

JUDGMENT SHEET

**PESHAWAR HIGH COURT
ABBOTTABAD BENCH
(Judicial Department)**

Custom Reference No. 07-A/2025

Muhammad Nawaz.

(Petitioner/s)

VS

*Additional Collector Adjudication, Custom Peshawar
and others.*

(Respondent/s)

Present: Mr. Asad Ayaz, Advocate, for petitioner.

*Hafiz Iftikhar Ahmad khan, Advocate, for
respondents.*

Date of hearing: 09.10.2025

JUDGMENT

AURANGZEB, J.- Through the instant custom
reference, the petitioner has prayed as under;

*“It is most respectfully prayed that this Hon’ble Court may
graciously be pleased to:*

- 1. Set aside the judgment of the Customs Appellate
Tribunal dated 17.01.2025, along with Order-in-
Original No. 301 of 2023 dated 08.12.2023.*
- 2. Declare that the appellant is the lawful owner of
the subject vehicle and order its immediate
release,*
- 3. Grant any other relief deemed appropriate and
just in the circumstances of the case.*

2. Precisely stated, the facts of the case are
that the petitioner purchased a 2000-model Toyota
Prado bearing registration No. BH-1631 from the open
market through a duly executed sale deed, becoming
the third owner after auction. Upon purchase, the

petitioner lawfully transferred the vehicle in their name, deposited the requisite transfer fee, and regularly discharged all applicable taxes and dues. According to the original record, the vehicle was advertised for auction by the Pakistan Coast Guards through a public notice published in the *Daily Express* newspaper dated 04-02-2017. The auction was conducted on 23-02-2017 by the government-approved auctioneer, Mr. Moin-ud-Din Chishti, under Lot No. 02/2017, and the vehicle was formally delivered on 13-03-2017. Pursuant thereto, the Pakistan Coast Guard handed over the vehicle to Mr. Zaid Yaseen vide official letter No. DG(CG) 3605/14/4004/WH dated 17-03-2017 after completion of all legal formalities. Subsequently, the second owner, Syed Haji Wali Muhammad, and later the present petitioner, consistently paid the transfer, registration, and token taxes from time to time. During registration, in compliance with Section 25 of the *Provincial Motor Vehicles Ordinance, 1965*, the Excise and Taxation Department, Motor Registration Wing, Civic Centre, Karachi, verified the requisite documents through the prescribed procedure. A verification letter bearing No. AETO/MR/CUST.VER/775/2018 dated 24-04-2018 was dispatched to the Pakistan Coast Guard

Headquarters, Karachi. In response, the said headquarters duly confirmed the particulars of the vehicle and certified its authenticity as genuine and correct, based on their official records. However, on 05-07-2023, the vehicle was intercepted and seized near the office of the Deputy Collector, Abbottabad, by ASU Customs on suspicion of being a Non-Customs-Paid (NCP) vehicle. Following the seizure, the Customs authorities again wrote to the Coast Guard Headquarters, Karachi, for verification. Surprisingly, this time the Coast Guard reported that the earlier documents were “counterfeit.” Yet, in the seizure memo itself, the Customs authorities admitted that the chassis and engine numbers of the vehicle were *not tampered with*. This glaring contradiction, where the Coast Guard initially authenticated the vehicle and later denied its own verification, creates a serious factual and procedural inconsistency, forming the crux of the petitioner’s grievance and a major ground for appeal. Subsequently, the Additional Collector (Adjudication), Customs Peshawar, issued a show-cause notice dated 15-11-2023, to which the petitioner submitted a comprehensive written reply supported by documents. Nonetheless, without adequately considering the material on record or the

petitioner's defence, the Additional Collector passed Order-in-Original No. 301/2023 dated 12-12-2023, ordering confiscation of the vehicle. Feeling aggrieved, the petitioner preferred an appeal under Section 194 of the *Customs Act, 1969* before the Customs Appellate Tribunal, Peshawar Bench. However, the Tribunal, through judgment dated 14-02-2025, dismissed the appeal and erroneously upheld the impugned Order-in-Original No. 301/2023 dated 08-12-2023. Hence, the petitioner has invoked the jurisdiction of this Hon'ble Court through the present reference petition. The instant reference petition raises the following questions of law;

- I. Whether, in light of the facts and circumstances, the order passed by the learned Customs Appellate Tribunal is incorrect in law and therefore untenable?*
- II. Whether the appellant, by producing all relevant documents, including the vehicle's registration certificate, successfully discharged the burden of proof regarding its legal import?*
- III. Whether verification from the Motor Registration Authority (MRA) is sufficient to satisfy the principle of "Mushtri Hoshyar Bash"?*
- IV. Whether the Tribunal's judgment is the result of misreading and non-reading of evidence, thereby rendering it liable to be set aside?*
- V. Whether Section 2(s) of the Customs Act, 1969, can be invoked against the appellant when the seized vehicle was lawfully registered before the Motor Registration Authority, and its*

registration has not been proven to be fake or challenged by the respondent?

