

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. 166 of 2026

M/s. Insons Corporation, Karachi Vs. The Collector of Customs, Karachi & others

Date of hearing : 24.09.2026

Date of decision : 05.10.2026

Applicant : Through Mr. Amjad Hayat, Advocate.

Respondents : Through Mr. Aamir Ali Shaikh, Advocate.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference under section 196 of the Customs Act, 1969 (“the Act”) is directed against the judgment of the Customs Appellate Tribunal, Bench-I, Karachi dated 28.07.2026 in Customs Appeal No. K-554 of 2026, by which the Order-in-Original No. 689 of 2025-26 dated 16.04.2026 passed by the Collector of Customs (Adjudication-I), Karachi was maintained. The reference was admitted on two questions, both on limitation, and they are all that we are called upon to answer.

I. FACTS OF THE CASE

2. The applicant filed Goods Declaration No. KAPW-HC-81856-05-11-2025 for automotive bearings and allied parts under P.C.T. heading 8708.9990, declaring a net weight of 21,345 kg and paying duty and taxes of Rs. 10,141,518. The declaration was selected for scrutiny under section 80 of the Act, the goods were examined and assessed, and a gate-out message was issued on 11.11.2025. On the same day, before the container could leave the port, a PCU/LT (lot) hold was placed on it at the instance of the enforcement wing. The applicant pressed repeatedly for the goods to be examined again, by letters dated 03.12.2025, 04.12.2025 and 06.12.2025, and once more after the show cause notice. The re-examination,

when it came, was a joint examination carried out on the directions of the adjudicating authority. **The findings of the forums below, which are not open to question in this reference, are that the misdeclaration was established: 24,000 pieces of universal joints of Japanese origin, not declared at all, were found concealed beneath other cartons in the container; 43 refurbished laptops, equally undeclared, were recovered from the same consignment; the quantities of the main bearings, connecting rod bearings and other declared items were misdeclared; and some 3,125 kg of weight had gone undeclared. The duty and taxes evaded were assessed at Rs. 167,379,026, on goods of an offending value of Rs. 193,371,656.**

3. Show Cause Notice dated 21.01.2026 was issued by the Collector of Customs (Adjudication-I), Karachi, alleging contravention of sections 32(1) and (2), 79(1) and 209 of the Act, punishable under clauses (1) and (14) of section 156(1), and calling upon the applicant and its clearing agent to show cause why the evaded duty and taxes be not recovered and penal action be not taken. On 23.01.2026 the applicant again asked for a fresh examination of the consignment, in the presence of its representative and a technical expert. The learned Collector acceded to that request by his letter dated 03.02.2026. The re-examination report came on record towards the end of March 2026, and in the meantime the Departmental Representative sought adjournments to place it before the adjudicating officer.
4. By the Order-in-Original dated 16.04.2026 the goods were confiscated, with an option of redemption on payment of a fine of Rs. 67,680,079 besides duty and taxes, and penalties were imposed on the applicant and on the clearing agent. In paragraph 13 of that order the learned Collector recorded that thirty days were to be excluded under the second proviso to section 179(3), on account of the adjournments sought by the Departmental Representative, and that he had extended the time by fifteen days under the third proviso; he computed the outer date as 20.04.2026.

5. The applicant carried the matter in appeal. At the commencement of the hearing before the learned Tribunal, the applicant's grievance being that the two examination reports were reproductions of each other, the Tribunal offered the learned counsel for the applicant a fresh re-examination of the goods under its own supervision. The offer was declined, and the learned counsel consented that the latest re-examination report be treated as final. The Tribunal then examined a representative sample of the goods itself, and dismissed the appeal. On limitation it held that the lot hold was an administrative restraint and not a seizure within section 168(2), and that the time consumed in the re-examination sought by the applicant was rightly excluded in computing the period under section 179(3).

