JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Custom Reference No. 12/2022

Laal Mat Khan & another
Vs.
Customs Appellate Tribunal, Islamabad & others

APPLICANTS BY:	M/s Barrister M. Usama Rauf and Malik Bahawal Bakhsh, Bilal Shehzad and Rana Saeed Afzal, Advocates in Custom Reference No.12 of 2022.
	Mr. Karim Ullah Khan, Advocate in Custom Reference No.100 of 2023.
	Ch. Imtiaz Ahmed, Advocate in Custom References No. 61 & 42 of 2024 and 7 of 2025.
	Mr. Imran Hussain, Advocate in Custom Reference No.05 of 2024.
	Mr. Muhammad Fahim Khan, Advocate in Custom Reference No.77 and 214 of 2023.
	Malik Nasir Abbas, Advocate in Custom Reference No.31 of 2024.
	Mr. Zahir Shah and Mr. Asad Ullah Taimur, Advocates in Custom Reference No.74 of 2024.
RESPONDENTS BY:	Barrister Muhammad Mumtaz Ali and Barrister Abdullah Manik, Advocates in Custom Reference No. 12 of 2022.
	Mr. Muhammad Fahim Khan, Advocate in Custom Reference No.100 of 2023.
	Ms. Maham Jamal and Mr. Wajih Hassan Pasha, Advocates in Custom Reference No.61 of 2024.
	Mr. Imran Feroze Malik and Mr. Muhammad Mohsin Ahmed, Advocates in Custom Reference No.42 of 2024.
	Mr. Aasim Shafi, Advocate in Custom Reference No.07 of 2025.
	Ms. Naziran Malik, Advocate in Custom Reference No.05 of 2024.

Islamabad High Court

Mr. Touqeer Akram, Advocate in Custom Reference No.77 of 2023.

Mr. Abdul Hameed Baloch, Advocate in Custom Reference No.214 of 2023.

Mr. Sikandar Naeem Qazi, Advocate in Custom Reference No.31 of 2024.

Mr. M. D. Shahzad, Advocate in Custom Reference No.74 of 2024.

Syed Bilawal Kamal and Ms. Janan Gul, State Counsels along with Mr. Asif Razzaq, Excise and Taxation Officer, and Mr. Asif Jahangir Khan, Inspector, Excise and Taxation Office, Islamabad.

Syed Shakeel Shah, Member Customs Operations, Mr. Saeed Akram, Member Legal Customs, Mr. Rizwan Slabat, Collector Customs, Islamabad, and Mr. Mudassar Rafique, Deputy Collector Preventive Customs, Islamabad.

Mr. Manzoor Ali Jokhio, Chief (Legal-HR), FBR (HQ), Islamabad.

Dr. Abdul Samad and Mr. Muhammad Arif, S.L.O, Directorate General Archeology and Museum, Peshawar.

Mr. Sajid Hussain Zuberi, Advocate along with Sardar Temur Khan Durrani, Commissioner Inland Revenue.

DATE OF HEARING: 10.11.2025.

==========

BABAR SATTAR, J.- This consolidated judgment will decide the above-titled reference as well as the references listed in Annexure-A.

2. While a host of questions have been formulated by the applicants in the mentioned references (a complete list of which is appended as Annex A), the elemental question in all these references, whether filed by the Customs Department or private citizens, is whether the finding by a Forensic Science Laboratory

Islamabad High Court

("FSL") that the chassis number of a vehicle is tampered is dispositive of the fact that such vehicle is smuggled in terms of Section 2(s) of the Customs Act, 1969 **("Customs Act")**? The affiliated question is one of consequences: where the chassis number of a vehicle is found to be tampered, can such vehicle be released to the owner under any circumstances or must such vehicle always be confiscated and its title vested in the State in terms of Section 182 of the Customs Act?