VI. *Whether Section 2(s) of the Customs Act, 1969, can be invoked against the appellant when the burden of proof had already shifted at the original stage, and the appellant submitted the original registration book issued by the Excise & Taxation Officer (ETO), MRA, to the seizing agency, which was not found to be fake or forged?*

3. Arguments advanced by the learned counsel for the petitioner as well as the learned AAG were heard, and the record was perused with their valuable assistance

4. The record reveals that on 05.07.2023, the vehicle of the petitioner, namely a Toyota Prado, model 2000, bearing registration No. BH-1631, was intercepted and seized near the office of the Deputy Collector, Abbottabad, by the Anti-Smuggling Unit (ASU) of Customs on suspicion of being a Non-Customs-Paid (NCP) vehicle. During the course of interception, the petitioner promptly produced the original registration book of the said vehicle in support of its lawful ownership; however, the customs officials remained unconvinced and proceeded with its seizure without properly verifying the authenticity of the documents on the spot. Subsequent to the seizure, the Customs authorities addressed a letter to the Pakistan Coast Guard Headquarters, Karachi, seeking

verification of the accompanying import and auction documents.

5. In response, the Pakistan Coast Guard reported that the documents received were “bogus” and that no corresponding record was traceable in their headquarters. Nevertheless, the record also reveals that, simultaneously, the seized vehicle was referred to the In-Charge of the Forensic Science Laboratory (FSL), Islamabad, vide letter dated 10.07.2023, for chemical examination of the chassis and engine numbers. The Forensic Science Laboratory, through its report bearing Lab No. 2361/2023 dated 11.07.2023, categorically confirmed that “no number other than the above mentioned has been developed after chemical treatment,” thereby ruling out any possibility of tampering or fabrication in the vehicle’s identification numbers.

6. Despite this clear forensic finding which established the genuineness of the chassis and engine numbers, the respondent No.1, namely the Additional Collector (Adjudication), Customs Peshawar, vide order dated 12.12.2023, proceeded to outrightly confiscate the vehicle in favour of the State. The petitioner’s appeal against the said confiscation order was also dismissed by the learned Customs Appellate

Tribunal, Peshawar, vide judgment dated 17.01.2025, thereby maintaining the confiscation.

7. While upholding the adjudication order, the learned Tribunal placed reliance upon Section 187 of the Customs Act, 1969, holding that the burden of proof in cases of such disputed nature rests upon the person found in possession of the vehicle to establish that it was lawfully imported and that all customs duties and taxes had been duly paid. It was further observed that since a show cause notice had been issued to the petitioner to substantiate the lawful import, and no satisfactory explanation was provided, the confiscation stood justified. However, the reliance placed upon Section 187 of the Act of 1969 appears misplaced in the present factual scenario.

8. It is by now well-settled in law that once a person produces a valid and genuine registration book issued by the Motor Registration Authority (MRA), a presumption of regularity and authenticity attaches to such official document, thereby rebutting the initial presumption envisaged under Section 187. The onus then shifts upon the Customs Department to establish through cogent and admissible evidence that the vehicle is, in fact, smuggled or non-customs-paid. Moreover, it is also a recognized principle that if the

import documents or allied records pertain to a period older than five years, their verification cannot form the basis for declaring such documents as bogus or fabricated merely on account of non-traceability in departmental record, as official record retention policies often limit the preservation period.

9. In light of the above discussion, it emerges that the petitioner had discharged the initial burden by producing a valid registration book duly issued by the competent authority, while the forensic report further corroborated the genuineness of the vehicle's identification marks. Therefore, the subsequent findings of the adjudicating authority and the learned Appellate Tribunal appear to be contrary to the settled principles of law and suffer from legal infirmities.

10. It is pertinent to note that the questions as proposed in the instant custom reference have already been dealt with in detail by the Division Bench of High Court of Sindh in the case of the **Additional Director, Directorate General of Intelligence and Investigation-FBR, Regional Office, Karachi and another v. Imran Khan and another (2021 PTD 1683)** in Special Custom Reference Application No. 110/2014 alongwith others. It will be advantageous to

reproduce the proposed questions of law which have been decided by the Division Bench of High Court of Sindh in the aforesaid cited case which read as follows:

“1. Whether banned goods (Notified vide Serial No. 26 of SRO 566(I)/2005 dated 06.06.2005, issued for the purpose of Sections 2(s) and 156(2) of the Customs Act, 1969, could be released by the learned Customs Appellate Tribunal without any discussion much less examination and analysis of the facts and law involved?

2. Whether the learned Member (Technical), Appellate Tribunal, Bench-II, Karachi, has seriously erred in law by not taking notice and giving findings on the evidence of Chemical Examination Report No. AIG/FD/OR/274/2012 06.11.2012, confirming therein tampering of the chassis frame?

3. Whether the learned Member (Technical), Appellate Tribunal, Bench-II, Karachi, while concluding the impugned judgment has seriously erred in law and failed to understand that in terms of subsection (2) of Section 156 and Section 187 of the Customs Act, 1969, the respondent/possession holder of the vehicle has failed to discharge burden of proof of lawful possession?

4. Whether registration of smuggled vehicle, having tampered chassis number with Motor Registration Authority Civic Centre, Karachi can regularize a smuggled vehicle and absolve it from penal action under the Customs Act, 1969?

5. Whether "importation" and registration, in context of vehicles, are not different and distinct concepts, the former being under the Customs Act, 1969 and the latter being the Provincial subject and whether mere registration of vehicle absolves the owner/possessor of a vehicle to prove its legal importation under the Customs Act, 1969?"