II. THE QUESTIONS PROPOSED

6. The memorandum of reference proposed five questions. Besides the two on limitation, they concerned the classification and essential character of the goods, the application of Valuation Ruling No. 1403/2019, the ninety-day clearance data, and the excess weight found on examination. By order dated 18.08.2026 the reference was admitted, and notice issued, on the following two questions only:

“i. Whether, under the facts and circumstances of the case, the impugned Show-Cause Notice issued beyond the mandatory statutory period of two months from the date of notional/actual seizure of the goods is not time-barred under Section 168(2) of the Customs Act, 1969, and whether the sub-ordinate fora i.e. Learned Adjudication as well as Learned Customs Appellate Tribunal erred in law by failing to consider that such delay renders the entire adjudication proceedings illegal, without jurisdiction, and void ab initio as per the law laid down in Syed Muhammad Razi v. Collector of Customs (Appraisement), Karachi reported as 2003 PTD 2821?

ii. Whether, under the facts and circumstances of the case, the impugned Order-in-Original dated 16-04-2026 passed after an absolute lapse of 86 days from the issuance of the Show-Cause Notice dated 21-01-2026 is patently time-barred, illegal, and coram non judice, given that the maximum permissible statutory period under Section 179(3) of the Customs Act, 1969 (including the Collector's 15-day extension for port-bound goods) had expired after 60 days on 22-03-2026?"

III. SUBMISSIONS

7. Mr. Amjad Hayat, learned counsel for the applicant, confined his submissions to the two questions admitted. He submitted that the goods stood seized within the meaning of section 168 on 11.11.2025, when the hold was placed after the goods had been cleared; that the hold was a notional seizure; and that under section 168(2) the department was bound to issue a show cause notice within two months. The notice came on 21.01.2026, 71 days later, and nothing on record shows that the Collector extended the period under the first proviso. He contended that the Order-in-Original was also beyond the time allowed by section 179(3), and that the entire proceedings were therefore void and liable to be set aside.
8. Mr. Aamir Ali Shaikh, learned counsel for the respondents, submitted that this is a case under section 32 of the Act, for which the period to issue a show cause notice is five years, and he took us through the notice to show that it was issued under that section. As to the Order-in-Original, he submitted that it was within time, since the adjournment was sought and the re-examination was carried out at the applicant's own request and in the interest of justice, which was duly recorded in the Order-in-Original and dealt with by the learned Tribunal.
9. In rebuttal, the learned counsel for the applicant submitted that section 32 had no application, that there was a notional hold on the

goods, and that the department failed to issue the show cause notice within the mandatory period prescribed by law.

IV. THE SCOPE OF THE REFERENCE

10. Under section 196 of the Act, as it now stands, a reference lies on “any question of law or a mixed question of law and fact”¹ arising out of the order of the Appellate Tribunal, and sub-section (3) requires this Court to decide the question so raised. The jurisdiction does not extend to questions of pure fact. The learned Tribunal is the final forum of fact, and it is not for this Court, in a reference, to reappraise the evidence or to substitute its own view of the facts for that of the Tribunal.
11. That is why the reference was admitted on the two questions of limitation alone. The remaining questions in the memorandum, whether the goods are universal joints or spider kits, whether the valuation ruling or the ninety-day data should govern, and whether the weight was misdeclared, all turn on the appreciation of evidence, and notice was not issued on them. On those matters the findings of the learned Tribunal stand. We would add that the grievance about the re-examination report is, in any case, one of fact, and it was fully met below: the applicant was offered a fresh examination under the supervision of the Tribunal, declined it, and accepted the latest report as final. We therefore take the facts as found and confine ourselves to the two questions of law.

V. THE LOT HOLD AND SECTION 168(2)

12. Section 168 reads, so far as relevant:

“(1) The appropriate officer may seize any goods liable to confiscation under this Act, and where it is not

¹Section 196 of the Act, so far as relevant: “(1) Within thirty days of the date of receipt of the order of the Appellate Tribunal, the aggrieved person or any officer of Customs not below the rank of Deputy Collector or Deputy Director, authorized by the Collector or Director in writing, may file a reference, in the prescribed form, along with a statement of the case, before the High Court, stating any question of law or a mixed question of law and fact arising out of such order: ...

