IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Agha Faisal
Mr. Justice Dr. Shah Nawaz Memon

Special Customs Reference Application No. 11 of 2026
The Collector of Customs (Enforcement), Karachi Vs. M/s. Muhammad Kamran & another

Date of hearing:	04.11.2026
Date of decision:	04.11.2026
Applicant:	Through Messrs Sardar Zafar Hussain and Muhammad Siddiq, Advocates.
Respondents:	Nemo.

JUDGMENT

DR. SHAH NAWAZ MEMON, J.: — This reference application, maintained under section 196 of the Customs Act, 1969 (hereinafter referred to as the "Act"), impugns a judgment dated 15.12.2025 of the learned Customs Appellate Tribunal, Karachi passed in Customs Appeal No. K-1094 of 2025, whereby the goods claimed by Respondent No.1 were allowed to be redeemed on payment of a fine equal to 20% of their customs value in addition to the duty and taxes leviable thereon.

I. FACTS OF THE CASE

2. On 24.02.2025, acting upon information that the Arbaz Travels bus stand near the Passport Office, Saddar, Karachi was being used for the transportation of smuggled goods, a team of the Anti-Smuggling Organisation of the Collectorate of Customs (Enforcement), Karachi found a large quantity of assorted goods of foreign origin in and around a passenger bus bearing registration No. BSA-738 (Quetta), booked from Balochistan for delivery at Karachi. No document of lawful import or possession was produced, and the goods were seized under section 168 of the Act for violation of section 2(s), read with sections 16, 17, 178 and 187, punishable under clauses (8) and (89) of section 156(1) of the Act. A notice under section 171 was displayed on the notice board, and a show cause notice dated 07.04.2025 was issued to Lal Khan and Daro Khan, the owners of the bus stand. Save for the claimant of three lots of pancake coils, with which we are not concerned, no one appeared. By Order-in-Original No. 302/2024-25 dated 05.05.2025 the Collector of Customs (Adjudication-I), Karachi confiscated the unclaimed goods outright and imposed a penalty of Rs.1,000,000/- upon the owner of the bus stand.

3. The record shows that Lal Khan and Daro Khan pleaded guilty before the learned Special Judge (Customs, Taxation and Anti-Smuggling), Karachi, and were sentenced on 13.09.2025. Respondent No.1 then preferred an appeal, with an application for condonation of delay, claiming the goods at serial Nos.

7, 13, 14, 15, 22 and 23 of the schedule, namely cream, bubble gum, two brands of soap, chocolates and coffee, which he said he had purchased in the local market, and relying upon purchase receipts and copies of goods declarations. The learned Tribunal condoned the delay and, observing that the goods had been seized far from the border, were on the free list and were available in the open market, and that the appellant was "also willing to deposit duty & taxes", allowed them "to be redeemed by the lawful owner on payment of fine @ 20% of the Customs Value in addition to duty & taxes payable thereon"; the Order-in-Original was modified to that extent.

II. THE QUESTIONS PROPOSED

4. The reference was admitted on 28.01.2026 on the following questions:

> (i) Whether the learned Customs Appellate Tribunal failed to appreciate that the respondent's willingness to pay duty and taxes amounts to a clear admission that the impugned goods were smuggled and that no duty or taxes were paid in accordance with law; and once it stood established that the impugned goods were smuggled into the country, the same could not legally be ordered to be released merely on payment of duty and taxes?
>
> (ii) Whether the learned Customs Appellate Tribunal erred in law in entertaining and admitting the impugned Appeal No. K-1094/2025, despite the respondent's failure to establish that the right of ownership had passed to him in accordance with law, thereby rendering him without locus standi, and not an aggrieved person in the instant case?

III. SUBMISSIONS

5. Learned counsel for the applicant-Department submitted that the questions stand concluded in favour of the Department by the recent judgments of the Hon'ble Supreme Court in Civil Petitions Nos. 6064 to 6066 of 2021, decided on 16.07.2026, which followed the reported decisions in 2025 SCMR 684 and 2026 SCMR 885, and in Civil Petition No. 327-P of 2020, decided on 17.08.2026. Notice was issued to the Respondents on 28.01.2026; none has appeared on their behalf.

IV. DISCUSSION

6. The questions turn upon the operative direction of the learned Tribunal as it appears on the face of its judgment, and they are decided upon the facts as there recorded.[1] The provision construed is section 181 of the Act, which reads:

> "181. Option to pay fine in lieu of confiscated goods.- Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may give the owner of the goods an

[1] *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax* [2017 SCMR 1006], reaffirmed in *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan* [2026 SCMR 833]; *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838].

> option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit:
>
> Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given:
>
> Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under section 16 or in violation of any other provisions of this Act, or any other law for the time being in force.
>
> Explanation.- Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods."

7. In exercise of the power under the first proviso the Board issued S.R.O. 499(I)/2009,[2] clause (a) of the preamble to which directs that no option to pay fine in lieu of confiscation shall be given in respect of:

> "(a) smuggled goods falling under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969);"

8. An option under section 181 presupposes an order of confiscation, and a fine levied "in addition to any duty and charges payable" presupposes goods upon which duty has not been paid. By directing the redemption of the goods on payment of a fine together with duty and taxes, the learned Tribunal necessarily proceeded upon the footing that the goods remained liable to confiscation. It did not set aside the confiscation, nor did it record that the goods were not smuggled within the meaning of section 2(s),[3] or that Respondent No.1 had shown the lawful excuse which clause (89) of section 156(1) and section 187 of the Act require of him.[4] Its observations upon the free-list character of the goods and their availability in the market, had they

---

[2]S.R.O. 499(I)/2009 dated 13.06.2009, the opening words of which read: "In exercise of the powers conferred by section 181 of the Customs Act, 1969 (IV of 1969), and in supersession of its Notification No. S.R.O. 487(I)/2007 dated 9th June, 2007, the Federal Board of Revenue is pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of the following goods or classes of goods, namely:-".

