ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 15 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.

23.10.2025

Mr. Muhammad Azad, advocate for the applicant.

The operative part of the impugned judgment is reproduced herein below:

> "11. We have examined the case record and given due consideration to the oral submission made by the both sides. The appellant's counsel plea is that firstly, it is hit by limitation period and show cause notice is time barred by five (5) days. Secondly the charge of smuggled vehicle is not applicable in this case. The bill of entry i.e., goods declaration contains the same engine and chassis number. The Collectorate of Customs Lahore has confirmed the documents with regard to payment of duty and taxes. Thirdly, it was learnt that another vehicle with registration No. LXA. 321 was plving in Lahore with the same chassis No. i.e. CONV460TJ0081. So far no effort are made to apprehend that vehicle to check its veracity of legal importation in the country. The first laboratory report of dated 03.12.2008 speaks of same chassis No. as that mentioned in bill of entry referred to above against chassis No. CONV460TJ00381. It is pertinent to point out that this test has been carried out with out presence of the appellant. The examination report from the same department dated 14.04.2009 further reveals that the last three digits (……..381) of present chassis No. (CONV460TJ00381) are re-stamped. Both these contradictory reports have been given by the same department about the same vehicle in the Custody of department without the presence of the appellant. By mention of restamping itself denies the fact that the Chassis No is tempered. There is no report of temperance with the numbers rather restamping. How would one like to restamp the same number of the chassis over and again. Fourthly, the respondent has reported the case using its revisional power under section 195 of the Customs Act but has failed to comply with the mandatory condition of issuing a show cause notice by himself. Rather a hearing notice been issued by the deputy Collector.
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> As to the first issue of the case hit by limitation under section 168 (2) of the Custom Act, 1969, the departmental representative has admitted that it is so but the same is not hit by limitation as the case is covered under the second proviso to section 168 (2) of the Act which stipulates that" The limitation prescribed under sub section (2) shall not apply to goods specified under first proviso to section 181".
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> The superior fora have always taken a strict view in cases barred by time and hit by the limitation. In case of M/s Super Asia Muhammad din Sons Private Limited V/s Collector of Sales Tax Gujranwala and others reported as 2008 PTD 60, the Honorable Lahore High Court has observed,

"Once limitation had started to run and had come to an end the assessee had acquired vested right of escapement of assessment by lapse of time". The apex court in its judgment reported as 1999 SCMR 1881 has observed,

"Having said as much, we also do not think that the petitioner's caveat is totally devoid of substance. Thus if initial period of two months, envisaged in section 168 (Supra) is allowed to by without any extension having been made, a vested right may come to accrue to the affectee and Collector should be obliged to issue a notice and accord necessary hearing before granting any extension correspondingly as always, it would remain a moot question whether an extension. if any was actually made with the initial period of two months from the date of seizure and merely because it purports to have been so made with in time, may not be itself be enough the contrary may be shown but, ordinarily with Customs jurisdiction alone."

The above view that once limitation period expire the orders or assessment become time barred is also supported by various judgment of the superior fora but to, quote a few reported as 2009 SCMR 1126, 2002 MLD 180, 2003 PTD 1354, 2003 PTD 1797, 2008 PTD 578, 2009 PTD 762, 2009 PTD TRIB 107 and PTCL 2003 CL 723.

Hence, the case is hit by limitation as the show cause notice issued is time barred. The plea that in the instant case, no time limitation is required under the second proviso of the section 168 (2) of the Act, the same is not tenable as they leads to a predetermined position of the impugned goods stand covered under item of section 2 (5) as specified under 1 proviso under section 181 of the Act where as their status is yet to be determined and are under litigation.

