

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 194 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing of CMA No.2353/2025.
3. For hearing of main case.
4. For hearing of CMA No.2354/2025.

06.08.2026

Mr. Zulfiqar Ali Arain, advocate for the applicant.
Mr. Aqeel Ahmed Khan, advocate for the respondent.

Matter pertains to the confiscation of a car in which contraband alleged to have been discovered. The impugned judgment observes as follows:

“7. I have perused the relevant case record and given due consideration to the contentions and arguments made by both parties during the hearings. It has been noted that neither in the show cause notice it has been alleged; nor in the Order-in-Original it has been established that the vehicle in question which is five seater passenger car plying on rent was being used wholly or exclusively in carrying the alleged smuggled goods value of which doesn't exceeds five hundred thousand rupees prescribed u/s 2(s) (ii) of the Act, 1969. On perusal of the show cause notice, it also appears that it is not the case of the appellant department that there were false cavities built in the vehicle for the storage of alleged smuggled goods for smuggling On perusal of the order-in-original, it appears that no conclusive finding has been recorded by the Adjudicating Authority that the vehicle was being used wholly or exclusively in the smuggling of betel nuts and gutka repeatedly and the owner of the vehicle conducting business of renting a car also involved in the offence of smuggling. It is observed that neither the appellant department has controverted such facts nor the judgments of the Honorable High Court of Sindh, Karachi (Supra) relied upon by the Counsel of the respondent-owner of the vehicle have been distinguished It is settled law that unless the allegations, and the grounds on which such allegations are based, are specifically alleged in the show cause notice issued to a person, the whole exercise becomes redundant and unsustainable in law. In this regard, reference could be made to the ratio of judgment rendered by the Honorable Supreme Court of Pakistan in the case of CIR v/s M/s RYK Mills reported in 2023 SCMR 1856

8. As regards to the aspect of applicability of SRO 499(1)/2009 dated 13-06-2009 for outright confiscation of vehicle, it is observed that the SRO 499(1)/2009 was amended vide SRO 1280(I)/2024 dated 20-08-2024 and SRO 1619(I)/2024 dated 03-10-2024 the seizure of vehicle, issuance of show cause notice dated 06-10-2023 and passing order-in-original dated 30-10-2023 Whereas, the SRO 499(1)/2009 itself provides release of such vehicles upon payment of 20% redemption fine, and such amendments made subsequently could not be given any retrospective effect for outright confiscation of the vehicle. It is also noted that the appellant department has not established any criminal link between the alleged smuggled goods and the

respondent-owner of the vehicle, which establishes that the confiscation of goods and the vehicle were two different aspects requiring different treatments, however, somewhat similar treatment was accorded by the Adjudicating Authority 499(1)/2009 could not have been confiscated outrightly in absence of establishment of allegation of being used wholly or exclusively in carrying alleged smuggled goods in false cavities.

9. In view of above findings and hollowing the ratio of judgments of the Honorable Supreme Court of Pakistan as well as the Hon'ble High Court of Sindh cited (Supra), I am of the view, that the impugned Order-in-Appeal doesn't require any interference which has been passed in accordance with the law for the option given for the release of vehicle upon payment of 20% redemption fine of assessed value of the vehicle in terms of SRO 499(1)/2009 dated 13-06-2009 issued u/s 181 of the Act, 1969. Consequently, the instant appeal having no merits is rejected with direction to the appellant department to release the vehicle to the respondent-owner as per Order-in-Appeal."

On 11.03.2026, following order was passed:

"11.03.2026

Mr. Zulfiqar Ali Arain, advocate for the applicant
Mr. Aqeel Ahmed Khan, advocate for respondent

Per learned counsel for respondent the matter pertains to a period prior to the amendment of SRO 2009, which admittedly took place on 20.08.2024. Upon being so confronted as to how a pre-amendment issue could be agitated in the post-amendment scenario learned counsel remains unable to assist. Since this matter involves a public revenue let the applicant, Collector, Collectorate of Customs Enforcement, Hyderabad, be present in person on the next date.

To come up on 01.04.2026."

Consequently statement was filed by the applicant, paragraph 4 thereof specifically stated that the case pertains to a period prior to the amendment dated 20.08.2024, in the governing SRO 499/2009.

While numerous questions have been proposed, the crux of the applicant's case was that confiscation was sanctioned by clause (b) of SRO 499. Learned counsel for the respondent draws attention to the conclusion of paragraph 8 of the impugned judgment to insist that sub class (b) could not have been invoked in absence of establishment of recovery of the vehicle having been used wholly or exclusively in carrying the offending items. He also placed reliance on the penultimate paragraph of the underlying Order-in-Original, which states that the vehicle is confiscated outright since it has been used in carrying/removing offending goods. Learned counsel emphasizes once against that there is absolutely no reference to the vehicle having any cavity etc and/or being used wholly or exclusively for the offending purposes. Under such circumstances and in view of a specific statement given by the applicant, no case is made out

to sustain the arguments articulated by the applicant. The question before this court is whether the clause (f) of the SRO 499/2009 could be enforced prior to its promulgation, the answer to the said question is in negative, in favour of the respondent and against the applicant department. This reference application is answered accordingly and dismissed in the said terms.

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(5) of the Customs Act, 1969.

Judge

Judge