

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Const. Petition No. D-1088 of 2026

(M/S Pioneer Tobacco v. Federation of Pakistan and others)

Petitioner : Through Mr. Ahmed Maqsood Advocate

Respondents No 1 : Through Ms. Shazia Ahmed Hanjrah
to 3 Deputy Attorney General for Pakistan

Respondent No 9 : Mr. Altamish Arab Advocate

Respondents No : Mr. Khurram Rashid Advocate
10 & 11

Respondents No 4 : Mr. Khalid Rajper
to 8

Date of hearing & : **12.05.2026**
short Order

Date of Reasons : **01 .06.2026**

JUDGMENT

NISAR AHMED BHANBHRO, J:- Through this petition, the petitioner has claimed the following relief(s):

- i. Declare that the Impugned Warrant dated 18.02.2026 is illegal and void;*
- ii. Declare that the Impugned Notice, raid and seizure dated 18.02.2026 is illegal and void;*
- iii. Declare that the Respondents No 5,7 & 8 acted illegally and with material irregularity while executing Impugned Warrant & Impugned Notice Dated 18.02.2026.*
- iv. Declare that the Respondent No 5 does not have the jurisdiction to conduct raid within the EPEZ and that the Respondent No 7 does not have jurisdiction to search on premises within the EPEZ or seize goods in presence of valid bill of lading.*
- v. Direct the Respondents to return the goods seized from the subject site.*

vi. Restrain the Respondents and any all other persons acting through or under them from taking any coercive action against the Petitioner in lieu of the Impugned Warrant and Impugned Notice dated 18.02.2026.

vii. Grant any other relief that this Court may deem fit and proper.

2. Initially Petitioner had filed instant petition by arraying officials of Inland Revenue and Customs Authority of Federal Board of Revenue (FBR) as party, however, during proceedings Pakistan Tobacco Company Ltd, Philip Morris Brands Sarl and Philips Morris Pakistan Limited filed applications being CMA No 7032/2026 and CMA No 5608/2026 under Order I Rule 10 C.P.C. seeking impleadment as party to the petition. Both the applications were allowed by consent vide order dated 16.04.2026. Accordingly all three business entities were added as respondents No 9 to 11 in the petition.

3. Learned counsel for the petitioner contended that Petitioner Company is partnership concern engaged in the business of wholesale and retail trade, registered under the laws and carrying business since year 2018. He contended that Petitioner obtained license to operate within Karachi Export Processing Zone (KPEZ) in year 2015 to conduct its business in the said premises. He contended that in year 2023 and 2024 Export Processing Zone Authority (EPZA) granted permission to Petitioner to carry out additional industrial activity including manufacturing and trade of Cigarette, Tobacco and Tipping Paper. He contended that on 18.02.2026 officials of Inland Revenue Conducted raid on the premises in KPEZ. During raid imported goods were seized without any lawful authority. He contended that search warrant was obtained under the garb of sales tax fraud on the ground that Petitioner Company was not registered under STA. He further contended that Respondents raided the premises of Petitioner in KEPZ under the garb of warrant dated 18.02.2026 issued under section 40 of the Sales Tax Act, 1990 (STA), conducted search of the premises and seized articles under section 163 of the Customs Act, 1969 (TCA). He contended that search and seizure was done without issuing any notice under section 26 and in absence of any proceedings under section 37 and 38 of STA. He contended that KEPZ was established under the provisions of Export Processing Zones Authority Ordinance, 1980 (the