However, above proposed questions were reframed in the following terms:

(i) Whether a motor vehicle, duly registered with the Excise and Taxation Department under the Motor Vehicle Registration Ordinance, 1965, can be detained/seized by the Customs Authorities on the charges of smuggling in terms of Section 2(S) read with Section 156(1)(89) and (90) of the

Customs Act, 1969, if the owner is not in possession of the import documents?

(ii) Whether the Customs Authorities can ask for production of record including import documents from owner in respect of a Motor Vehicle or any other importable item, beyond the period of five years in terms of Section 211 of the Customs Act, 1969?

(iii) Whether the Registration Book, Customs Auction Documents, Form of Transfer Order, Bank challans towards payments of additional duty and taxes, capital value tax (CVT), registration fee transfer fee and other charges, unless proved to be bogus and forged, constitute other documents prescribed by or under any law for the time being in force in terms of Section 187 of the Customs Act, 1969?

(iv) Whether production of documents as prescribed by or under any law for the time being in force by the owner in respect of a motor vehicle or any other importable item shifts the burden of proof from the owner, upon the Customs Authorities to establish the charge of smuggling through positive evidence or any concrete material to the contrary, in terms of Section 2(s) read with Section 156(1)(89) and (90) of Customs Act, 1969?

11. Perusal of hereinabove questions shows that the controversy involved in the above-mentioned case is identical to questions involved in the instant case, therefore, the decision on the aforesaid questions has a direct bearing on the legal issues involved in the instant case, hence the relevant findings on the said issues are reproduced as under:

“7. We have reproduced the relevant facts, questions proposed and the findings recorded thereon by the Divisional Bench of this Court in the aforesaid reference application at length, as we are of the view that the facts and legal issues involved in all these cases are similar to the facts and legal issues of the above cited case, and,

therefore, would be relevant to decide the questions of law and legal points involved in these reference applications and the connected petitions as well as High Court Appeal. As we

have already observed that in none of these cases, there is any allegation against the owners/subsequent purchases for having committed an act of smuggling in terms of Section 2(s) of the Customs Act, 1969, as neither they have imported subject vehicles nor they have brought such vehicles into Pakistan from routes other than specified under Section 9 or 10 from any place other than a Customs Station, nor any evidence or material has been produced by the Customs Authorities, which could otherwise establish that documents produced, e.g. Registration Books issued by Excise and Taxation Department, Motor Vehicle Registration Authority, Government of Sindh, Form of Transfer Order, the sale/purchase agreements, the Custom Auction documents, Bank Challans towards payment of Additional Customs duty and taxes, CVT, registration fee, transfer fee and other charges etc., produced in respect of subject vehicles, are forged or bogus documents. Admittedly, all the owners of the subject vehicles in these cases are second, third or even fifth owners, and have supplied the above documents which, prima-facie, show that initial burden of proof to the effect that they are the bona fide lawful owners/purchasers of the subject vehicles and have not committed any act of smuggling nor they are in possession of smuggled vehicles. The subject vehicles do not fall within the category of banned items as defined in Appendix-A of the Import Policy Order, 2009, 2012, and 2016, however, their import is subject to certain conditions prescribed by the Federal Government through Notifications issued in terms of Section 2(s)(ii) read with section 156(2) of the Customs Act, 1969, Import Policy Orders, 2009, 2012, 2013 and 2016, which includes restriction of five years as to the age of manufacture of a vehicle to be imported. In fact none of the Motors Vehicles, subject matter of instant cases, is less than 5 years old rather, they are mostly old Models of 1998 to 2004, therefore, reference to provisions of Section 211 of the Customs Act, 1969, becomes relevant as it provides that **record required under subsection (i) of Section 211 of the Customs Act, 1969, in respect of any imported item shall be kept for a period of not less than five years in such form as the Board may by Notification in the official gazette, specify.** In other words, any importer or owner of the imported items is under no legal obligation to maintain any record pertaining to import beyond the period of five years under the Customs Act, 1969, nor the Customs Authorities can demand such record under the Customs Act, 1969, hence nonavailability of customs documents, older than five years, particularly in cases of Registered Motor Vehicles, would not

attract the provisions of Section 2(s) read with Section 156(1)(89) and (90) of the Customs Act, 1969.

8. *We would now examine the provisions of Section 187 of the Customs Act, 1969, relating to discharge of burden of proof, according to which, when any person alleged to have committed an offence under this Act, and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall be upon such person. In all the above references and the petitions, it has been noted that original Registration Book issued by Motor Vehicle Registration Authority in respect of subject vehicles, along with Customs Auction documents. Bank Challans towards payment of Additional duty and taxes. Form of Transfer Order, Capital Value Tax (CVT), Registration Fee and other charges were produced before the Customs Authorities to justify the lawful ownership/possession towards discharge of initial burden of proof in terms of Section 187 of the Customs Act, 1969. In the afore cited judgment, the learned Divisional Bench of this Court has elaborately dilated upon all the above legal issues related to discharge of burden of proof and has been pleased to hold that in terms of Section 187 of the Customs Act, 1969, once the initial burden relating to ownership and lawful possession of the imported vehicle has been discharged through production of original Registration Book issued by the Motor Vehicle Registration Authority or any other document prescribed by law or under any other law for the time being in force, then burden shifts upon the Customs Authorities to establish that either the Documents produced are forged, bogus or the same have been obtained illegally, hence of no legal consequences. However, in these cases, no proceedings, whatsoever, appear to have been initiated either against the previous owners of the subject vehicles, whose particulars have been provided by the respondents to the Customs Authorities to verify the mode and manner in which such vehicles were brought into Pakistan, nor any action against the officials of the Motor Vehicle Registration Authority. Customs Authorities and the Bank officials has been taken, for having issued the Registration Books, Custom Auction documents and Bank paid challans which, according to Customs Authorities are forged and bogus documents. On the contrary, in the absence of any material, inquiry/investigation or any steps required to be undertaken for*