(3) The Special Bench shall decide a reference within six months from the date of its filing. The High Court upon hearing a reference under this section shall decide the question of law or a mixed question of law and fact raised in the reference and pass judgment thereon specifying the grounds on which such judgement is based and the Appellate Tribunal’s order shall stand modified accordingly.

(10) The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.”

practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) Where any goods are seized under sub-section (1) and no show cause notice in respect thereof is given under section 180 within two months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: ...”

13. The first question is whether there was a seizure at all. Seizure under section 168 is not the only power by which goods remain in customs control. **Section 80(2) empowers an officer of customs to examine any goods at any time after their import, during or after their release, and section 80(3) requires the goods to be reassessed where the declaration is found to be incorrect.**² Section 186(1), as it has stood since the Finance Act, 2004, provides that goods shall not be removed by the owner while the imposition of a fine or penalty is under consideration, or pending any inquiry or investigation, until the inquiry and investigation have been completed.³ The Act thus distinguishes between holding goods back for examination and inquiry, and seizing them as liable to confiscation; and it is only the latter that carries the consequences of sections 168(2) and 171.⁴

²Section 80(2) and (3) of the Act: “(2) An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;

(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty, taxes and other charges levied thereon:

Provided that in case of reassessment, a notice shall be served to the importer through Customs Computerized System and opportunity of hearing shall be provided, if he so desires.”

³Section 186(1) of the Act: “When any fine or penalty has been imposed, or while imposition of any fine or penalty is under consideration, or pending any inquiry or investigation, in respect of any goods, such goods shall not be removed by the owner until such fine or penalty has been paid or such inquiry and investigation has been completed.” The words “or pending any inquiry or investigation” and “or such inquiry and investigation has been completed” were inserted by the Finance Act, 2004.

⁴*Syed Muhammad Razi v. Collector of Customs (Appraisement)* [2003 PTD 2821]: “... the legislature has used two different expressions in the Customs Act, namely, ‘seized’ and ‘detained’ and different provisions have been enacted for seizure and detention of goods. The seizure has been dealt with in sections 168 and 171 of the Customs Act, while the detention has been dealt with under section 186 of the Customs Act. The two Acts are distinct from each other and the provisions relating to the two Acts

14. The hold of 11.11.2025 falls on the first side of that line. The goods had not left the port. They were held back at the gate-out stage so that they could be examined again, and it was that re-examination which disclosed the goods now said to have been concealed. No seizure report was drawn and no notice under section 171 was issued⁵; the show cause notice rests on the examination and contravention report. The learned Tribunal was, in our view, right to treat the hold as a restraint pending examination and inquiry rather than as a seizure within section 168. Section 168(2) was therefore not attracted.
15. *Syed Muhammad Razi*, on which the question is founded, does not lead to a different result. The Court there itself set detention under section 186 apart from seizure, and treated as a notional seizure only a restraint other than a detention contemplated by that section.⁶ The facts there also arose in 2003, before the words “pending any inquiry or investigation” were added to section 186(1). The earlier decisions followed in that case were of the same kind: in each of them there had been a seizure in the ordinary sense.⁷ None of them reaches a hold placed on goods at the port, after 2004, to permit their re-examination.
16. The show cause notice in this case, as the learned counsel for the respondents pointed out, charges the applicant under sections 32(1) and (2) and 79(1) of the Act, and calls upon it to show cause why the short-levied duty and taxes be not recovered and why penal action be not taken. A demand of duty short-levied by reason of a false declaration is governed by section 32(2), which allows a notice within five years of the relevant date.⁸ The notice issued on

are also distinct and separate. The difference in the two Acts and the provisions governing them are always required to be kept in view.”