Ordinance) and was declared a bonded area and treated separate from the tariff area. He contended that by exercising powers conferred under section 25 of the Ordinance, the Federal Government vide S.R.O No 881 dated 23.08.1980 exempted KPEZ from customs duties and sales tax imported or exported from the zone. He contended that neither any recovery memo was prepared nor inventory prepared, and raid was conducted with ulterior motives at the instance of other competing companies to stop Petitioner Company's sharp growth in business. He contended that all the proceedings were conducted in violation of laws and principles of natural justice, were arbitrary and discriminatory, thus offended the fundamental rights of the Petitioner guaranteed under article 4, 9, 10-A, 18 and 25 of the Constitution of Islamic Republic of Pakistan, of 1973 (the Constitution). He relied upon unreported judgment of this Court in the case of The Commissioner Inland Revenue, Legal Zone (MTO) Vs. Team A-Ventures (Pvt) Ltd. (H.C.A No 11 of 2022), unreported judgment in the case of H.M. Motors V. Federation of Pakistan and others (CPD No 4910 of 2025), Mohammad Hassan Nadeem V. Model Customs Collectorate (Enforcement and Compliance) through Collector and 4 others (2021 PTD 764), Collector of Customs through Additional Collector of Customs V Messrs Forte Impex (2002 PTD 245), Collector of Customs, Model Customs Collectorate, Peshawar V Noor Sher Ali (2021 PTD 822), Messrs Popular Juice Industries (Pvt.) Ltd. Through Authorized Officer and 6 others V. Federation of Pakistan through Chairman Federal Board of Revenue and 3 others (2021 PTD 1329), Messrs Kamran Industries V. The Collector of Customs (Exports) 11th Floor, Customs House, Karachi and 4 others (PLD 1996 Karachi 68). He lastly prayed that petition may be allowed as prayed.

4. Learned Counsel for Respondent No 3 to 8 contended that Petitioner Company registered itself under the Income Tax Ordinance, 2001 (ITO) as Retailer in the jurisdiction of RTO - II Karachi. He contended that perusal of Returns of Income filed by Petitioner Company for tax year 2025 appeared to be suspicious, therefore, FBR initiated inquiry in its business activities. He contended that upon receipt of credible information that Petitioner Company was engaged in unlawful manufacture of tobacco products / cigarettes and supplies to Tariff Area which were taxable under Federal Excise Act, 2005 (FEA). He contended that in order to ascertain the factual position FBR obtained search warrant from Learned Judicial Magistrate Malir on 18.02.2026. He

further contended that during search substantial quantity of imported cigarette brands and Sheesha/Hookah flavour were found stored in the premises, however no operational manufacturing facility, machinery or other evidence of any manufacturing activity or international undertaking was found. He contended that since activity involved imported items therefore concerned customs authority was taken on board. He contended that action was taken by Tax Authority and Custom Authority in accordance with law. He contended that the Petition was not maintainable as it contained disputed questions of law and fact, which required evidence. He contended that Petitioner stored huge quantity of tobacco items without import documents, thus seized articles were liable to confiscation. He therefore prayed to dismiss the petition.

5. Learned Counsel for the Respondent No 9 contended that pursuant to search and seizure samples of cigarettes and Hookahs were taken and sent by Customs Authority to Respondent No 9 for the forensic analysis. He contended that analysis of samples revealed that the branded items did not belong to Respondent No 9 (Pakistan Tobacco Company). He contended that Petitioner used the labels of Respondent No 9 and sold cigarette in the market. He contended that Customs Authority rightly seized the articles which were liable to confiscation. He prayed to dismiss the petition.

6. Learned Counsel for the Respondents No 10 and 11 contended that Petitioner Company though imported the seized items under a valid invoice but the seized items were near to expiry and Petitioner Company was selling poison, therefore, instead of returning the articles to Petitioner Company the same may be ordered to be destroyed. He prayed to dismiss the Petition

7. Learned Deputy Attorney General for Pakistan contended that Petitioner Company was involved into evasion of sales tax and illicit trade activities and FBR while conforming to provisions of CTA, TCA and ITO conducted raid over the premises after obtaining permission from concerned Magistrate. She contended that there is no illegality in the proceedings, therefore, no case for indulgence of this Court at this stage is

made out. While further relying upon the arguments of Learned Counsel for Respondents No 3 to 8, she prayed to dismiss the petition.

8. Heard arguments of the parties and perused the material made available before us on record.

9. Scanning of the material available on record revealed that Deputy Director intelligence & Investigation-IR Karachi sought search warrant from the area Magistrate to conduct search of the premises of M/s Pioneer Tobacco Karachi (Petitioner Company) located at Plot No 10 Sector A-IV KEPZ Landhi Karachi. Per contents of application seeking search of premises (page 105 of Court File), it was alleged that Petitioner Company was involved in illegal and unauthorized manufacturing of Tobacco Products/ Cigarettes and accused of making taxable supplies without issuance of Sales Tax Invoices. It was further alleged that documents and electronic devices are kept at the premises. Learned Area Magistrate vide its order dated 18.02.2026 granted permission to conduct search of the premises for the purposes of investigation, further restraining Deputy Director from arresting any person.

10. Pursuant to search warrants, search of the premises was conducted. Per compliance report submitted to concerned Magistrate (Page 113 of Court File) no operative manufacturing facility or evidence of any international undertaking was found there, however a substantial stock of imported cigarette brands as well as Sheesha/hookah was found lying in the store. Since stock of imported cigarettes and sheesha/hookah flavors comprised imported goods falling within the jurisdiction of the Customs Authorities, therefore the concerned Customs Authorities were informed by phone. On information a customs team headed by Mr. Javed Iqbal arrived at the premises and approximately 5000 cartons of cigarettes and 1600 cartoons of sheesha flavors found at the premises were handed over to Customs Authorities under proper memo.

11. It further transpired from record that seized articles were sent to Philip Morris (Pakistan) Limited and Pakistan Tobacco Company Limited for verification of authenticity and authorization of Cigarettes bearing Marboro trademark and Benson & Hedges Trademark recovered from premises.

12. Philip Morris (Pakistan) Limited in its report dated February 26, 2026 informed that Petitioner Company was not an authorized/recognized importer, exporter distributor, manufacturer or any other authorized business partner for MARLBORO and seized articles were counterfeit.

13. Pakistan Tobacco Company Ltd. sent cigarette samples for verification to British American Tobacco (BAT), the manufacturer of Benson & Hedges. In its report dated 10th March, sent to Pakistan Tobacco Company Ltd., it was informed that product did not comply to BAT's packaging standards and specifications, though the product resembled with the manufacture by BAT but in fact was a counterfeit.

14. Petitioner's case involves two fold actions. Initially the permission to search the premises was obtained to ascertain availability of any manufacturing facility, that was not recorded with FBR and resulted in sale tax evasion, followed by seizure of goods under the provisions of the Customs Act, 1969.

15. Sales Tax 1990 is the governing law to check sales tax fraud. Petitioner Company was suspected of Sale Tax Fraud. In the given situation, Section 37 A of STA empowered an officer of Inland Revenue not below the rank of Assistant Commissioner or any other officer authorized by FBR to initiate an inquiry on the basis of material evidence pointing to the commission of tax fraud or an offence warranting prosecution under STA upon approval by the Commissioner. For the purpose of an inquiry, the officer of Inland revenue enjoys the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the matters to summon and enforce the attendance of any person and examine him on oath; and requiring the discovery and production of documents and receiving evidence on affidavits and to complete the inquiry within six months. During inquiry proceedings, the officer of Inland Revenue is obligated to an opportunity of being heard to the person alleged to have caused tax fraud warranting prosecution under this Act, and confront the person with the details of tax fraud committed or caused to be committed by such person for explanation. The officer of Inland Revenue shall submit inquiry report along with reasons to be recorded in writing indicating the amount involved in tax fraud worked out as a result of such inquiry to the

Commissioner to obtain prior approval for investigation or the closure of inquiry without any further investigation. The Commissioner, on the basis of inquiry report and after recording reasons in writing, shall either approve initiation of investigation, or require the officer of Inland Revenue to submit such further information or documents as he may direct for his decision; or close the inquiry by rejecting the report or accepting the report, as the case may be. After approval of investigation under sub-section, the officer of Inland Revenue shall complete investigation within three months and prepare investigation report for submission before the competent court. The three-member committee notified by the Chairman, FBR may authorize the Commissioner to issue warrant of arrest of a person, if it is satisfied on the basis of facts brought before it, that the tax fraud falls within the ambit of sub-clauses (a), (b), (c), (d), (e) and (f) of clause (37) of section 2; the amount involved in tax fraud exceeds fifty million rupees; and it has been established during the course of investigation by the Inquiry Officer that the accused is intentionally or willfully not joining the investigation after three duly served notices; the accused is attempting to abscond; or there are sufficient grounds that the accused would temper with the evidence, the officer of inland revenue may arrest a person alleged to have committed a tax fraud. For the ease of reference section 37A of STA is reproduced below