establishing the charge of smuggling in terms of Section 2(s), or to make out a case that owners of the vehicles are found in possession of smuggled vehicles in terms of Sections 156(1), (89) and (90) of the Customs Act, 1969, and even without following the legal course of adjudication as provided under Chapter XIX of the Customs Act, 1969, subject vehicles have been detained/seized on the charges of smuggling. In all these cases, subject vehicles have been detained / confiscated by the Customs Authorities in a highly arbitrary manner while the same were plying within the territorial city limits, inspite of the fact that initial burden to prove the lawful ownership and possession of subject Registered Vehicles was discharged by the owners through production of aforesaid documents. Reliance in this regard can be placed in the case of Messrs Muhammad Ateeq Paracha and others v. The State (2005 PTD (Trib.) 135) and Abdul Razzaq v. Directorate General of Intelligence and Investigation - FBR and 2 others (2016 PTD 1861).”

9. This Court in a recent judgment in the case of Collector of Customs V. Messrs Muhammad Tahir Construction Company, Loralai (2019 PTD 1599) while examining the scope of importability of Hino Trucks in term of Import Policy Order, 2016 and the provisions of section 187 of the Customs Act, 1969, relating to discharge of burden of proof, has been pleased to hold as under:

"7. Learned counsel for the applicant has not been able to point out any factual error or illegality in the impugned order passed by the Customs Appellate Tribunal in the instant case, nor could assist this Court as to how, on the basis of a purported certificate obtained from local manufacturer of Hino Pak Truck, the age of imported Hino Truck can be ascertained. Moreover, record shows that respondent has discharged the initial burden to prove that the subject vehicles were imported in conformity with paragraph 9(ii)(5) of the Import Policy Order, 2016, whereas, applicant has failed to produce any evidence or material which could otherwise support the allegations of violation of para 9(ii)(5) of the Import Policy Order, 2016. The ratio of the case relied upon by learned counsel for respondent as referred to hereinabove is also squarely attracted to the facts of the instant case.

8. Accordingly, we do not find any substance in the instant Reference Application, whereas, the finding as recorded by the Appellate Tribunal in the instant case is predominately based on the

findings of facts which does not suffer from any factual error or legal infirmity, hence does not require any interference by this Court. Reference in this regard can be made to the case of Irom Ghee Mills v. Commissioner of Income Tax 2000 SCMR 1871. Accordingly, the proposed questions are answered in negative against the applicant and in favour of the respondent."

10. To be more specific about the brief facts and the legal issues involved in all these cases we deem it appropriate to mention the same in following terms so that there remains no ambiguity regarding the facts and the legal controversies involved in all these cases. In C.P. No.D-5230 of 2014, the description of subject vehicle has been given as Toyota Land Cruiser, bearing Registration No.BD-6648, Model 1998, Chassis No.HDT-101-0004534 and Engine No.015719. The petitioner has attached registration book, issued by Excise and Taxation Department, Government of Sindh along with customs auction documents issued by Director General, Intelligence and Investigation (Customs and Excise), Government of Pakistan, including Certificate under Rule 72, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P. No.D-7527/2017, the description of subject vehicle has been given as Toyota Hilux Surf, bearing Registration No.BF6328, Model 2001, Chassis No VZN185-9056058, Engine No. 5VZFE-1269447, whereas, petitioner has attached registration book, issued by Excise and Taxation Department, Government of Sindh along with customs auction documents issued by Collectorate of Customs Appraisement, AICT, Mauripur Road, Karachi, including Certificate under Rule 72, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P. No D-3351/2017, the description of subject vehicle has been given as BMW Sports Car, bearing registration No BEE924, Model 2005, Chassis No. WBAEK32050B740093. Engine No N25B3000, whereas, petitioner has attached registration book, issued by Excise and Taxation Department, Government of Sindh along with customs auction documents issued by Model Collectorate of Customs Appraisement. Karachi, including Copy of Order-in-Original whereby the petitioner has been given an option to redeem in terms of SRO 172(I)/2013 dated 05.03.2013, paid bank challan of additional duties and taxes, CVT, registration charges, transfer charges etc., and Form of Transfer Order. In C.P No.D-5163/2018, the description of subject vehicle has been given as