⁵Section 171 of the Act: “When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, as soon as may be, inform in writing the person so arrested or the person from whose possession the things are seized of the grounds of such seizure or arrest.”

⁶*Syed Muhammad Razi*, supra: “The restraint imposed on the goods other than a detention contemplated under section 186, by any nomenclature such as blockage, detention etc. falls within the contemplation of section 168(1) read with the definition contained in section 2(rr), and would amount to a seizure, bringing the provisions contained in sections 171 and 168(2) into operation.”

⁷*Ilam Khan v. Government of Pakistan* [1983 CLC 786], where a restraint order under the latter part of section 168(1) had been served; and *Haji Noor-ul-Haq v. Collector of Customs* [1998 MLD 650], where the goods had been taken in a raid and orders of seizure passed in cases registered with the police.

⁸Section 32(1) and (2) of the Act: “(1) If any person, in connection with any matter of customs,- (a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of

21.01.2026, some ten weeks after the goods declaration was filed, and was well within that period. Whether the charge of misdeclaration is made out is a question of fact, and it is not before us. There having been no seizure, the consequence which section 168(2) attaches to a notice not given within two months does not arise; and that consequence, in any case, is confined to the return of the goods, and does not reach the adjudication itself.⁹

VI. SECTION 179(3): THE TIME FOR DECISION

17. Section 179(3), in its present form, reads:

“(3) The cases shall be decided within ninety days of the issuance of show cause notice or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed sixty days:

Provided that in cases, wherein the provisions of clause (s) of section 2 have been invoked, such cases shall be decided within a period of forty-five days of the issuance of show cause notice extendable for fifteen days by the Collector Adjudication:

Provided further that any period during which the proceedings are adjourned on account of a stay order or alternative dispute resolution proceedings or the time taken through adjournment by the petitioner not

customs any declaration, notice, certificate or other document whatsoever, or (b) makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer, or (c) submits any false statement or document electronically through automated clearance system regarding any matter of Customs, knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty of an offence under this section.

(2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty, taxes or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within five years of the relevant date, requiring him to show cause why he should not pay the amount specified in the notice.”

⁹*Joint Secretary, CBR v. Raja Nazar Hussain* [1991 SCMR 647]: “The question of imposition of penalty is not dealt with under Section 168(2) of the said Act. Therefore, it does not appear to be correct to say that the failure to issue a statutory notice within the requisite period which is essential before any order of confiscation of goods can be passed also results in absolving the said party from the liability of imposition of penalty ...”

The Supreme Court there approved the following passage from *Sikandar and Brothers v. Government of Pakistan* [PLD 1986 Kar. 373]: “... the failure on the part of the Customs Officers to issue notice within the period contemplated by subsection (2) or proviso thereto, of section 168, would certainly clothe the person, from whom the goods have been seized with the right to claim the return of the same but it does not set at naught the provision of section 180 and will not deprive the Customs Officers to issue notice under section 180 for the obvious reason that it (section 180) does not prescribe any time limit for issuance of such notice.”

exceeding thirty days, shall be excluded for the computation of aforesaid periods:

Provided further that in cases where in goods are lying at sea-port, airport or dryport, these shall be decided within forty-five days of the issuance of show cause notice which can be extended by another fifteen days by Collector of Customs, if required so.”