[3]Section 2(s) of the Act: "'smuggle' means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or in any way being concerned in carrying, transporting, removing, depositing, harbouring, keeping, concealing, retailing or en route pilferage of transit goods, anywhere within the territorial jurisdiction of Pakistan or evading payment of customs-duties or taxes leviable thereon, (i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or (ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed five hundred thousand rupees in value; or (iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station, and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly; or (iv) essential commodities, as notified by the Board".

[4]Clause (89)(i) of section 156(1) of the Act: "If any person without lawful excuse, the proof of which shall be on such person, acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing, retailing, or in any manner dealing with smuggled goods or any goods in respect to which there may be reasonable suspicion that they are smuggled goods", such goods "shall be liable to confiscation". Section 187 places upon the person in possession the burden of proving that he was in possession "with lawful authority or under a permit, license or goods declaration or sales tax invoice in his name or other document prescribed by or under any law for the time being in force".

been carried to a finding that the goods were lawfully imported, would have led to their release without any fine;[5] they were not so carried, and the direction actually made rests upon the willingness of Respondent No.1 to pay the duty and taxes. The finding of the adjudicating authority that the goods were smuggled therefore remained undisturbed.

9. Once the goods stood confiscated as smuggled goods, the option under section 181 was not available in respect of them. The Hon'ble Supreme Court has held that, the Board having exercised its power under the first proviso to section 181, the prohibition so prescribed is binding and leaves no discretion with the adjudicating officer or the Tribunal to grant release upon a redemption fine in respect of goods or conveyances falling within the excluded classes.[6] The judgments cited at the bar reaffirm that position, holding the Tribunal "bereft of the jurisdiction of giving the option" in respect of a conveyance falling within clause (b) of the preamble.[7] Those cases concerned conveyances; the principle upon which they rest applies with equal force to clause (a), which excludes the smuggled goods themselves.[8] The learned Tribunal was accordingly not competent to extend the option to the goods claimed by Respondent No.1, whether against a fine of 20% or at all.

10. The first question also asks us to treat the willingness of Respondent No.1 to pay duty and taxes as an admission that the goods were smuggled. We do not think it necessary to go so far, for an offer of that kind may be made for reasons other than a consciousness of smuggling, the goods here being perishable. Its legal significance lies elsewhere. Payment of duty after seizure does not convert smuggled goods into lawfully imported goods, and an offer to pay it is no substitute for the lawful excuse which the person in possession must establish before the forum which finds the facts.[9] It could not, therefore, furnish a ground for release, still less a ground for extending an option which the Board had withdrawn.

11. The second question asks whether Respondent No.1 was a person aggrieved, the ownership of the goods having been asserted by him and, on the Department's case, admitted by the accused who pleaded guilty. Whether, and

---

[5]The learned Tribunal reproduced, and relied upon, the observations of the Hon'ble Supreme Court in *Pakistan v. Qazi Ziauddin* [PLD 1962 SC 440] and *Sikander A. Karim v. The State* [1995 SCMR 387]. Where that presumption is held to arise and stands unrebutted, the goods are not liable to confiscation at all, and the consequence is their release without any fine.

[6]*Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), F.B.R., Peshawar* [2025 SCMR 684]; *Director, Intelligence and Investigation (Customs), F.B.R., Peshawar v. Muhammad Ishaq* [2026 SCMR 885].

[7]*M/s Panjgur Goods Transport Co. v. The Collector of Customs*, Civil Petitions Nos. 6064 to 6066 of 2021, decided on 16.07.2026; *Collector of Customs, Model Customs Collectorate, Peshawar v. Shamsur Rehman*, Civil Petition No. 327-P of 2020, decided on 17.08.2026.

[8]Upon S.R.O. 574(I)/2005, the predecessor notification in materially identical terms, see also *Collector of Customs, Peshawar v. Wali Khan* [2017 SCMR 585], which was relied upon by the adjudicating authority.

[9]*The Intelligence Officer, Directorate of Intelligence and Investigation, FBR v. Abdul Karim* [2025 SCMR 969]; *Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi* [2025 SCMR 1912].

how, Respondent No.1 came by the goods is a matter of fact. In view of the answer to the first question, the release of the goods cannot stand whoever their owner may be, and the second question is rendered academic. We do not answer it and express no view upon it.

V. THE ANSWERS TO THE QUESTIONS

12. The questions are answered as follows:

> (i) The first question is answered in the affirmative, in favour of the applicant-Department and against Respondent No.1, in the terms set out in paragraphs 8 to 10 above: the goods having been confiscated as smuggled goods falling under section 2(s) of the Act, clause (a) of the preamble to S.R.O. 499(I)/2009 excluded the option under section 181, and the learned Tribunal could not order their release on payment of duty, taxes and redemption fine.
>
> (ii) The second question has been rendered academic and is not answered.

VI. ORDER

13. This Special Customs Reference Application is accordingly allowed. The judgment dated 15.12.2025 passed by the learned Customs Appellate Tribunal in Customs Appeal No. K-1094 of 2025 is set aside, and Order-in-Original No. 302/2024-25 dated 05.05.2025, to the extent of the outright confiscation of the goods at serial Nos. 7, 13, 14, 15, 22 and 23 of the schedule, is restored. There shall be no order as to costs.

14. 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.

JUDGE

JUDGE

Karachi,
Dated: 4th day of November 2026

AYAZ,PS