ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 153 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of main case.
2. For hearing of CMA No.1608/2026.

17.08.2026

Mr. Zulfiqar Ali Arain, advocate for applicant.
Dr. Nasir Khan, Collector of Customs (Enforcement) Hyderabad

The impugned judgment observes as follows:

> "07. I have heard parties to the dispute, perused the case record and given due deliberations to the facts and law points involved therein. The matter revolves around the following questions: -
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> > (1) Whether the burden of proof was adequately shifted to the Respondent department under Section 187 of the Customs Act, 1969, as regards the legal procurement of the goods?
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> > (ii) Whether the outright confiscation of the subject vehicle under Section 157(2) read with SRO 499(1)/2009 was justified in connection with the answer to Question (i) above and in the light of the judgment of Hon'ble Supreme Court in the case of Director US. Muhammad Ishaq Civil Petition No. 2853-2854/2025?
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> 08. The Appellant's principal contention is that the seized goods (i.e., "Bombay" Sweet Supari) were not smuggled goods but Use lawfully acquired from M/s BDM Enterprises under a valid purchase invoice dated 02.02.2026 issued to M/s Ansra Food Products. It is argued that goods purchased through lawful commercial transactions from a legitimate importer cannot subsequently be characterized as smuggled goods in the absence of any evidence to the contrary. The Appellant further submits that he is engaged in the business of processing and packing betel nuts at Plot No. WSA-4, Block-1, F.B. Industrial Area, Karachi, and that the seized goods formed part of his regular business stock.
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> 09. On the other hand, the respondent alleged that the documents relied upon by the appellant do not prove lawful possession of the seized "Bombay" sweet supari. The documents fail to establish any direct nexus with the seized goods, and the importer mentioned in the GD is different, and the present claimant is also a different person/entity. Furthermore, the respondent failed to produce a complete and verifiable transaction trail, including sales records of both seller and buyer and their proper reflection in sales tax summary invoices, to prove lawful purchase and payment of duties/taxes. In the absence of such clear linkage, these documents cannot be relied upon as proof of lawful possession.
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> 10. After having gone through the available record, the Appellant has produced the following documents to claim possession of the subject goods:-

1. GD No. KAPS-HC-64426-14-10-2025 in the name of M/s BDM Enterprises;
2. Plant protection/PPRO documents;
3. Sales tax invoice No. 21 dated 02.02.2026 issued to M/s Ansa Food Products by the importer M/s BDM Enterprises;
4. HACCP, Quality Management,
5. Halal certifications;

11. The counsel for the appellant has placed on record complete and cogent documentary evidence pertaining to the manufacturing facility, including import documents relating to the betel nuts, sales tax invoice and relevant tax returns. The appellant, being the proprietor of M/s Ansa Food Products, has demonstrated full compliance with the applicable legal and regulatory framework. The show cause raises broad IPO-2022 conditionalities relating to betel nut imports (DPP permits, phytosanitary, food safety, shelf-life, halal certification, etc.). Where a consignment has been cleared through customs against a valid GD after production of DPP/PPRO documentation, any residual regulatory non-compliance like labeling, shelf-life shortfall, or halal/logo deficiencies in retail packs generally attracts specific regulatory action by the competent food/standards authorities or post-clearance proceedings against the importer/packer, not a smuggling presumption against a downstream bona fide purchaser who holds a tax invoice and conducts registered business. The record shows no laboratory testing, no shelf-life verification, no halal certificate repudiation, and no finding of adulteration/contamination in terms of any notified standard.

12. The above trail of documents leads me to conclude that Appellant No.1 has adequately shifted its burden onto the Respondent department under Section 187 of the Customs Act, 1969. However, no evidence to the contrary has been placed on record by the Respondent department to prove these documents to be unauthentic. Consequently, the documentary evidence placed on record by the Appellant holds the field. Accordingly, the answer to Question No. (i) framed above is given in the negative in favour of the Appellant and against the Respondent Department. Hence, the subject goods are proved to be lawfully imported by the importer and legally procured by the Appellant. Therefore, charges of goods being smuggled are unwarranted and unsubstantiated. The respondent department has failed to substantiate its allegations without any credible evidence or documentary evidence. Mere assertions, devoid of evidentiary backing, cannot sustain a charge of smuggling. It is noteworthy that despite the opportunity, the department neither conducted a meaningful investigation into the manufacturing process nor produced any material to demonstrate illicit procurement of raw material. The appellant has maintained complete transparency regarding its manufacturing operations and has furnished all requisite documentation, including certifications from the relevant food authority. Furthermore, it is common knowledge at the impugned goods are widely available across the country, ng lawfully manufactured and marketed under proper registration and trademark. If the stance of the department were be accepted, it would lead to an untenable and absurd situation whereby numerous similar brands of sweet supari, widely available in thousands of retail and wholesale outlets. nationwide, would also be liable to seizure.

13. As regards Question No. (ii), the Appellant asserts that the vehicle was duly registered with the concerned Motor Registration Authority (MRA) and had a clean track record and had never indulged in any kind of transportation of smuggled goods, therefore, the same may be released unconditionally. On the other hand, the learned adjudicating authority has held that the vehicle in question had been used wholly for the transportation of smuggled goods; hence, the same was required to be confiscated

outright within the contemplation of Clause 1(b) of the preamble to the SRO 499 (I)/2009.