Toyota Land Cruiser (Jeep), bearing registration No.BE-0563, Model 2000, Chassis No.HDT101-00076362UZ9002918, Engine NO.T58857, whereas, petitioner has attached registration book, issued by Excise and Taxation Department, Government of Sindh along with customs auction documents through approved Government auctioneer, paid bank challan of the bidding amount i.e. CVT, registration charges, transfer charges etc., and Form of Transfer Order. In HCA No.334/2017, the description of subject vehicle has been given as Toyota Hilux Surf (Jeep), bearing registration NO.BF8588, Model 2004, Chassis No. VZN215-0006060, Engine No.5VZ-1828615, whereas, the appellant has attached Registration Book, issued by Excise and Taxation Department, Government of Sindh along with customs auction documents issued by Collectorate of Customs Appraisement and Directorate of Intelligence and Investigation, Customs House, Karachi, including Certificate under Rule 72, paid bank challans of the bidding amount, Addl. duty and taxes, CVT, Registration charges, transfer charges etc., and Form of Transfer Order. In all these cases, the owners have claimed to be owners/subsequent purchases, and have produced the aforesaid documents to the customs authorities to discharge the initial burden of proof regarding their lawful possession of the subject vehicles in terms of Section 187 of the Customs Act, 1969, however, customs authorities, without adopting legal course of adjudications or to establish that the documents produced by the owners/subsequent purchasers are forged or bogus, and the subject vehicles are otherwise smuggled, detained the same in violation of law, merely on the unlawful presumption that since the owners could not produce the import documents of the subject vehicles, which are admittedly manufactured beyond the period of five years, whereas, there is no material or even allegation that these vehicles have been smuggled within five years from the date of their manufacture. If such authority is given to the public functionaries to charge the owners of the vehicles of a criminal offence of smuggling in the absence of any evidence or material to this effect, would amount to giving them unbridled powers to act arbitrarily and to abuse the process of law, which is neither the intent of law nor could be approved by Courts under any circumstances.

11. We have also observed that in some of the cases, there have been allegations by the Customs Authorities that the chassis numbers of the vehicles are found tempered, however, such allegations have been seriously disputed, whereas there has been no specific FSL Report to

show as to whether chassis numbers of the vehicles were erased for the purpose of theft or for any other purpose. Mere allegation of tempering of chassis numbers and such sketchy stereotype FSL Report, cannot be considered as conclusive proof to establish a charge of smuggling, particularly, when the make, model, engine number and other particulars of the vehicles in question are found to be the same as mentioned in the documents, including import documents, customs Auction and bidding documents, paid bank challans and the original Registration Books issued by the Motor Vehicle Registration Authority. The Hon'ble Supreme Court in the case of Federation of Pakistan through Director-General of Intelligence and Investigation FBR, Karachi v. Muhammad Jamal Rizvi and others [2012 PTD 90], while examining the fate of similar allegation regarding tempered chassis number and the FSL Reports has been pleased, to hold as under: -

"5. Perusal of the impugned judgment reflects that the FSL Report was not found specific and various queries made by the Investigating Agency remained unanswered. In this behalf learned Division Bench of the High Court observed that. "The FSL report shows that the chassis numbers on the vehicle were tampered. The FSL report is not specific and creates doubts as to whether the chassis numbers of the vehicle were erased for the purpose of theft and or for any other purpose. This issue is not answered in the FSL report though the Directorate of Customs, Intelligence and Investigation had sought report through a letter calling upon FSL to specifically mention the status of chassis numbers. The FSL report is silent on queries made by the investigating agency, except that chassis numbers were tampered. The report of the FSL was insufficient to authorize the Directorate of Customs, Intelligence and Investigation, to detain and or seize the vehicle inter alia, on the ground that it was smuggled vehicle." When asked, learned counsel had no reply to furnish on the observation so made however, he admitted that the make model. Engine number and other material about the vehicle in question were same as were in the documents noted hereinabove."

12. The aforesaid judgment was assailed by the Custom Authorities before Hon'ble Apex Court in

Civil Appeals No. 1088, 1231 to 1236/2013 and Civil Appeals No. 142-K/2015 and 938/2018 and Civil Appeals No. 453 to 466/2022 and the aforesaid civil appeals have been recently decided vide judgment dated 03.03.2025. Upholding the aforesaid judgment and dismissing the departmental appeals in following terms: -

“12. For the amended SRO's effect, (wherein vehicles were included), the record of import is required to be kept in terms of Section 211(2) for a period of five years ("five" was substituted for the word "three" by the Finance Act, 2007). For the sake of brevity, such provisions of law is reproduced as under:

"211. Maintenance of record. All importers, exporters and claimants of duty drawback, refunds or any notified concessions, terminal operators, owners of the warehouses, customs agents and the licensed customs bonded carriers, transport operators and tracking companies, carrying out business under this Act or rules made thereunder or under any other law, directly or indirectly, relating to international trade, shall be required to maintain and keep records and correspondence concerning import, export and transit trade transactions.

(2) The records required under sub-section (1) shall be kept for a period not less than five years in such form as the Board may by notification in the official gazette, specify.

(3) The provision of sub-section (1) shall not be applicable to the baggage of the passengers and crew of the conveyance and to the recipients of gifts."

13. The consequence of this provision appears to be that if the auction of the vehicle took place more than 3 years ago for cases prior to the Finance Act, 2007 and 5 years for cases thereafter, there would appear to be a "lawful excuse" to the person (retaining the possession of vehicle under valid registration), who is accused of an offence under Section 156(89) or (90) (for not showing required import documents), unless it can be demonstrated that he was told or knew that duties and taxes were not paid and the same were required to be paid.