3. The answers to these primary questions are then contingent on other questions of law involving interpretation of provisions of the Customs Act. The first issue that the Court must attend to is the scope of this Court's reference jurisdiction in terms of Section 196 of the Customs Act and whether in exercise of such jurisdiction this Court can interpret provisions of the Customs Act that impinge on whether or not a vehicle that forms the subject-matter of the reference is to be released to its purported owner or confiscated by the State? The answer to the question of what constitutes smuggling for purposes of Section 2(s) of the Customs Act, inviting the penalties prescribed under Section 156 of the Customs Act, requires interpretation of Section 187A of the Customs Act to decipher the legislative intent behind such provision introduced through the Finance Act, 2025. The second foundational question that arises is whether penalties under clauses (9), (89) and (90) of Section 156(1) of the Customs Act can be imposed in relation to a vehicle without first rendering a finding of wrongdoing against the owner of a vehicle held liable for the offence of smuggling. In other words, for purposes of clauses (89) and (90) of Section 156(1) of the Customs Act is the penalty for wrongdoing to be imposed on the

Islamabad High Court

property *in rem*, or is the penalty to be imposed *in personam* after rendering a finding that the purported owner of the property is liable for wrongdoing? In this context, the question of how property rights and the right to due process and fair trial guaranteed by Articles 9, 23, 24 and 10A of the Constitution are to be balanced against public interest and the legitimate interest of the State in preventing and deterring smuggling in terms of provisions of the Customs Act requires consideration. This discussion would then necessarily require an appreciation of how the principle of proportionality is to be applied where an order for confiscation of property is to be made and whether such confiscatory order qualifies the test of being the least restrictive means to realize a legitimate State objective that has the effect of fettering the right to property guaranteed by Articles 23 and 24 of the Constitution.

4. In terms of determining the question of wrongdoing and liability, there is need to interpret how burden of proof is to be discharged for purposes of Section 156(1) read with Sections 187 and 211 of the Customs Act, how the requirement to discharge the burden of proof continues to shift during the adjudicatory proceedings, and the implication of application of the best evidence rule to such proceedings. What also requires determination is how case property is to be administered during the adjudicatory proceedings, starting from the detention of a vehicle through other stages starting from its detention and seizure through confiscation and thereafter till the adjudicatory proceedings attain finality. This requires appreciation of how the notions of safe custody and safe transmission of case property are to be understood and applied while interpreting Sections

Islamabad High Court

168, 169 and 182 of the Customs Act? In this context, the Court would also need to delineate the scope of Customs General Orders **("CGOs")** issued in terms of Section 223 of the Customs Act and whether such CGOs can regulate exercise of authority under Section 169(4) of the Customs Act or expand the scope of authority vested pursuant to Section 182 of the Customs Act. What also requires interpretation is the scope of Section 169(4) of the Customs Act and how the principles of safe custody of case property, while a matter is sub-judice, is to be squared with Section 201 read with Section 169(4) of the Customs Act, to understand and interpret the circumstances in which case property can be sold off or put to use by the State while the property remains the subject-matter of adjudicatory proceedings and its title remains vested in a private individual.

5. This Court is seeking to undertake a holistic appraisal of how provisions of the Customs Act are to be read and understood keeping in view the constitutional guarantees underscoring the right of citizens to fair trial, due process and property rights, which have sometimes escaped the attention of adjudicatory authorities, as evident from conflicting case law on the question of confiscation of vehicles found or deemed to be tampered. We will therefore start with considering the scope of our reference jurisdiction followed by an appraisal of the relevant constitutional principles and how they impinge on the various provisions of the Customs Act identified above for purposes of understanding how the process of detaining, seizing and confiscating vehicles deemed to be smuggled, while upholding the rights of vehicle owners to fair trial and due process and to uphold their right to property while balancing the same against

