

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Bench-II:**

Mr. Justice Munib Akhtar  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Aqeel Ahmed Abbasi

**Civil Petition No. 288-P/2025**

*(Against the order dated 12.02.2025 passed by the Peshawar High Court, Peshawar in Custom Ref. No. 154-P/2024 with CM No. 100-P/2024)*

Director, Intelligence and Investigation (Customs), Federal Board of Revenue

***... Petitioner***

***Versus***

Zaman Khan & others

***... Respondents***

For the Petitioner: Mr. Ishtiaq Ahmad, ASC  
(Via Video Link, Peshawar)

For the Respondents: N.R.

Assisted by: Ms. Zainab Bashir, Judicial Law Clerk,  
Supreme Court of Pakistan.

Date of Hearing: 23.04.2025

**JUDGMENT**

**Aqeel Ahmed Abbasi J.-** The instant petition for leave to appeal is filed by the petitioner under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioner has challenged the impugned order dated 12.02.2025 passed by the Division Bench of Peshawar High Court, Peshawar in Custom Reference Application No. 154-P/2024, whereby the reference filed under Section 196 of the Customs Act 1969, (hereinafter referred to as the "**Act**") against the judgment dated 04.11.2024 passed by the Custom Appellate Tribunal, Peshawar (Special Division Bench), was dismissed.

2. Brief facts of the case as recorded by the Division Bench of Peshawar High Court in the impugned order while deciding the aforesaid reference application are that "the staff of the Field Intelligence Unit, Mardan intercepted a Toyota Corolla Motorcar bearing Registration No. BA-1812/Peshawar (hereinafter referred to as the "**subject vehicle**") at Charsadda Road, Peshawar. On demand, the driver Muhammad Jamil son of Damsaz produced a GD No. KAPR-HC-137314 dated 06.04.2006 showing the import of a used Toyota Corolla Car Model 2003 chassis No. NZE120-3027717. The

vehicle was brought to the office of Intelligence and Investigation Customs Peshawar and was detained in terms of section 17 of the Act. Accordingly, a letter dated 30.10.2022 was sent to Junior User Support Officer, Intelligence & Investigation (PRAL), Hayatabad, Peshawar to verify the import status of the vehicle and in response, it was reported vide letter dated 02.01.2022 that the record of the vehicle pertaining to chassis No. NZE120-3027717 could not be traced in one customs database. Further, the Director FSL, Peshawar was also requested vide letter dated 02.11.2022 to chemically examine the chassis number of the vehicle and through letter dated 08.11.2022, the Director FSL submitted his report, according to which, no other number has been deciphered in its chassis number. As there was reason to believe that the foreign-origin Toyota Corolla Motorcar was a non-duty paid/smuggled one and was brought into the country through unauthorized routes without payment of leviable duty/taxes; therefore, the vehicle was seized on 10.11.2022 in terms of section 168(1) of the Act for violation of section 2(s) and 16 of the Act read with section 3(1) of the Imports and Exports (Control) Act, 1950 and SRO 566(1)/2005 dated 06.06.2005 punishable under section 156(1) clause (8) and (89) of the Act read with section 3(3) of the Imports and Exports (Control) Act, 1950 and SRO 499(1)/2009 dated 13.06.2009. After completion of requisite formalities, the matter was placed before the Collector of Customs (Adjudication), Islamabad, who vide order-in-original 39/2023 dated 08.02.2023 ordered for outright confiscation of the vehicle. The respondents feeling aggrieved filed an appeal bearing No. Cus-160/PB/2023 before the worthy Tribunal. The Worthy Tribunal allowed the appeal and released the vehicle to the owner unconditionally vide impugned judgment dated 04.11.2024”.

3. The Division Bench of the Peshawar High Court after hearing the learned counsel for the petitioner and scrutiny of entire record while referring to the relevant provisions of the Customs Act, 1969 as well as the provisions of West Pakistan Motor Vehicles Ordinance, 1965 was pleased to dismiss the reference application by holding that the seizure of the subject vehicle by the Custom Authorities on the allegations of its being smuggled vehicle was unlawful. It has been further held that in view of the fact that the subject vehicle was duly registered under Section 25 of the West Pakistan Motor Vehicles Ordinance, 1965, the presumption of truth



was attached to the official document of registration hence, the burden under Section 187 of the Act was shifted from the owner of subject vehicle upon the Custom Authorities to establish that subject vehicle was unlawfully imported. While reaching to such conclusion the Division Bench of Peshawar High Court, Peshawar has further held that since the subject vehicle was more than 5 years old at the time of its confiscation by the Custom Authorities, therefore, in view of Section 211 of the Act the owner of the subject vehicle was not under legal obligation to keep the record of such import beyond the period of 5 years. Accordingly, the reference filed by the Custom Authorities before the Peshawar High Court was dismissed and the order passed by the Custom Appellate Tribunal was upheld.

