

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 89 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case
3. For hearing of CMA No.786/2025

07.04.2026

Mr. Khalid Mehmood Rajpar, advocate for the applicant

Following questions had been proposed for determination.

1. Whether the learned Tribunal did not err in law by refuting / ignoring the tampering of chassis number duly confirmed by the valid FSL report No.AIG/FD/Veh//OR/11126/2024 dated 12.09.20024 issued by office of Assistant Inspector General of Police, Forensic Division, Sindh, Karachi, against the impugned vehicle?
2. Whether the learned Appellate Tribunal did not err in law that in the absence of customs documents and only production of registration book issued by Motor Registration Authority, is sufficient cause to discharge burden of proof of lawful possession in terms of clause (89) of sub section (1) sub section (2) of section 156 read with section 187 of the Customs Act, 1969?

Counsel further states that even questions have been decided in favour of the applicant by the honourable Supreme Court including most recent judgment dated 03.03.2025 passed in Civil Appeals 1088, 1231 to 1236 of 2013 (*Intelligence Officer, Directorate of Intelligence & Investigation FBR & Others v. Abdul Karim*).

Pursuant to order for substituted service, learned counsel states that service has been effected through publication. He places relevant excerpt of the newspaper on file which is taken on record.

Learned counsel states that the aforementioned questions have already been decided in favour of the applicant department inter alia vide judgment cited supra. He also relies upon the earlier order dated 10.12.2025 passed in SCRA 11 of 2025, reproduced here-in-below :

“Following questions of law are proposed for determination :

1. Whether the Customs Appellate Tribunal has erred in releasing outright confiscated vehicle which was used wholly and exclusively in transporting smuggled Betel Nuts of foreign origin in violation of the provisions of section 181 of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13.06.2009 as amended vide SRO 1619(1)/2024 dated 03.10.2024?

2. Whether the Customs Appellate Tribunal is permissible under the law to exercise powers provided by section 181 of the Customs Act, 1969 and redeemed the goods and vehicles against which the adjudicating officer has not allowed such option to pay fine in lieu of confiscation?

It is jointly stated that the controversy is clinched by the judgment dated 29.10.2025 passed by the honourable Supreme Court in the case of *Director, Intelligence & Investigation (Customs) FBR, Peshawar vs. Muhammad Ishaq* (Civil Petition Nos.2853 and 2854 of 2025). The relevant constituent thereof is reproduced herein below:

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

¹ Bashir Ahmed v. Director, Directorate of Intelligence and Investigation (Customs), FBR Peshawar (2025 SCMR 684)

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 measure strengthens 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.

In view of the binding nature of the aforementioned authority it is sought that the questions framed for determination be decided in favour of the applicant department and against the respondent and consequently the reference application may be allowed. Order accordingly.

A copy of this decision may also be sent under the seal of this Court and signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969"

Learned counsel states that in view of the authority cited supra being binding in nature, the questions proposed may be answered in favour of the applicant department and against the respondent. Order accordingly. This reference application stands disposed of.

A copy of this decision may also be sent under the seal of this Court and signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge