

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Yahya Afridi, CJ
Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Shafi Siddiqui

Civil Appeals No.1088, 1231 to 1236/13

(On appeal from the judgments/orders dated 06.02.2013, 15.02.2013, 22.02.2013, 20.03.2013 and 23.05.2013 of the High Court of Sindh, Karachi passed in C.P.1377-D/11, C.P.No.2172/11, Special Customs Reference Nos.245, 253, 263/08, 22/09 and Special Custom Reference Application No. 187/20)

AND

Civil Appeals No.142-K/2015 and 938/18

(On appeal from the judgments/orders dated 04.09.2014 and 30.05.2017 of the High Court of Sindh, Karachi passed in C.P.D-568/12 and C.P.No.11-D/2017)

AND

Civil Appeals No. 453 to 466 of 2022

(On appeal from the judgments dated 09.07.2020 of the High Court of Sindh, Karachi passed in Special Customs Reference Application Nos. 35/10, 311/13, 110/14, 219/14, 2391/15, 42, 419, 420, 541, 905/17, H. C. A. No.334/17, C.P.No.D-3351, 7527/17/ and C.P.No.D-5163/18)

1.	The Intelligence Officer, Directorate of Intelligence & Investigation, FBR and others Vs. Abdul Karim.	CA No.1088/13
2.	The Director of Intelligence and Investigation FBR Vs. Muhammad Nasir and another.	CA No.1231/13
3.	The Collector of Customs, MCC (Preventive), Customs House, Karachi Vs. Omar Ehsan Khan and another.	CA No.1232/13
4.	The Director of Intelligence and Investigation, FBR Vs. Imdad Hussain and another.	CA No.1233/13
5.	The Director of Intelligence and Investigation, FBR Vs. Javed Iqbal.	CA No.1234/13
6.	The Additional Collector, Collectorate of Customs, (Preventive), Customs House, Karachi Vs. Saif-ur-Rehman and others.	CA No.1235/13
7.	Additional Director through Director, Directorate General of Intelligence and Investigation FBR, Karachi Vs. Arshad Ali Rind and another.	CA No.1236/13
8.	Additional Collector, Govt. of Pakistan and another Vs. Rana Moeen Akhtar and others	CA No.142-K/15
9.	Director, Directorate General of Intelligence and Investigation FBR (CAS) Vs. Mohabbat and others.	CA No.938/18
10.	Directorate General Intelligence and Investigation (Customs) Vs. Imran	CA No.453/22
11.	Directorate General Intelligence and Investigation (Customs) Vs. Abdul Rehman and others.	CA No.454/22
12.	Directorate General Intelligence and Investigation (Customs) Vs. Liaquat Ali and others.	CA No.455/22

13.	Directorate General Intelligence and Investigation (Customs) Vs. Muhammad Mansoor and another.	CA No.456/22
14.	Directorate General Intelligence and Investigation (Customs) Vs. Muhammad Mohsin and others.	CA No.457/22
15.	Directorate General Intelligence and Investigation (Customs) Vs. Murtaza Khan and others.	CA No.458/22
16.	Directorate General Intelligence and Investigation (Customs) Vs. Muhammad Usman	CA No.459/22
17.	Directorate General Intelligence and Investigation (Customs) Vs. Muhammad Saeed and others.	CA No.460/22
18.	Directorate General Intelligence and Investigation (Customs) Vs. Sheikh Umer Imtiaz	CA No.461/22
19.	The Collector of Customs Vs. Mumtaz Ali	CA No.462/22
20.	The Collector, Government of Pakistan MCC, Karachi Vs. Khalil-ur-Rehman and others.	CA No.463/22
21.	Directorate General Intelligence and Investigation (Customs) Vs. Shiraz Qureshi and others.	CA No.464/22
22.	Directorate General Intelligence and Investigation (Customs) Vs. Zain Un Nisa and others	CA No.465/22
23.	Directorate General Intelligence and Investigation Customs Vs. Raza Khan Pathan (Owner)	CA No.466/22

For the Appellants:
(In CA.1088/13)

Mrs. Misbah Gulnar Sharif, ASC.

(In CAs.1231, 1233 & 1234/13):

Mr. M. D. Shehzad Feroze, ASC.
Syed Rifaqat Hussain Shah, AOR.
Mr. Shabbir Hussain, Supdt Customs.

(In CAs.1232, 1235 & 1236/13):

Dr. Farhat Zafar, ASC.
Mr. Moin-ud-Din Ahmed Wani,
Collector (Enforcement), Karachi.

(In CAs.142-K/15 & 462-463/22):

Raja Muhammad Iqbal, ASC.
Mr. Moin-ud-Din Ahmed Wani,
Collector (Enforcement), Karachi.