37A. Power to inquire, investigate offences warranting prosecution under this Act and Arrest of a person.- (1) *Notwithstanding anything contained in Section 11E of this Act, an officer of Inland Revenue not below the rank of assistant commissioner or any other officer authorized by the Board in this behalf on the basis of material evidence pointing to the commission of tax fraud or an offence warranting prosecution under this act may initiate an inquiry upon approval by the Commissioner.*

(2) *For the purpose of an inquiry under this Act, the officer of Inland revenue shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:*

(a) *summoning and enforcing the attendance of any person and examining on oath; and*

(b) *requiring the discovery and production of documents and receiving evidence on affidavits.*

(3) *The officer of inland revenue shall complete the inquiry while exercising the powers under the provisions of section 37, 38, 38A, 38B, 40 or any other section of the Act, wherever required within six months.*

(4) *During inquiry proceedings, the officer of inland revenue shall give an opportunity of being heard to the person whose actions alleged to have caused tax fraud warranting prosecution under this Act, confronting the person the details of tax fraud committed or caused to be committed by such person for explanation.*

(5) *The officer of inland revenue shall submit inquiry report along with reasons to be recorded in writing indicating the amount involved in tax fraud worked out as a result of such inquiry to the Commissioner to obtain prior approval for investigation or the closure of inquiry without any further investigation.*

(6) *The Commissioner, on the basis of inquiry report under sub section (5) and after recording reasons in writing, shall either –*

(i) approve initiation of investigation, or

(ii) require the officer of Inland Revenue to submit such further information or documents as he may direct for his decision; or

(iii) close the inquiry by rejecting the report or accepting the report, as the case may be.

(7) *After approval of investigation under sub-section (6), the officer of inland revenue shall complete investigation within three months and prepare investigation report for submission before the competent court.*

(8) *The three-member committee notified by the Chairman, may authorize the Commissioner to issue warrant of arrest of a person, if it is satisfied on the basis of facts brought before it, that*

(a) the tax fraud falls within the ambit of sub-clauses (a), (b), (c), (d), (e) and (f) of clause (37) of section 2;

(b) the amount involved in tax fraud exceeds fifty million rupees; and

(c) it has been established during the course of investigation by the Inquiry Officer that the accused is intentionally or

willfully not joining the investigation after three duly served notices; the accused is attempting to abscond; or there are sufficient grounds that the accused would temper with the evidence.

(9) Notwithstanding anything contained in sub-section (8), the officer of inland revenue may arrest a person alleged to have committed a tax fraud after obtaining an arrest warrant from the Special Judge in a case of a fraud falling within the ambit of the subclauses of clause (37) of section 2 during the course of investigation if:-

(i) the accused is intentionally or willfully not joining the investigation after three duly served notices;

(ii) the accused attempting to abscond; or

(iii) there are sufficient grounds that the accused would temper with the evidence.

(10) Where the person suspected of tax fraud or any offence warranting prosecution under this Act is a company, every director or officer of that company whom the officer of inland revenue has reason to believe is personally responsible for actions of the company contributing the tax fraud or any offence warranting prosecution under this Act shall be liable to arrest; provided that any arrest under this sub-section shall not absolve the company from the liabilities of payment of tax, default surcharge and penalty imposed under this Act.

(11) Notwithstanding anything contained in this Act, where any person has committed a tax fraud or any offence warranting prosecution under this Act, the Commissioner may, either before or after the inquiry or investigation, compound the offence if such person pays the amount of tax evaded or sought to be evaded as determined in the inquiry or the investigation along with default surcharge and penalty as provided under this Act.

(12) Any person accused of an offence who is arrested under this Act shall at the time of arrest be informed of the grounds of arrest in writing on the basis of which he has been arrested.

(13) All arrests made under this Act shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided that no arrest under this section shall be made before the completion of inquiry under sub-section (1) of this section.

