We mention it not as binding authority but because it illustrates that the distinction drawn by the forums below is the distinction which the notification itself draws.

VIII. THE AMENDING NOTIFICATIONS OF 2024

33. It is right that we should notice, since it was not adverted to at the Bar, that clause (ba) was inserted in the notification by S.R.O. 1280(I)/2024 dated 20.08.2024 and thereafter substituted by S.R.O. 1619(I)/2024 dated 03.10.2024, and that in its substituted form that clause withholds the option from a lawfully registered conveyance which is seized and found carrying smuggled goods, without more. Upon that substituted text the Lahore High Court has held that the Tribunal is bereft of jurisdiction to give the option in such a case.⁹
34. That development does not govern this case. The seizure was effected on 05.01.2024, the Order-in-Original was passed on 19.03.2024 and the order of the learned Tribunal followed on 04.07.2024, all of them before either amendment came into existence. A notification which enlarges the classes in which the benefit of redemption is denied imposes a heavier consequence, and it is not to be applied to an adjudication already concluded under the text which was in force when the liability arose. The notification falls to be applied to this case in its unamended form, and in that form clause (b) is the only clause which could have excluded this conveyance.

⁸ *Muhammad Aslam v. SPS, ASO, NMB Wharf, Karachi* [2018 PTD 2324].

⁹ *Collector of Customs, Collectorate of Customs (Enforcement), Sargodha v. Juma Khan* [2026 PTD 298], which proceeds expressly upon clause (ba) as substituted by S.R.O. 1619(I)/2024 dated 03.10.2024.

IX. THE ANSWERS TO THE QUESTIONS

35. Drawing the threads together: the first proviso to section 181 withdraws the discretion to permit redemption only in the classes which the Board has specified; clause (b) of the preamble to S.R.O. 499(I)/2009 specifies, for conveyances, those found carrying smuggled goods in false cavities and those used exclusively or wholly for the transportation of offending goods; clause (f) of Serial No. 1 of the Table to the same notification provides in terms for the redemption, at twenty per cent of the customs value, of a lawfully registered conveyance not covered by clause (b) which is found carrying such goods; the applicability of clause (b) is a question of fact to be established by the party asserting it; and in this case both forums below have found, upon material, that it was not established. That being so, the option which the adjudicating officer gave was not an exercise of a discretion which had been taken away. It was the application of the rate which the Board itself has prescribed for the class into which this conveyance was found to fall.
36. The questions proposed are accordingly answered as follows:
- I. In the **affirmative**, in the sense and to the extent explained below; against the applicant Department. A lawfully registered conveyance which is found carrying offending goods falling under clause (s) of section 2 of the Act, but which is not covered by clause (b) of the preamble to S.R.O. 499(I)/2009 dated 13.06.2009, may be released upon payment of a redemption fine, that being the very case for which clause (f) of Serial No. 1 of the Table to that notification provides. Where, on the other hand, a conveyance is found to have carried such goods in false cavities, or to have been used exclusively or wholly for their transportation, no option may be given; but that is a conclusion which must rest upon a finding, and the burden of establishing the facts which attract the clause lies upon the Department.
 - II. In the **negative**; against the applicant Department and in favour of the respondents. The learned Customs Appellate Tribunal did not err in maintaining the option. The premise of the question, that the conveyance was wholly used for the

transportation of smuggled goods, is contrary to the concurrent findings of the forums below, which found that the vehicle bore no hidden or false cavity, had not previously been used for such transportation, and was not covered by clause (b) of the preamble to the notification. Those findings are findings of fact, no case of misreading, non-reading or perversity has been made out, and they are not open to re-examination in this jurisdiction.

37. We should record that no question has been proposed touching the waiver by the learned Tribunal of the personal penalty of Rs. 50,000, and we accordingly express no opinion upon it.

X. ORDER

38. This Special Customs Reference Application, being without merit, is **dismissed**. The order dated 04.07.2024 of the learned Customs Appellate Tribunal, Bench-III, Karachi in Customs Appeal No. K-2319 of 2024 is maintained. The confiscation of the seized gutka shall remain undisturbed, and the redemption of the conveyance shall be upon the terms fixed by the forums below. The listed applications, if any, stand disposed of. There shall be no order as to costs.
39. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, in terms of section 196(10) of the Customs Act, 1969.

J U D G E

J U D G E

Karachi, dated: 2nd day of October 2026

ANNOUNCED BY

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