(In CA. 938/18):

Mr. Kafeel Ahmed, ASC.
[via video-link from Karachi]

(In CAs.453-461 & 464-466/22):

Mr. Akhtar Hussain, Sr. ASC.
Mr. K. A. Wahab, ASC.
[both via video-link from Karachi]

For Appellant (department):

Mr. Masood Ahmed,

Director, Intelligence & Investigation,
Customs.

Mr. Imran Afzal, Additional Director.

Mr. Shaheer Ahmed, ETO/ E&T,
Department.

[via video-link from Karachi]

For Respondent No. 2:
(In CA. 458/22)

Mr. M. Younas Thaheem, ASC.

All other Respondents:

Ex-parte.

Amicus Curiae:

Sirdar Ahmed Jamal Sukhera, ASC.

Date of Hearing:

03.03.2025.

JUDGMENT

Muhammad Shafi Siddiqui, J. The present bunch of Civil Appeals arises out of Reference Jurisdiction of the High Court under the Customs Act, 1969 (hereinafter referred to as the '**Act**') whereunder a number of questions (mentioned below) have been decided substantially by two judgments of Sindh High Court. The commonality in all references, in terms of questions were:

(1) Whether a motor vehicle, duly registered with the Excise & 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?

(2) 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?

(3) 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?

(4) 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 the Customs Act, 1969?

5. Whether in the facts and circumstances of the case, the learned Tribunal has materially erred in its reading of the evidence, and has misread the same inasmuch as it has failed to draw the correct legal conclusion that necessarily follows from the fact that the vehicle was disposed off by the Punjab authorities by way of an auction and acquired on such basis?

2. For the purposes of present controversy (summarized in references), we should keep in mind that the Reference jurisdiction is contoured to decide the questions of law only arising out of the orders of the last appellate jurisdiction i.e. Tribunal, which is the last fact finding forum.

3. For the sake of brevity Civil Appeal No. 1235/2013 is being treated as leading appeal to answer the questions raised in leave granting order, in which the main judgment dated 15.02.2013 of the High Court of Sindh is impugned/challenged whereby Special Customs Reference Applications No.263/2010 and 245 and 253 of 2008 were decided.

4. Leaves were granted on 25.09.2013 in some of these Civil Appeals which were filed in the year 2013 and the three questions/points, which were framed were also adopted in the subsequent appeals and are as under:

i) The vehicles which are imported through any route other than those declared under Sections 9 or 10 of the Act would be treated as smuggled goods within the meaning of Section 2(s) of the Act;

ii) The court had erred in shifting the burden of proof to the authorities whereas under Section 187 as well as under clauses 8 and 89 of Section 156(1) of the Act the burden is on the person who owns or possesses the goods to establish that he had lawful authority or a lawful excuse to possess the same;

iii) None of the vehicles that were the subject matter of the references before the High Court were lawfully imported into the country.

5. We, on the above questions, have heard learned counsel for the parties and perused material available on record. We have also been valuably assisted by Mr. Sirdar Ahmed Jamal Sukhera Advocate, who was appointed as Amicus Curiae earlier.

6. The substantive questions for us as undertaken was/is whether the vehicles, considered by the customs department to have been smuggled, were rightly seized and confiscated, notwithstanding that admittedly they were either bought in "auction conducted by the government" or purchased from the respective owners who had shown the "verified registration books" and that the statutory period, to enquire/demand import documents on the basis of which the registration of some of the vehicles took place, as framed in Section 211 of Custom Act, had lapsed whereas others were registered on the basis of auction reports.

7. The cause to seize and confiscate the vehicles triggered when show-cause notices were issued to the individuals having custody of the subject vehicles. It is a common stance of the appellants/department that these vehicles were either smuggled one and/or were shown to have been acquired on fake auction report followed by disputed registration, whereas some of them having chassis number re-punched to match auctioned vehicles' statistics. The ancillary common stance of the appellant/department was that the respondents have failed to produce the import documents as against the registration of the vehicles. Each of the show-cause notices were then taken to its logical end under customs hierarchy i.e. after Order-in-Original, Order-in-Appeal and order of Appellate Tribunal, the issue finally came before the High Court in Special Customs Reference Applications (reference jurisdiction) wherein the questions were finally answered in

favour of the respondents and against the appellants/department in terms whereof the vehicles were released to the respondents, hence these appeals.