14. For the sake of understanding and to arrive at a fair conclusion, it is imperative to discuss the amendments made in SRO 499(I)2009 in the recent past. Through SRO 1280(I)/2024 dated 20.08.2024, the following clause was inserted in the SRO:-

> "(ba) lawfully registered conveyance including packages and containers other than in clause (b), found carrying smuggled goods if seized for the third time; or"

15. Additionally, the pitch of fine against clause (f) of Table to SRO was enhanced from 20 to 40%. For Clause (f) following explanation was added: -

> "Explanation. For the purposes of sub clause (1), of S.No.2 of the Table, the value of the seized vehicle for payment of fine in lieu of confiscation, shall be determined by allowing a maximum of 50% of depreciation @ of 2% per month upto 24 months. Any further depreciation in value for the purposes of this sub-clause shall be in accordance with the provision of sub-rule (2A) of rule 58 of Customs Rules, 2001, after written approval of the relevant Collector of Customs."."

16. This clause remained in field until it was substituted by the following clause vide SRO 1619(I)/2024 dated 03.10.2024: -

> "(ba) lawfully registered conveyance including packages and containers, other than in clause (b), if seized and found carrying smuggled goods"

17. The substitution of clause (ba) rendered Clause (f) of the Table to SRO 499(I)/2009 and the explanation thereto as redundant, which provisions, however, were omitted through SRO 586(I)/2025 dated 09.04.2025.

18. Post 3rd October, 2024, in case a lawfully registered vehicle is found carrying smuggled goods in false cavities, packages, containers or being used wholly or exclusively for transportation of offending goods under Clause (s) of Section 2 of the Customs Act, 1969, the same shall be confiscated outright. The only condition precedent for outright confiscation is that a vehicle or package or container should be found carrying smuggled goods. In case the vehicle is not found in such offence, the same will be released unconditionally, as the option of release of the vehicle against the redemption fine has been withdrawn by omission of Clause (1) of Table to SRO 499(I)/2009. This conclusion finds support from the judgment of the Hon'ble Supreme Court of Pakistan's dated 29.10.2025, passed in Civil Petitions No. 2853 and 2854 of 2025 (Director I&I, PSW vs. Muhammad Ishaq), wherein the apex court has observed as under: -

> 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 s against payment of fine, and confiscation in such clamstances is mandatory in law. The judgment of this Count in Bashir Ahmad (supra) thus affirms and reinforces the binding operation of SRO, 2009 in all pending as well as future proceedings."
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> 19. In the light of above and in the absence of such evidence, the allegation of carriage of smuggled goods against the vehicle is wholly unfounded.
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> 20. Nevertheless, in answer to Question (i) above, it has already been concluded that goods were not smuggled, rather the same were lawfully procured. Therefore, the subject vehicle, although lawfully registered, was not found to be carrying smuggled goods; hence, its outright confiscation is declared to be unlawful. Accordingly, the answer to Question (ii) is given in the negative in favour of Appellant and against the Respondent department.
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> 21. Based on the above deliberations, I am left with no option but to allow the appeal and set aside the Impugned Order as well as the Show-Cause Notice. The Subject Goods and the Vehicle are directed to be released to the Appellants / lawful owners unconditionally.
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> 22. With these findings, the Impugned Order is modified to the above extent and the instant appeal is disposed of accordingly."

On the last date, learned counsel for the applicant was confronted that the entire judgment appears to pivot on evidence/appreciation thereof and no case was made out for de novo appraisal of the same in reference jurisdiction. The impugned judgment formulates two questions for determination. The first one was entirely evidential in nature and the second was a consequential question to be answered considering a binding judgment of the Supreme Court. Since learned counsel remained unable to assist, it was considered expedient to seek the assistance of the applicant.

Today, Mr. Muhammad Nasir, Director, Directorate of Intelligence and Investigation, Customs, Regional Office, Hyderabad, is present and the only plea remains that the evidence was not appreciated in its proper perspective by the learned appellate Tribunal, hence, reappraisal was merited in reference jurisdiction. Surprisingly, the same worthy officer had unsuccessfully raised the same plea in earlier matters, including as apparent vide order dated 02.03.2026 in SCRA 16 of 2024. The same does not meet the approval of this Court in view of the judgment of the Supreme Court in the case of *Umar Tariq Khan*[1].

It remains settled law that the learned tribunal is the last forum of fact in the pertinent statutory hierarchy. The appreciation of evidence was only material before the subordinate adjudication fora and no appreciation of evidence is merited before this Court in the exercise of its reference

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[1] Per *Miangul Hassan Aurangzeb J* in *ACIR Rawalpindi* vs. *Umar Tariq Khan* (CPLA 1990 of 2025); judgment dated 15.01.2026.

jurisdiction[2]. The officer remained unable to dispel the preponderance of reasoning / record relied upon in the impugned judgment and could not demonstrate that the conclusion reached could not have been rested thereupon.

Since the learned Appellate Tribunal is the last fact-finding forum in the statutory hierarchy, therefore, mechanical de novo adjudication does not fall within the ambit of reference jurisdiction[3]. Since no question of law has been articulated before us to be adjudicated in reference jurisdiction, therefore, this reference application is dismissed in *limine*.

A copy of this decision 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(10) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS

[2] Per *Qazi Faez Isa J* in *Middle East Construction vs. Collector Customs*; judgment dated *16.02.2023* in *Civil Appeals 2016 & 2017 of 2022*; *Collector of Sales Tax vs. Qadbros Engineering Limited* reported as *2023 SCMR 939*; *Army Welfare Trust vs. Collector of Sales Tax* reported as *2017 SCMR 9*; *Pakistan Match Industries (Pvt.) Ltd. Vs. Assistant Collector, Sales Tax and Central Excise* reported as *2019 SCMR 906*; *Commissioner of Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd.* reported as *2022 SCMR 1082*.

[3] Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as *2011 PTD 2577* – Findings of fact cannot be challenged in reference jurisdiction.