14. For auctioned vehicles such as in SCRA No. 263 of 2010 (Civil Appeal No. 1235 of 2013), the vehicle in question was auctioned on or about 25.11.1999, having registration No.BD-0689 dated 24.06.2005 and was intercepted on or about 09.10.2008. In these circumstances, Section 211(2) seems to provide a "lawful excuse" since no adverse inference for failure to produce the documents can be drawn after the lapse of period provided in Section 211(2) to be counted at-least from date of registration if not before, as auction date in other vehicles is also a legitimate claim to count time. The vehicle in question was in Pakistan on or about 25.11.1999, i.e. the date of auction, and the said period expired before the vehicle was intercepted on or about 09.10.2008. There does not appear to be anything on the record to suggest that as per the terms of the auction, the auction purchaser had to pay duties and taxes applicable in respect of the import of the auctioned vehicle. Similarly, in all other cases where (not auctioned cases) the registration record with Motor Registration Authority and registration books (duly verified) are available, the subject period of 3/5 years would apply to give beneficial effect of Section 211 to those having custody and registration in their names.

15. The provisions of Section 174 of Income Tax Ordinance 2001, for present controversy is *pari materia* to Section 211 of the Act. The provisions of 174 of the Ordinance was discussed at length in *Panther Sports'* specially in para-5. Since the two provisions are *pari materia* therefore by applying doctrine of statutory construction there cannot be a different interpretation of section 211 of Customs Act than the one given in the said judgment for section 174 of the Income Tax Ordinance, 2001.

16. So in cases of registered vehicles, if at the time the vehicle being intercepted, more than 3 years have elapsed for cases prior to the Finance Act, 2007 and 5 years for cases thereafter, the defence of "lawful excuse" appears to be indefeasible. This is also because it is reasonable to assume that if a vehicle stands registered, the government is presumed to have exercised due care and diligence with respect to its obligation to see whatever duties and taxes as payable to the government before a vehicle can be registered, stand paid. It must also be noted that the vehicles being registered, which registration was duly verified, is presumed to have been brought lawfully; after completion of notified period in case of used vehicles also. It seems harsh, to say the least, if without any proof that a person (last owner) was involved in the registration of the vehicle knowing fully well that no duties and taxes, as required under the law, were paid, and

that therefore the vehicle was fraudulently registered, the vehicle be seized from him on his failure to produce documents of import and payment of duties and taxes thereon and even that beyond the period of three years or five years, as the case may be, as required under section 211(2). In most of the cases since first registration, the vehicles changed many owners on the strength of registration book and no adverse inference could be drawn for the ultimate bonafide owners unless otherwise proved contrary by appellant, in which exercise the appellant department has failed below. The verified registration book and official record is enough for bonafide presumption that a valid title exist.

17. The Motor Vehicle Ordinance, 1965 provides the mechanism for registration of motor vehicles in terms of its sections from 23 to 43. Section 27 of ibid law even provides the production of the vehicle at the time of registration and if the registration of a vehicle passes through this statutory process conducted by officials responsible under M.V.O 1965, then presumption of truthfulness is eminent.

18. One must bear in mind that there is a distinction between the expression "lawful authority" contained in Section 187 and the expression "lawful excuse" contained in clause 89 of Section 156 (1). The distinction in both is reproduced as under:

<i>Section 187</i>	<i>Clause 89 of Section 156 (10)</i>
<i>Burden of proof as to lawful authority etc. When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall lie on him: Provided that any person, alleged to have committed an offence under this Act, shall bear the burden of proof that any property</i>	<i>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</i>

<i>owned by him in his name or someone else name was not acquired from the proceeds of such crime:</i>	
<i>Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules.</i>	

19. To apply Section 187 to clauses (89) and (90) of Section 156 would amount to limit or narrow down the scope of what is permissible under the said clauses of Section 156 of the Act as a defence; and that cannot be done. The legislature was conscious while using the two legal phrases which have different connotation. Section 187 in general deals with burden of proof as to lawful authority whereas Section 156 deals with punishment for offence. In this context, Section 187 can be regarded as a general provision whereas clauses (89) and (90) are specific provisions and in such a situation the specific provisions (to the context) must apply to the event/situation under discussion. As such, the accused persons are entitled only to demonstrate a lawful excuse to discharge themselves from the allegation under the said clauses even where the law is conceived to have been violated in respect of the goods i.e. the goods are smuggled goods in absence of import documents, and that is possible courtesy statutory period, (disclosed in Section 211) followed by registration book through an official act under the law. A strong presumption is thus attached as a statutory act was performed in the registration of vehicle.

20. The distinction between lawful authority and lawful excuse was highlighted by the Privy Council in the judgment reported as PLD 1955 PC 29 by holding that the defence of lawful excuse may be sufficiently proved although no lawful authority exists for doing what is charged against the accused. Lawful excuse is an expression that is of wider import and lesser degree of burden than lawful authority. It follows from this that proving a lawful excuse, which falls short of lawful authority, it is the excuse put forward by the accused, rather than handling smuggled goods, that must be shown to be lawful.