8. There are 23 Civil Appeals, the subject matter of which is the seizure of the vehicles and the allegations are common as described above. To cut short the controversy, these petitions are categorized in the following manner with their respective data:

S. No	C.A. No.	SCRA/CP No.	Regst. No.	Registration date	Confiscation date	Allegation	Reply	
1	1088/13	CP No.D-1377/11	JAC-377		18.08.2010	No legal import documents; changed body of the vehicle (ONO)	Purchased from previous owner vide registration book. (CP)	Arises out of CP - as of CA 1235
2	1231/13	SCRA No. 22/09	BB-7503	28.03.1994	19.10.2005	French Consulate General immunity – (i) registration on irrelevant documents (ii) Chassis number re-punched after erasing original digits (iii) no import documents (ONO)	Purchased from open market, is third owner vide registration book (ONA)	No question of law as of CA 1235
3	1232/13	CP No.D-2172/11	JAA-346		28.05.2011	Failed to produce auction papers and valid registration, not imported through authorized route book, record of the vehicle not found in registration dept. (ONO).	Purchased through open auction having registration book	Arises out of CP
4	1233/13	SCRA No. 245/08	BB-9110		06.01.2006	No import documents; registration on bogus and fake documents	Purchased from previous owner vide registration book	Main judgment
5	1234/13	SCRA No. 253/08	BC-4308	17.06.2004	15.08.2005	No import documents, bill of entry forged. (ONO)	Ownership on registration book; the owner ready to pay duties etc. (ONO)	Main judgment
6	1235/13	SCRA No. 263/2010	BD-0689	24.06.05	09.10.2008	No import documents;	purchased through auction having registration book in his name;	Main judgment
7	1236/13	SCRA No. 187/11	H-7824		20.11.2009	No import documents ; piece of chassis frame is welded and replaced; car model is of 1994 whereas registration is of 1974	Owner has registration book in his name; admitted body of vehicle is altered;	6 questions but judgment as of 1235

8	142/1 5	CP No.D- 568/12	G-5936	27.10.20 10	30.07.2011	No import documents; car's body and engine changed/ piece of chassis frame is welded and replaced	Owner surrender the vehicle; Purchased from previous owner; previous owner also claimed to have purchased from someone else.	Arises out of CP - as of CA 1235
9	938/1 8	CP No.D- 11/17	BET- 208	11.12.20 15	24.12.2016	No import documents;	Registration in his name.	Arises out of CP - as of CA 1235
10	453/2 2	SCRA No.110/2 014	R-8727	31.08.20 10	15.10.2012	No import documents; the chassis number re-punched; two digits deciphered	Registration in his name.	4 reframed questions a/w CP
11	454/2 2	SCRA No. 2391/15	BA- 6238		01.10.2013	No import documents; No metal plate of chassis serial affixed on the standard place.	Registration in his name; purchased from open market	-----do-----
12	455/2 2	SCRA No. 42/17	LES- 5989	20.08.20 11	27.01.2013	No import documents; chassis number tampered	Registration in his name.	-----do-----
13	456/2 2	SCRA No. 419/17	BFF- 879		09.08.2016	No import documents	Purchased on open letter and not the first owner.	-----do-----
14	457/2 2	SCRA No. 420/17	BF- 9413	31.03.20 16	09.08.2016	No import/ auction documents; fake documents	Registration in his name; sale through auction	-----do-----
15	458/2 2	SCRA No. 541/17	BFU- 751		27.07.2016	No import / auction documents;	Registration in his name; other documents of the owner found to be fake.	-----do-----
16	459/2 2	SCRA No. 905/17	BEN- 684	12.11.20 15	16.08.2016	No import documents;	Registration in his name;	-----do-----
17	460/2 2	HCA No. 334/17	BF- 8588	06.01.20 16	26.01.2017	Fake import documents.	Auctioned vehicle; purchased from previous owner having registration book; initially auctioned	-----do-----
18	461/2 2	SCRA No. 311/13	BD- 6793	23.06.20 07	04.01.2013	No legal import documents; chassis sheet is welded and replaced; the first owner has stated the subject vehicle different from the one he purchased in auction.	Registration book in his name;	-----do-----
19	462/2 2	SCRA No. 35/10	BB- 9992	29.10.20 05	26.02.2009	No legal import documents on the said chassis number	Owners has registration in his name	-----do-----
20	463/2 2	CP No.D- 7527/17	BF- 6328	23.01.20 15	27.10.2017	No import documents; no auction conducted	Purchased from previous owner having registration; auctioned dated 25.3.14	-----do-----

21	464/2 2	CP No.D- 3351/17	BEE- 924		20.04.2017	No import documents;	Owner agreed to pay the duties etc.	-----do-----
22	465/2 2	CP No.D- 5163/18	BE- 0563		23.06.2018	No import documents; the documents produced by the owner are fake	Registration in his name having auction certificate as well.	-----do-----
23	466/2 2	SCRA No. 219/14	R-2483	07.11.20 06	22.03.2012	No import documents; chassis number re- punched.	Purchased from previous owner via registration;	-----do-----

9. A perusal of Section 2(s) and 156(8), (89) and (90) of the Act reflects that clause 8 deals with smuggling whereas clause 89 deals with smuggled goods and clause 90 with goods other than to which clause 89 relates. For the sake of brevity these sections/clauses are reproduced as under:

“Section 2.-

....

