

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application Nos. 77, 78 & 79 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
1. For order on office objection No. 8. 2. For orders on CMA No. 949/17. 3. For hearing of main case. 4. For hearing of CMA No. 950/17.	

03.12.2025

Mr. Zulfiqar Ali Arain, advocate for the applicant.

Per learned counsel, the matter pertains to smuggling of petroleum products. He states that confiscation of petroleum was ordered vide Order-in-Original No.72/2016 dated 03.06.2016, however, vehicle was directed to be released on payment of redemption fine. He further states that while confiscation of the smuggled item was not challenged by any assessee, appeal was only filed in respect of the vehicle. Cross appeal by the department was also filed. Counsel states that the finding of the petroleum was smuggled, has attained finality and under such circumstances there is no recourse but for outright confiscation of the vehicle involved.

Learned counsel files tracking report on record to demonstrate that service has been effected upon the respondent.

Learned counsel states that the pertinent question before the court for determination is *whether a vehicle admittedly carrying smuggled items could be released*. He states that the said question has already been decided in favour of the department by the Supreme Court in its judgment dated 29.10.2025 in Civil Petition No. 2853/2025 etc. The operative constituents of the judgment are reproduced hereinbelow:-

- “4. We have heard the learned counsel for the parties on the proposed question summarized in the opening paragraph of this judgment and perused the material available on record.
5. Section 157(2) of the Act renders every conveyance used in the movement of smuggled goods liable to confiscation. Section 181 of the Act empowers the adjudicating officer to offer the owner an option to pay fine in lieu of confiscation, subject to the first proviso, whereby the Board may issue orders specifying classes of goods for which such option shall not be given. In exercise of this power, the Board issued the SRO, 2009, the operative portion whereof prohibits such release for (a) smuggled goods falling under section 2(s) and (b) lawfully registered conveyance including packages and containers found carrying

smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969).

6. This Court, in Bashir Ahmed case¹ has conclusively held that the issuance of SRO, 2009 creates a statutory bar, leaving no discretion with the adjudicating officer or the Tribunal to grant release on redemption fine if it had fallen within frame of (a) and (b) of SRO. It was further held that the subsequent amendment introduced on 03.10.2024 did not dilute the earlier prohibition rather includes vehicles with container as well. The relevant observation reads, as under:

"When the Board has exercised its power and issued an order under section 181. the Tribunal is bereft of jurisdiction to order release of such conveyance by giving an option under that section."

7. In view of the statutory framework and the authoritative pronouncement of this Court in Bashir Ahmad (supra), it stands settled that upon the promulgation of SRO, 2009, the Board acting under the first proviso to section 181 of the Act divested itself of the authority to grant an option of fine in lieu of confiscation in respect of conveyances employed for the transportation of smuggled or non-custom-paid goods. The said SRO, 2009 unequivocally withdrew the discretion of the adjudicating officer by declaring that no such option shall be extended in cases of (a) smuggled goods falling under clause (s) of section 2 of the Act, and (b) lawfully registered conveyances found used wholly or exclusively for the carriage of offending goods in false cavities. This statutory embargo remained in force continuously, except for a brief and limited relaxation introduced through S.R.O.1280(I)/2024 dated 20.08.2024, which conditionally permitted release of certain vehicles not falling within clause (b), seized for the first or second time. The said concession, however, stood rescinded by S.R.O.1619(I)/2024 dated 03.10.2024, thereby restoring the original and complete prohibition with insertion/inclusion of (ba). Consequently, the adjudicating fora, including the Board itself, have had no lawful competence to order release of any conveyance used for the transportation of smuggled goods against payment of fine, and confiscation in such circumstances is mandatory in law. The judgment of this Court in Bashir Ahmad (supra) thus affirms and reinforces the binding operation of SRO, 2009 in all pending as well as future proceedings.

8. Applying the above understanding of law to the case at hand, it is manifest that the Customs Appellate Tribunal as well as the learned High Court failed to appreciate the legal effect of the aforesaid statutory bar. Once the Board, in exercise of its powers under section 181 of the Act, had withdrawn the discretion to grant an option of redemption fine through SRO, 2009 as amended, neither the adjudicating officer nor the appellate fora retained jurisdiction to order release of a vehicle found used wholly or exclusively for transportation of smuggled goods. The record establishes that the vehicle in question was intercepted carrying only foreign-origin PU Coated Fabrics and old and used tyres, and no lawful import documents were produced to discharge the burden under section 187 of the Act. The plea that the vehicle was a hired public transport cannot override the explicit statutory bar created by the Board's notification. In such circumstances, the confiscation of the vehicle was the only course permissible under the law.

9. By empowering authorities to confiscate, without option of redemption fine, all vehicles and conveyances used in the transportation of smuggled goods, the amendment closes a longstanding loophole that previously allowed offenders to reclaim such assets through payment of fines. This measures the enforcement capacity of the authorities ensuring that the instruments of smuggling are permanently removed from circulation.

10. The reasoning adopted by the Tribunal, treating the words "liable to confiscation" occurring in section 157(2) as a matter of discretion, was misconceived and contrary to the clear mandate of the Act as reinforced by the binding precedent of this Court in Bashir Ahmed (supra). The High Court, by affirming such view and construing the amending S.R.O. 1619(I)/2024 dated 03.10.2024 as discretionary, overlooked the enduring operation of the amended notification above, thereby falling into error apparent on the face of the record. Their interpretation that the case involved discretionary confiscation under section 157(2) is misconceived.

11. In view of the forgoing discussion, this petition is converted into an appeal and allowed. The judgment dated 20.05.2025 of the Peshawar High Court in Custom Reference No.84-P/2025 and the judgment dated 13.03.2025 of the Customs Appellate Tribunal, Peshawar are set aside. Consequently, Order-in-Original No.367/2024 dated 18.12.2024 passed by the Additional Collector of Customs (Adjudication), Islamabad, Camp Office, Peshawar, ordering outright confiscation of the goods and vehicle, is restored.

Civil Petitions No.2854 and 3566 of 2025: In view of the findings recorded and conclusion drawn in the connected case (Civil Petition No.2853 of 2025), these petitions are converted into appeals and the same are allowed. The impugned judgments of the High Court are set aside.

Civil Petition No.3886 of 2025: In view of the findings recorded and conclusion drawn in the connected case (Civil Petition No.2853 of 2025), this petition is dismissed and leave to appeal is refused.”

Per learned counsel, the aforementioned judgment is squarely binding upon this Bench and therefore in view thereof, the question proposed may be determined in favour of the applicant department and the impugned judgment may be set-aside. Order accordingly.

A copy of this order may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969. Office is instructed to place copy of this order in the connected files.

Judge

Judge

Ayaz p.s.