21. Conceiving the events discussed in show-cause notices with above analysis as a common tool, it demonstrates that the vehicles in question are actually those which were registered through a statutory process and were duly verified and hence would carry lawful excuse.

22. This principle however is distinguished for the case where vehicles were found with tampered chassis and engine numbers. If this is seemingly done to match the statistics of original vehicles auctioned or brought into Pakistan officially having different chassis/engine number, the lawful excuse may not be applicable in case of tampered vehicle. This would not include those vehicles which were acquired via auction report explicitly disclosing such tampering and tampered statistics. Also at times the engine and chassis numbers are changed which are also excluded from any action, provided it was done with prior permission of the authority under the Motor Vehicles Ordinance, 1965. All this require thorough probe at the end to applicant which again is a question of fact not required to be determined by us afresh.

23. Learned counsel for the responded/department has mainly emphasized that a proper procedure was adopted while initiating confiscation and/or seizure process. Suffice to say that applying right procedure on wrong person and at the wrong time would not serve any purpose, rather is an abuse of process of law and such actions would be of no help for the department to take corrective measure to curb the smuggling. Such actions ought to have been taken at the time when vehicles were being registered. The appellants should workout some collaborated efforts before and at the time of registration of such vehicles so that this menace may come to an end. A proper joint effort in registration may be a way out.

24. Indeed, the respondents in order to achieve their lawful object of identifying the vehicles and subjected them to such exercise, the concerned directorate, on receipt of credible information of a suspected vehicle from authority concerned, including but not limited to Motor Registration Authority, may take requisite steps. In conducting such exercise a lady custom officer and a lady sepoy should also be aligned to ensure privacy and respect; legal requirement including search under section 162 of the Act be followed and inconvenience to the family must be avoided.

25. The conclusion in the above analysis is that the vehicles in question are those which were either auctioned or were brought into Pakistan and were registered through a statutory process and that the auction papers or registration papers of some other vehicles are not being used fraudulently, however, where it is established that the chassis/engine numbers have been tampered with after auction or registration to match the description of the auctioned or

registered vehicle, the lawful excuse is not available”

13. Before adverting to the questions framed for determination, it is essential to observe that the controversy in the instant reference revolves around the seizure and subsequent confiscation of the petitioner’s vehicle, a Toyota Prado model 2000 bearing registration No. BH-1631, on the allegation of being a Non-Customs-Paid (NCP) vehicle. The petitioner, claiming to be a bona fide purchaser, produced the original registration book duly issued by the Motor Registration Authority (MRA) as well as other supporting documents to establish lawful ownership. The Customs authorities, however, proceeded to confiscate the vehicle primarily on the basis of a verification letter from the Pakistan Coast Guard, without bringing any positive evidence on record to substantiate the charge of smuggling. The learned Appellate Tribunal, while maintaining the confiscation order, failed to appreciate the settled principles of law governing burden of proof under Sections 2(s), 187 and 211 of the Customs Act, 1969. The findings on each

question of law are therefore recorded as follows:

I. Whether, in light of the facts and circumstances, the order passed by the learned Customs Appellate Tribunal is incorrect in law and therefore untenable?

Perusal of the record reveals that the learned Customs Appellate Tribunal maintained the confiscation order without proper appreciation of the evidence and settled law. The Tribunal overlooked that the registration of the vehicle was duly made through a statutory process by the Motor Registration Authority (MRA), which carries a presumption of regularity and authenticity. Once a vehicle stands registered through an official act of a competent authority, it cannot be treated as smuggled merely on assumptions or unverifiable departmental correspondences. The Tribunal also ignored the Forensic Science Laboratory report confirming that the chassis and engine numbers were genuine and untampered. Such misreading and non-consideration of vital evidence render the impugned judgment legally untenable and

contrary to the settled principles laid down by the superior Courts.

II. Whether the appellant, by producing all relevant documents, including the vehicle's registration certificate, successfully discharged the burden of proof regarding its legal import?

In the case in hand, the owner of the vehicle, the petitioner, possessed a genuine registration book duly issued by the competent authority. It was found that the registration of the vehicle was not bogus; hence, the owner had successfully discharged the burden of proof, as the registration record itself reflected that all taxes and duties relating to the import of the vehicle had been duly paid. A glance over Section 25 of the West Pakistan Motor Vehicles Ordinance, 1965, reveals that whenever any imported vehicle is registered with the Motor Registration Authority (MRA), the said authority is under a statutory obligation to confirm the authenticity of import documents, including verification of the payment of all applicable customs duties and taxes, from the Customs Department. Therefore, once such registration was issued and remained unchallenged, the

presumption of legality stood firmly attached. The appellant, having produced all requisite documents, had thus effectively discharged the initial burden of proof in terms of Section 187 of the Customs Act, 1969, shifting the onus upon the Customs Department, which failed to rebut the same through any credible evidence.

III. Whether verification from the Motor Registration Authority (MRA) is sufficient to satisfy the principle of "Mushtri Hoshyar Bash"?

The principle of *Mushtri Hoshyar Bash* (buyer beware) cannot be stretched to penalize a bona fide purchaser who acquires a vehicle that has been duly registered through a statutory process. The MRA, before effecting registration, is required under law to verify import and tax documents from the Customs Department; thus, the buyer who relies on an officially issued registration certificate cannot be treated as negligent. The presumption of truth attached to official acts under Article 129(e) of the Qanun-e-Shahadat Order, 1984, fully applies in such cases. Hence, verification from the MRA constitutes a sufficient and lawful measure of

diligence to satisfy the requirement of *Mushtri Hoshyar Bash*.