(s) “smuggle” means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or evading payment of customs-duties or taxes leviable thereon,-

(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred and fifty thousand rupees in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly;

(iv) essential commodities, as notified by the Board.”

156. Punishment for offences.- (1) Whoever commits any offence described in column 1 of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under any other law, be liable to the punishment mentioned against that offence in column 2 thereof:-

....

8.	(i) Where any goods including essential commodities as notified by the Board be smuggled into or out of Pakistan	Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to	General
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...

89.	<p><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; Provided....</i></p>	<p><i>such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and, where the value of such goods exceeds three hundred thousand rupees, he shall further be liable, upon conviction by a Special Judge, to imprisonment for a term not exceeding six years and to a fine not exceeding ten times but not less than the value of such goods</i></p>	<p><i>General</i></p>
.....			
90.	<p><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 or in any manner dealing with any goods, not being goods referred to in clause 89, which have been unlawfully removed from a warehouse, or which are chargeable with a duty which has not been paid, or with respect to the importation or exportation of which there is a reasonable suspicion that any prohibition or restriction for the time being in force under or by virtue of this Act has been contravened, or if any person is in relation to any such goods in any way, without lawful excuse, the proof of which shall be on such person, concerned in</i></p>	<p><i>such goods shall be liable to confiscation, and any person concerned shall also be liable to a penalty not exceeding ten times the value of the goods.</i></p>	<p><i>General</i></p>

	<i>any fraudulent evasion or attempt at evasion of any duty chargeable thereon, or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods,</i> <i>(ii) in case seized goods liable to confiscation not being goods referred to in clause 89, placed in the custody of the owner of the goods or any person holding the goods in his possession or charge are found removed illegally, exchanged, pilfered or disposed of in any manner,</i>	<i>such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding two times of the value of such goods and upon conviction by a Special Judge, shall further be liable to imprisonment for a term not exceeding six months or to a fine not exceeding fifty thousand rupees or both.</i>	
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10. For clause 89 to apply, the condition precedent is that the goods in question should be smuggled one. In terms of Section 2(s) read with the applicable notification thereunder it seems that vehicles can be considered smuggled if either (i) at the relevant time, the applicable notification in terms of **Section 2(s)(ii)** included vehicles, or (ii) in terms of **Section 2(s)(iii)** the vehicles were brought in by any route other than a route declared under Section 9 or Section 10 or from any place other than the customs station.

11. Motor vehicles were not originally listed in SRO 491(1)/85 dated 23.5.1985 but were added thereto only on 14.09.1998 by means of an amending notification. Keeping this in mind, any vehicle brought into Pakistan before 14.09.1998 could only be considered a smuggled vehicle if it is established that it was brought into Pakistan through a route other than the routes permissible under Section 2(s)(iii). There cannot be a simple answer that since original import documents were neither available with customs nor with the one having custody of the vehicle or motor registration authority, therefore, it is the smuggled one as the application of Section 211

of the Act has its own effects. For ease of understanding we give references of some vehicles. In SCRA No. 263 of 2010, the model year of the vehicle was 1986 and it was seized in 2008; in SCRA No. 245 of 2008, the model year of the vehicle was 1991 and it was seized in 2006, in SCRA No. 253 of 2008 the model year of the vehicle was 1991 and it was seized in 2005. These are subject matters of Civil Appeal No.1235 of 2013. All the vehicles have been registered with Motor Registration Authority (MRA) as shown in the chart above. Indeed, neither model year nor its registration could give exact date of arrival of vehicles to Pakistan however the effect of Section 211 is imperative as the burden is heavier on appellants to demonstrate above facts.

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 Sports¹ specially

¹ Commissioner Inland Revenue v. Panther Sports (2022 SCMR 1135)

in para-5. Since the two provisions are *pari materia* therefor by applying doctrine of statutory construction there cannot be a different interpretation of section 211 of 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><i>187. 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 :</i></p> <p><i>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:</i></p> <p><i>Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules.</i></p>	<p><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></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.

26. With this understanding the questions have been answered cumulatively and no case for interference is made out and appeals are dismissed.

Chief Justice

Judge

Judge

Announced in open Court on 17 April, 2025 at Islamabad.

Judge

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Approved for Reporting