As to the second issue of impugned vehicle being tempered as well as registered against fake documents and another vehicle in Lahore is plying against the same documents. The vehicle is a Mitsubishi pajero 1996 Model and imported in the year 1997, where as the case has been made in the year 2008. The appellant is the ninth owner. It is noted that Motor Registration Authority registered the impugned vehicle after due verification of import documents and other relevant papers purporting to payment of duty and taxes along with confirmation from the Lahore Customs. Further the Motor Registration Authority Karachi never denied the registration of the impugned Vehicle except that they were not in position of documents in original in as much as same situation is being prevalent at Lahore Motor Registration Authority. More than this, both the forensic report as mentioned supra are conflicting and were obtained in absence of the appellant while impugned vehicle was in custody of the respondent. This issue was raised by the Forensic Laboratory when the issue was sent to them for 3rd time. The reports do not deny the mention of the chassis No. as per import documents but remarked as re-stamping. One fail to under-stand as to why re-stamping of same number is to be done as to whom advantage. In case, if respondent came to know that and other vehicle in Lahore was plying on the same chassis no and documents, it was imperative to have got hold of the said vehicle to check its antecedents and to resolve the whole mystery. The appellant has discharged the initial burden of proof as required under section 187 of the Act by submitting the documents and proof about the legal status of the impugned vehicle. The case do not fall under section 2 (S) of the Act as the prosecution failed to establish its mandatory condition as held in Customs Appeal No. K-86 of 2006 in case of M/s Orix Leasing Pakistan Ltd. Further it is a settled principle of law that goods which are available in the market are presumed to have been brought in the country after payment of

duty and taxes. Apart from this fact, section 211 of the Act also bars maintenance of record for a maximum period of five year, Whereas in the instant case the car is imported in years 1996 and case is made out in year 2008, after a lapse of more than 10 years. Reliance is placed upon Honourable Supreme Court of Pakistan orders in case of Collector V/s Professor Muhammad Khan Civil partition No 603-K of 2004, 2003 PTD 2118, Custom Appeal No-Q.197 OF 2003, 2008 PTD 525 and 2009 SCMR 226. The respondent thus has failed to proof with evidence that vehicle has been smuggled one other than its chassis being re-stamped. The whole process during which the Francis Laboratory reports have been sought while impugned vehicle was in custody of the respondent and done in absence of the appellant_ smack of suspicious and illicit conduct.

The third aspect of the issue is the reopening of the case by the collector under section 1995 of the customs Act. These powers are the revisional and are allowed in exceptional circumstances as supported by the wording of the provision of the aforesaid section itself. However, it is to be exercised in a manner prescribed there under. The proviso to section 195 (1) clearly envisages that no order confiscating goods of greater value or in enhancing any fine in lieu of confiscations, or imposing or enhancing any penalty, or requiring payment of any duty not levied or short levied shall be passed unless the person affected thereby has been given an opportunity of showing cause against it and of being heard in person or through a counsel or other person duly authorized by him. The above reading abundantly makes clear that a fresh show cause notice has to be issued by the collector himself or in case by Board, the line Member and subsequently to provide hearing opportunity. In the instant case, a fresh hearing notice has been issued which is violative of the aforesaid provision of law. If it was meant to be providing a hearing opportunity, the proviso to section 195 (1) supra would have not used the words showing cause but simply referred to it by being heard in person. Superior judicial forums has always held and being of the opinion that thing must be done in the same manner as prescribed under law. In Case, Directorate General of Intelligence and Investigation V/s M/s Al-faiz Industries (Pvt) limited and other reported as PTCL 2008 CL 337, the Honourable Supreme Court has held.,

"Each and every word appearing in a section is to be given effect to and no word is to be rendered as redundant or surplus"

It further says,

"When legislature requires the doing of a thing in particular manner then it is to be done in that manner and all other manners or modes of doing or performing that thing are barred…

If the doing of a thing is made lawful in a particular manner then doing of that thing in conflict with the manner prescribed will be unlawful as per maxim "Expression facit cessare tactium."

Hence non issuance of a fresh show cause notice to the appellant is violation of the mandatory provision of the section 195 of the Customs Act.

In view of the forgoing reason, the order of the respondent is patently manifested with legal and factual infirmities, and is thus held void abinitio and unlawful. The appeal is allowed as no order to cost."

This reference is pending since 2013 and on the last date following order was passed:

"**25.09.2025**

Mr. Muhammad Azad Khan, advocate for the applicant.

Learned counsel is put on notice to satisfy as to how any question of law arises from this reference. To come up after three weeks."

Even today counsel remains unable to articulate any question of law arising in the present circumstances. In view of foregoing, reference application is dismissed.

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

Khuhro/PS