18. The periods so fixed are mandatory, and an order made beyond them cannot be sustained.¹⁰ The goods here were lying at the port, so the third proviso applied: forty-five days from 21.01.2026, extendable by fifteen days. The question as framed itself counts the Collector’s fifteen-day extension, and the Order-in-Original records it, so the submission that no extension was granted does not carry the matter further. Sixty days from the notice ended on 22.03.2026. The Order-in-Original was made on 16.04.2026, the 85th day. It is within time only if thirty days are excluded under the second proviso.
19. The second proviso excludes, among other things, “the time taken through adjournment by the petitioner not exceeding thirty days”. The Act does not define “petitioner”, and the word has to be understood in the setting of adjudication. There, the case is instituted by the case-making Collectorate, which brings the charge and asks for the order; the person to whom the notice is addressed answers it. The Order-in-Original itself records the case as instituted by the Collectorate of Customs (Appraisement-West), Karachi and describes the importer and the clearing agent as respondents. In that scheme the party that answers the description of petitioner is the department. The proviso thus contemplates that the department may take time by adjournment, and it limits that time to thirty days. The learned counsel for the applicant fairly did not dispute this reading, and the submission that the law makes no

¹⁰ *Additional Collector of Customs v. Fatima Enterprises* [2025 SCMR 1929]: “The principles set out in *Super Asia* were applied by this Court in relation to section 179(3) in *Mujahid Soap and Chemical Industries Ltd. v. Customs Appellate Tribunal* 2019 SCMR 1735. On such basis, the order of the adjudicating authority there was found to be unsustainable. In view of these decisions there can be no doubt that the timelines set in subsection (3) of section 179 are mandatory and not directory.” See also *Collector of Sales Tax v. Super Asia Muhammad Din & Sons* [2017 SCMR 1427]; *WAK Ltd. v. Collector Central Excise and Sales Tax* [2026 SCMR 201].

room for an adjournment sought by the department is not borne out by the text.

20. The facts point the same way. The re-examination was undertaken on the applicant's own request dated 23.01.2026, which the learned Collector accepted on 03.02.2026, and the adjournments sought by the Departmental Representative were to place the report of that very exercise on record; the time so taken was, in substance, taken at the applicant's own instance. The exercise took longer than thirty days, but only thirty days, the statutory cap, were excluded. With that exclusion the period ran until 21.04.2026; the learned Collector took the date as 20.04.2026, which makes no difference. The Order-in-Original dated 16.04.2026 was within time. It was the applicant who asked for the goods to be examined afresh, and it was to accommodate that request that the adjudication took the time it did. Having obtained the re-examination it sought, the applicant cannot now turn the time spent upon it into a ground for declaring the whole proceedings void. No one may take advantage of his own wrong, *nullus commodum capere potest de injuria sua propria*,¹¹ and the principle applies with greater force where what is relied upon is not a wrong at all, but an indulgence extended to the party at its own request.

VII. THE ANSWERS TO THE QUESTIONS

21. Question (i) is answered in the negative. The lot hold of 11.11.2025 was a restraint pending examination and inquiry, not a seizure under section 168(1), and section 168(2) was not attracted. The show cause notice, issued under section 32, was within the period which that section allows. Neither the notice nor the adjudication founded on it is void or without jurisdiction.

¹¹*Justice Hasnat Ahmed Khan v. Federation of Pakistan* [PLD 2011 SC 680]: "... they cannot take advantage of omissions and commissions done by them in accordance with the well known principle enshrined in maxim *nullus commodum capere potest de injuria sua propria*, which means that 'no man can take advantage of his own wrong'." The Supreme Court there approved the application of the maxim to bar a plea of limitation by a party who had himself occasioned the delay, and the statement in Broom's Legal Maxims that "he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned".

Trio Industries (Pvt.) Ltd. v. Babu Sher [2026 SCMR 152]: "A legal right or entitlement cannot ascend from an illegal act, laxity, or inadvertence. The legal maxim '*nullus commodum capere potest de injuria sua propria*' delineates that no man can take advantage of his own wrong."

22. Question (ii) is answered in the negative. After exclusion of thirty days under the second proviso to section 179(3), the Order-in-Original dated 16.04.2026 was passed within time.

VIII. ORDER

23. Both questions are answered in favour of the respondents and against the applicant, and the reference is dismissed. There shall be no order as to costs.
24. 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: 05th day of October, 2026

Announced by:

J U D G E

J U D G E

Ayaz PS.