(14) The accused arrested may approach the competent court for his release on bail under the provisions contained in sections 497 and 498 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(15) The purpose of prosecution under the provisions of sections 37A and 37B of this Act shall remain to –

- (a) create sufficient deterrence against tax fraud; and*
- (b) provide for retribution for commission of tax fraud.*

16. From perusal of above provisions of law it is crystal clear that an inquiry into tax fraud shall be initiated on the basis of material evidence. Prior to taking any adverse action the person under allegation has to be heard. But in the case of Petitioner Company none was heard. Even notice of hearing was not given to the Petitioner Company. Section 37 A requires the approval of Commissioner to initiate an inquiry, but no such approval was either placed before learned Magistrate while seeking permission to raid the premises or before this Court, which established that no inquiry or proceedings were initiated against the Petitioner Company. Section 38 of STA further empowers the authorized officer to have free access to business or manufacturing premises, registered office or any other place where any stocks, business records or documents required under this Act are kept or maintained belonging to any registered person or a person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud committed by him or his agent or any other person; and such officer may, at any time, inspect the goods, stocks, records, data, documents, correspondence, accounts and statements, utility bills, bank statements, information regarding nature and sources of funds or assets with which his business is financed, and any other records or documents, including those which are required under any of the Federal, Provincial or local laws maintained in any form or mode and may take into his custody such records, statements, diskettes, documents or any part thereof, in original or

copies thereof in such form as the authorised officer may deem fit against a signed receipt. The registered person, his agent or any other person acting on his behalf shall be bound to answer any question or furnish such information or explanation as may be asked by the authorised officer. The department of direct and indirect taxes or any other Government department, local bodies, autonomous bodies, corporations or such other institutions shall supply requisite information and render necessary assistance to the authorised officer in the course of inquiry or investigation under this section. Section 38-A of STA empowered the Commissioner to call for information, by notice in writing from any person including a banking company, to furnish such information or such statement in connection with any investigation or inquiry in cases of tax fraud, as may be specified in such notice. Section 38B obligated the person required to maintain the record under the STA, on demand by an officer, not below the rank of an Assistant Commissioner Inland Revenue, by notice in writing, as and when specified in the notice, to produce for examination, such documents or records which the officer of Inland Revenue considers necessary or relevant to the audit, inquiry or investigation; allow the officer of Inland Revenue to take extracts from or copies of such documents or records; and appear before the officer of Inland Revenue and answer any question put to him concerning the documents and records relating to the audit or inquiry or investigation. An officer of Inland Revenue conducting an audit, inquiry or, as the case may be, an investigation under the Act, may require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization which, in the opinion of the officer of Inland Revenue, is relevant to such audit, inquiry or investigation. The FBR may require, in writing, any person, department, company or organization, as the case may be, to provide any information or data held by that person, department, company or organization, which, in the opinion of the Board, is required for purposes of formulation of policy or administering the Customs, Sales Tax, Federal Excise or Income Tax. Every person, department, company or organization shall furnish the information requisitioned by the FBR or the officer of Sales Tax, within the time specified in the notice. Notwithstanding anything contained in any other law for the time being in force, the Commissioner may, by notice in writing, require any Internet Service Providers, Telecommunication Companies and Pakistan Telecommunication Authority, to furnish subscriber's information

pertaining to the Internet Protocols in connection with any inquiry or investigation in cases of tax fraud, as may be specified in such notice.

17. STA envisaged a mechanism to conduct search of a place. When authorized officer has a reason to believe that that any documents or things are kept in any place which were useful and relevant to any proceedings under this act, the officer may obtain a warrant from concerned magistrate and conduct search of the premises. Section 40 of STA being relevant reads as under:

40. Searches under warrant.- (1) Where any officer of Inland Revenue has reason to believe that any documents or things which in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place, he may after obtaining a warrant from the magistrate, enter that place and cause a search to be made at any time.

(2) The search made in his presence under subsection (1) shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (V of 1898).