4. The learned counsel for the petitioner while referring to the questions proposed in the instant civil petition for leave to appeal vehemently argued that the controversy involved in the instant case relates to the authority of the officials of Directorate of Intelligence, Customs, to intercept any imported vehicle while plying on road for the purposes of verification of its lawful import, payment of duty and taxes etc. Whereas, the burden to prove that such vehicle is lawfully imported is upon the importer/owner of said vehicle in terms of Section 187 of the Act and in case the importer/owner of subject vehicle fails to discharge the burden, then the said vehicle can be seized in terms of section 168(1) of the Act for violation of section 2(s) and 16 of the Act read with section 3(1) of the Imports and Exports (Control) Act, 1950 and SRO 566(1)/2005 dated 06.06.2005 punishable under section 156(1) clause (8) and (89) of the Act read with section 3(3) of the Imports and Exports (Control) Act, 1950 and SRO 499(1)/2009 dated 13.06.2009. According to the learned counsel for the petitioner the Customs Appellate Tribunal and the Hon'ble Division Bench of Peshawar High Court, Peshawar have erred in law and facts while holding that the burden of proof regarding the lawful import of subject vehicle was lawfully discharged by the importer/owner of subject vehicle in view of Registration of the subject vehicle under Section 25 of the West Pakistan Motor Registration Authority which fact alone is sufficient to discharge such burden in terms of Section 187 of the Act. It has been prayed that the impugned order may be set aside and instant civil petition for leave to appeal may be allowed.

5. Heard the learned counsel for the petitioner, perused the



record and the impugned order passed by the Division Bench of Peshawar High Court, Peshawar in the above aforesaid reference application with his assistance.

6. Since the facts as recorded by the Division Bench of Peshawar High Court are not disputed by the learned counsel for the petitioner, therefore, we need not further elaborate the factual position and would decide the legal issues involved in the instant case, including seizure of an imported vehicle duly registered in Pakistan by the Motor Vehicle Registration Authority by the Custom Authorities, while plying on the road within the city limits, by invoking the provisions of Section 168(1) of the Act requiring the owner to show the import documents and in case of failure by the owner of such import documents, to seize the same on the presumption that such vehicle is a smuggled vehicle.

7. It is pertinent to note that the questions as proposed in the instant civil petition for leave to appeal as decided by the Custom Appellate Tribunal and the Division Bench of Peshawar High Court, Peshawar in aforesaid reference application 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 dated 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?*

8. 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?*

9. 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 non-availability 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.BF-6328, 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 BEE-924, Model 2005, Chassis No.WBAEK3205OB740093. 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 Appraisalment 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."*

10. The aforesaid judgment was assailed by the Custom Authorities before this Court in Civil Appeals No. 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 17.04.2025. 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 infeasible. 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:

Section 187	Clause 89 of Section 156(1)
<p>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:</p> <p>Provided that any person, alleged to have committed an offence under this Act, shall bear the burden of proof that any property owned by him in his name or someone else name was not acquired from the proceeds of such crime:</p> <p>Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules.</p>	<p>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</p>



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.*

11. The extensive reproduction of the judgment of the High Court of Sindh in the case reported as 2021 PTD 1683 and the judgment of the three-member bench of this Court in Civil Appeals No. 1088, 1231 to 1236/2013 (and others) dated 17.04.2025, whereby, the judgment of High Court of Sindh has been duly upheld, has been made to appreciate that the legal issues involved in the aforesaid cases and the questions of law arising from the impugned order passed by the Peshawar High Court, Peshawar in the instant matter have already been dealt with and answered through authoritative pronouncement by this Court in the aforesaid Civil Appeals, hence requires no further elaboration on the settled legal issues. Moreover, while confronted, the learned counsel for the petitioner could not point out any factual error or legal infirmity in the impugned order passed by the Peshawar High Court, Peshawar which may require this Court to interfere with such findings of facts and law or to take a different view which has already been taken by this Court in the above referred Civil Appeals.

12. Keeping in view the facts and the legal issues involved in the above reference application, we are of the opinion that legal issues and the questions of law relating to authority of the officials of the custom department to seize an imported vehicle, more than five years old plying on road, within territorial limits of the city, duly registered



by the Motor Vehicle Registration Authority, in terms of Section 25 of the West Pakistan Motor Vehicle Ordinance, 1965, can be made if the importer/owner of such vehicle, fails to produce the import documents. In spite of the fact that the importer/owner of such vehicle is under no legal obligation to keep such record of import beyond the period of five years in terms of Section 211 of the Act and further, the burden of proof in terms of Section 187 of the Act, stands discharged once the importer/owner produces the registration documents and shifts upon the Custom Authorities to prove otherwise by adopting the legal course, have already been decided in detail through an authoritative judgment by this Court in the above referred Civil Appeals.

13. Accordingly, while reformulating the questions proposed through instant civil petition for leave to appeal in terms of Para 8 herein above, we would answer the questions (i) and (ii) in "NEGATIVE" whereas the questions (iii) and (iv) are answered in "AFFIRMATIVE" against the applicants and in favour of the respondents. The instant petition for leave to appeal being devoid of any merits is hereby dismissed in the aforesaid terms.

Islamabad,  
23.04.2025.  
*Approved for Reporting*  
*Tanveer Ahmed / Zainab Bashir, JLC.*