IV. Whether the Tribunal's judgment is the result of misreading and non-reading of evidence, thereby rendering it liable to be set aside?

The record demonstrates that the Tribunal failed to appreciate the Forensic Science Laboratory report dated 11.07.2023, which categorically confirmed that “no number other than the above mentioned has been developed after chemical treatment,” establishing that the chassis and engine numbers were original. The Tribunal also ignored the uncontroverted registration record and the legal limitation prescribed under Section 211(2) of the Customs Act, 1969, which prohibits verification of import records beyond a period of five years. As the vehicle was manufactured in 2000 and registered soon thereafter, any attempt to verify import documents after such lapse was impermissible. The Tribunal's omission to consider these aspects amounts to serious misreading and non-reading of evidence, warranting reversal of its findings.

V. Whether Section 2(s) of the Customs Act, 1969, can be invoked against the appellant when the seized vehicle was lawfully registered before the Motor Registration Authority, and its registration has not been proven to be fake or challenged by the respondent?

Section 2(s) defines smuggling as the act of bringing goods into or removing them from Pakistan in contravention of law. The petitioner neither imported the vehicle nor participated in any act of smuggling. The registration book issued by the MRA is a statutory document that has never been challenged as forged or fabricated. The Hon'ble Supreme Court in *Federation of Pakistan through DG Intelligence & Investigation FBR v. Muhammad Jamal Rizvi* (2012 PTD 90, upheld in Civil Appeals decided 17.04.2025) and the Division Bench in *Additional Director DG I&I-FBR v. Imran Khan* (2021 PTD 1683) held that once a vehicle is duly registered and its registration stands unassailed, the presumption of legality extends to all prior procedural steps including payment of customs duties and taxes. Consequently, invoking Section

2(s) against the petitioner is misconceived and contrary to the intent of law.

VI. Whether Section 2(s) of the Customs Act, 1969, can be invoked against the appellant when the burden of proof had already shifted at the original stage, and the appellant submitted the original registration book issued by the Excise & Taxation Officer (ETO), MRA, to the seizing agency, which was not found to be fake or forged?

Once the petitioner produced the original registration book duly issued by the MRA, the burden under Section 187 stood discharged and consequently shifted to the Customs Department. The respondents failed to establish that the said registration was false, procured through misrepresentation, or that the vehicle was ever brought into the country unlawfully. In light of Section 211(2), where the record retention period is limited to five years, the non-availability of import data cannot be used as a basis to allege smuggling after the expiry of such statutory duration. The principle of “lawful excuse,” as recognized by the Hon’ble Supreme Court applies squarely to the present case. Hence, the

confiscation under Section 2(s) is devoid of lawful authority. In this regard, reliance is placed on following cases, where the same issues have been discussed in detail.

1. Civil Appeals No. 1088/2013, titled “The Intelligence Officer, Directorate of Intelligence & Investigation, FBR and others vs. Abdul Karim” (Supreme Court of Pakistan).
2. Civil Petition No. 288-P/2025 titled “Director, Intelligence and Investigation (Customs), Federal Board of Revenue vs. Zaman Khan & others” (Supreme Court of Pakistan).
3. Custom Ref No. 112 of 2023 titled “Iftikhar Ahmed Khan vs. The Customs Appellate Tribunal and others” (Islamabad High Court).
4. “Additional Collector of Customs (Adjudication) at Model Customs, Collectorate, Abdara Road, Peshawar and 2 others” reported as (2024 PTD 226).
5. The Additional Director, Directorate General of Intelligence and Investigation-FBR, Regional Office, Karachi and others VS. Imran and another reported as (2021 PTD 1683).
6. Custom Ref No. 50-P/2024 titled “Ammar Shah vs. The Director Intelligence and Investigation Customs FBR, Peshawar and 02 others” (Peshawar High Court).
7. Custom Ref. No. 154-P/2024 titled “Director I & I, Peshawar vs. Zaman Khan etc. (Peshawar High Court)

14. In light of the foregoing discussion, it stands established that the appellant lawfully discharged the burden of proof, while the

Customs Department utterly failed to produce any substantive evidence of smuggling or forgery. The impugned orders reflect a clear misreading of evidence and a misapplication of Sections 2(s), 187, and 211 of the Customs Act, 1969. Accordingly, the Order-in-Original dated 12.12.2023 passed by the Collector (Adjudication), Customs Peshawar, and the Order dated 17.01.2025 of the Customs Appellate Tribunal, Peshawar, are hereby set aside being contrary to law and facts. The confiscation of the petitioner's vehicle i.e. Toyota Prado, Model 2000, Registration No. BH-1631, is declared illegal and without lawful authority. The respondents are directed to release the vehicle forthwith to the petitioner, subject to verification of ownership and payment of any ordinary dues, if applicable.

Announced

09.10.2025

Tahir Saleem

J U D G E

J U D G E

(DB) Mr. Justice Syed Mudasser Ameer & Mr. Justice Aurangzeb