18. Analysis of record leads to an inference that Petitioner Company was not facing any proceedings under tax fraud at the time when permission to search the premises was obtained. In absence of any proceedings pending before competent forum the search of premises was not warranted under the law. Careful reading of the application filed before concerned Magistrate revealed that concerned officer was authorized to a free access of premises by the competent authority vide order dated 22.09.2025 but said order was neither produced before concerned Magistrate nor before this Court. Learned Counsel for the Petitioner took specific plea that no any proceedings of tax fraud were initiated, when confronted to such stance, FBR failed to dispel this claim. In absence of any proceedings of tax fraud, search of the premises cannot be done. Learned Magistrate without examining the relevant provisions of law through an arbitrary exercise of powers granted permission to conduct search of the premises vide order dated 18.02.2026, which cannot sustain.

19. Officer of Inland Revenue sought permission to conduct search of the premises as he believed that a credible information was available

regarding unauthorized manufacturing facility at the premises, however, during search no such facility was found, therefore, officers of customs department were taken on board by phone as stocks of branded cigarettes and sheesha/ hookah was found stored. The Officers of customs arrived at the place and seized 5000 cartons of cigarettes and 1600 cartons of Sheesha / hookah flavors. Though no any reason was assigned for such seizure in the memo but report dated 18.02.2026 (page 109 of Court File) revealed that seized goods were suspected to be smuggled goods, therefore, provisions of section 163 of the Customs Act 1969 were invoked. It will be conducive to reproduce below the statement dated 18.02.2026 released by Assistant Collector Anti Smuggling Organization (ASO) for sake of reference:

GOVERNMENT OF PAKISTAN
COLLECTORATE OF CUSTOMS ENFORCEMENT
CUSTOM HOUSE KARACHI

Dated 18.02.2026

Time 09:30 PM

Place/Address: Pioneer Tobacco

STATEMENT UNDER SECTION 163 OF THE
CUSTOMS ACT, 1969 ON GROUNDS OF BELIEF AS TO THE
SUSPECTED SMUGGLED GOODS LIABLE TO BE
CONFISCATED

I, Bisma Noor Jatoi, Assistant Collector of Customs, duly employed as In-charge of Anti - Smuggling Organization of Collectorate of Customs Enforcement at NMB Wharf Karachi, am acting upon a secret / confidential information regarding the storage of foreign origin smuggled goods. These smuggled goods including Cigarettes and Sheesha flavors liable for confiscation and are reportedly secretly kept in the aforesaid premises, which is meant for illegal trade.

2. In view of the above stated grounds, I have a strong and reasonable belief that there is an imminent risk of these goods being removed from the premises before a search can be conducted under section 162 of Customs Act, 1969. Given the urgency of the situation, I hereby order that a search of the said premises be conducted in the presence of musheers (witnesses) for recovery of above mentioned smuggled goods liable for confiscation. After the search detailed inventory of the seized goods shall be prepared by the seizing officer in the presence of musheers. A copy of the inventory shall be affixed at

the main entrance of the premises for the information of the occupants and to be dispatched to the owner to be ascertained during the course of investigation as prescribed under section 163 of the Customs Act, 1969.

3. Moreover, a statement of the grounds mentioned for conducting this search has also been affixed to the main entrance of the premises, located at Export Processing Zone. To document this action, photographs and video footage of the same has been captured/recorded by the detention officer on his personal mobile device and will be submitted as evidence when required, in terms of Article 164 of the Qanun e Shahadat Order, 1984.

Sd/

Owner of the goods/premises

Nawab owner of premises

Sd/

(Bisma Noor Jatoi)

Assistant Collector of Customs

Anti - Smuggling Organization

Collectorate of Customs Enforcement, Karachi

20. From the perusal of above statement, it is crystal clear that goods were seized under suspicion being smuggled goods by invoking the provisions of section 163 of the Customs Act, 1969. Section 163 is tied in with section 162 which envisaged for issuance of a search warrant by Judicial Magistrate, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of its jurisdiction. Learned Magistrate may issue a warrant to search for such goods, documents or things and such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure, 1898 (Act V of 1898). Resort to section 163 was only merited, if the requirements laid out therein were satisfied. In the present case initially search warrant was obtained to examine the premises as to availability of any manufacturing facility. If we presume that information to Customs Authorities was conveyed in the night at 09:30 pm and there was no possibility of obtaining a fresh search warrant, thus recourse to section 163 was rightly taken. Recourse to section 163 can be made in the situations where there are reasonable grounds for believing that any goods liable to confiscation or any documents or things

which will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, the officer of Customs may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place. Section 163 reads as under:

163. Power to search and arrest without warrant.- (1)

Whenever any officer of customs not below the rank of an Assistant Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.

(2) An officer or person who makes a search or causes a search to be made under sub section (1) shall leave a signed copy of the aforementioned statement in or about the place searched and shall, at the time the search is made or as soon as is practicable thereafter, deliver furthermore a signed copy of such statement to the occupier of the place at his last known address.

(3) All searches made under this section shall be carried out mutatis mutandis in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

(4) Notwithstanding anything contained in the foregoing sub-sections and subject to previous authorization by an officer of customs not below the rank of an Assistant Collector of Customs, any officer of customs or any person duly empowered as such may, with respect to an offence related to exportation of such goods as the Federal Government may, by notification in the official Gazette, specify in this behalf-

(a) arrest without warrant any person concerned in such offence or against whom reasonable suspicion exists that he is about to be concerned in such offence;

(b) enter and search without warrant any premises to make an arrest under clause (a), or to seize any goods which are reasonably suspected to be intended for exportation contrary to any prohibition or restriction for the time being in force, and all documents or things which in his opinion will be useful for or relevant to any proceeding under this Act; and

(c) for the purpose of arresting, detaining or taking into custody or preventing the escape of any person concerned or likely to be concerned in such offence, or for the purpose of seizing or preventing the removal of any goods in respect of which any such offence has occurred or is likely to occur, use or cause to be used such force to the extent of causing death as may be necessary.

(5) The provisions of sub-section (4) shall apply only to the areas within five miles of the land frontier of Pakistan, and within a five miles belt running along the sea coast of Pakistan.

(6) No suit, prosecution or other legal proceeding shall be instituted, except with the previous sanction in writing of the Federal Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred by sub-section (1) or sub-section (2) or, in the areas specified in sub-section (5), by sub-section (4).

21. As discussed supra, no proceedings under Customs Act or Sales Tax Act were pending against Petitioner Company. For taking any action related to seizure or confiscation of the goods, it was incumbent upon Officer of Customs to inquire about the status of goods. If during inquiry Petitioner Company failed to justify the entry of foreign goods through valid channel then proceedings under section 163 ought to have been taken. Section 26 of the Customs Act empowers a designated officer to require any person concerned with the importation, exportation, purchase, sale, transport, storage or handling of any goods, which are being or have been imported or exported, to furnish such information relating to the goods as may be necessary for determining the legality or illegality of the importation or exportation of such goods. In the event that the department did have actionable information, it may have been appropriate to serve such a notice to determine the veracity of the information received. Section 26 reads as under:

26. Obligation to produce documents and provide information.- (1) Any person, as and when required, in writing, by an officer of customs not below the rank of an Assistant Collector, shall,-

(a) furnish information relating to importation, exportation, purchase, sales, transportation, storage or handling of any goods imported or exported;

(b) produce for examination, documents or records that the appropriate officer considers necessary or relevant to the audit, inquiry or investigation under the Act;

(c) allow the appropriate officer of Customs to take extracts from or make copies of documents or records; and

(d) appear before an officer of Customs and answer any question put to him concerning goods, documents, records and transactions relating to the audit or inquiry or investigation.

(1A) Subject to rules, the Board or any officer authorized in this behalf may require any person to provide such information as is held by that person which is required for the purposes of End Use Verification of goods specified under Program Global Shield.

(2) The appropriate officer of Customs conducting an audit, inquiry or investigation as the case may be, under this Act, may require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization which in the opinion of the appropriate officer is required for the completion of such audit, inquiry or investigation.

(3) The Board may require in writing any person, department, company or organization, as the case may be, to provide information held by that person, department, company or organization, which in the opinion of the Board is required for purposes of formulation of policy or administering the laws of Customs, Sales Tax, Federal Excise or Income Tax.

(4) Every person, department, company or organization shall furnish the information requisitioned by the Board or the appropriate officer within the time specified in the notice.

22. It is an admitted fact that no such notice was ever issued or even an oral inquiry was made at the time of raid. Even there was no credible information available on record to say that stored goods were smuggled. It is ordinarily presumed that goods coming in to the country have been filtered through the customs barrier and the relevant duties and taxes have been paid. The aforesaid presumption is judicially recognized in the absence of an indication to the contrary. The law places the initial burden upon the person to show that the goods in possession are in accordance with lawful authority; however, it is well settled law in customs matters that while the evidential and tactical burden is initially placed upon on the person, he only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same shifts upon the customs authorities. Petitioner Company has placed on record Bill of Laden, Export Invoice, Goods Declaration on Karachi Port and payment of duties (page 115 to 123 of Court File) to establish that seized goods were imported from China. When confronted to above piece of evidence, Learned Counsel for Respondents No 4 to 8 failed to repel the stance of Petitioner Company. Learned Counsel for the respondents submitted that since the said documentation was not provided at the time of raid, therefore, such documentation is doubtful. The Officer of Customs was required to justify seizure action in lieu of the alleged suspicion for goods being smuggled, particularly when the goods were placed under a protected area notified by the government. When confronted as to the genuineness of documents, respondents failed to respond. However, Learned Counsel for the Respondents No 10 & 11 at this juncture admitted that goods were imported but were unhygienic therefore, instead of restoration to owner, the goods may be ordered to be destroyed. Careful perusal of record revealed that no such report was available on record to evidence that seized goods were unhygienic and Customs Department wanted to take any action in terms of Section 231 of Customs Act 1969.

23. The Petitioner Company claims that the seized goods have been duly imported and brought out of charge post completion of the requirements. In support of claim, the petitioner has also provided the documentation, upon which their assertion is based, to the respondents, so also annexed the same with petition. While the respondents have not

denied the veracity of such documentation, therefore action of seizure of goods taken by the respondents cannot be validated. In absence of any evidence that the seized articles were smuggled goods, action on the part of Respondents cannot be protected even in terms of section 217 of the Customs Act, 1969 by declaring the same as an action taken in good faith.

24. To be dealt with in accordance with law is inviolable right, to afford an opportunity of fair trial and to do lawful trade and business has been guaranteed as fundamental rights under articles 4, 9, 10-A and 18 of the Constitution of Islamic Republic of Pakistan, of 1973 (the Constitution). It is the Constitutional responsibility of this Court to take notice in situations where it appears that persons, mandated to perform functions in connection with the affairs of the Federation or Province, were discharging their obligations in violation of the law. It is foundational duty of the functionaries to ensure that the powers conferred upon them are exercised in consonance with the provisions of the governing laws with utmost responsibility to make sure that the fundamental rights, inter alia with respect to livelihood and liberty, guaranteed in the Constitution are not impinged upon.

25. The case laws relied upon by Learned Counsel for Petitioner are applicable to the facts and circumstances of this case. However not reproduced, as reproduction thereof may result in repetition.

26. In view of the reasoning and rationale herein contained, a case to exercise the powers of judicial review under article 199 of the Constitution is made out. Consequently this petition is allowed. The search and seizure conducted by the respondents is declared in dissonance with the law. Admittedly no any proceedings were initiated subsequent to the raid, therefore, the seized property even was not required by Customs Authorities for any purpose, therefore the goods, seized by the respondents shall be returned to the Petitioner forthwith.

27. These are the reasons for short order dated 12.05.2026 vide which this petition was allowed. The order reads as under:

“For the reasons to be recorded later on and subject to any modification(s) and alteration(s) in the detailed order, instant petition is allowed in the following terms:-

- i. *The impugned warrants dated 18.02.2026 and search of premises to that order are declared illegal.*
- ii. *The property seized by the Respondent Customs Authorities is restored to the Petitioner, which shall be handed over to him within two days' time from today."*

JUDGE

**JUDGE
HEAD OF CONST. BENCHES**

Approved for reporting