Islamabad High Court

the legitimate State interest of preventing and deterring smuggling in Pakistan. Such analysis will be followed by interpretation of the various provisions of the Customs Act to explain how a finding of wrongdoing in view of the relevant record and evidence during the adjudicatory proceedings is a prerequisite for imposition of liability in terms of Section 156 of the Customs Act. And how case property is to be preserved and its safe transmission ensured in order for an FSL report re the chassis number or chassis plate of an allegedly tampered vehicle to have evidentiary value, especially where such tampered chassis plate is the primary or sometimes the only basis for the assertion that the vehicle in question is smuggled. The analysis will be undertaken in the larger context of how the relationship between the citizen and the State is to be understood and what affirmative steps the State is required to take in its fiduciary capacity before imposing penalties on citizens, where the effect of such penalty acquires the form of confiscation of the citizen's property. The legal analysis will follow the relevant factual details of individual references, then leading to adjudication of questions framed in relation to such references. The arguments of learned counsel for vehicle owners and the Customs Department have not been summarized separately in order not to elongate this already lengthy judgment, but have been dealt with as part of the legal analysis.

Custom Reference No.12 of 2022

6. A Toyota Land Cruiser (2700 CC), Registration No. BH-779-ICT, Model 2010, Chassis No. TRJ150-0008697, was intercepted and detained on 08.12.2020, and subsequently seized on 21.12.2020. A Show-Cause Notice was issued to the

Islamabad High Court

owner of the vehicle and through Order-in-Original dated 24.02.2021, the vehicle was ordered to be confiscated on the basis that its chassis number had been tampered with and that the prosecution had established that the vehicle had been brought into the country illegally without payment of duties and taxes. The owner of the vehicle, Raza Khan s/o Altaf Khan, submitted before the Collector that he was a bona fide purchaser of the seized vehicle. He stated that the vehicle had originally been purchased by Muhammad Bilal, resident of Dosali, North Waziristan Agency, under the Amnesty Scheme, 2013, who had deposited duties and taxes amounting to Rs.4,627,661 under Order-in-Original No. 7903 dated 30.03.2013, issued by the Deputy Collector Customs, Kohat. Subsequently, Minallah Jan (CNIC No. 21506-8295775-1) purchased the vehicle, which was registered in his name by MRA Islamabad with Registration No. BH-779. Thereafter, the present owner purchased the seized vehicle from Raza Akram s/o Muhammad Akram, resident of Faisalabad, through Pak Motors and Property Advisor, G.T. Road, Sarai Alamgir. It was further contended that the Customs Department had not verified the particulars of the seized vehicle by scrutinizing the data available with it regarding imports, auctions, or vehicles cleared under the Amnesty Scheme. The vehicle was reflected at Serial No. 351 in the data of vehicles cleared under the Amnesty Scheme, 2013 by Customs at Kohat (MCC Peshawar). It was also asserted that, at the time of clearance of vehicles under the Amnesty Scheme, 2013, no mechanism existed for verifying chassis numbers in order to determine whether they were genuine or had been tampered with or cut and welded. The Tribunal, however, upheld the order of confiscation, observing that the tampered chassis number of

Islamabad High Court

the vehicle did not tally with the documents produced before MRA Islamabad for the purpose of registration.

Custom Reference No.77/2023

7. A Toyota Aqua, Registration No.ANX-668-ICT, Model 2014 (Chassis No.NHP10-6295729), was intercepted and detained on 12.07.2021. It was seized on 09.08.2021. A Show-Cause Notice dated 26.08.2021 was issued to the owner and by Order-in-Original dated 18.10.2021, the confiscation of the vehicle was ordered on the basis of FSL report dated 15.07.2021, which rendered a finding that the chassis plate of the vehicle was cut and welded. The Customs Appellate Tribunal **("Tribunal")** set-aside the Order-in-Original for having been passed beyond a period of 30 days and thus being in contravention of the requirement of Section 179(3) of the Customs Act. It noted that a second forensic examination ordered by the Collector was not carried out. The owner of the vehicle produced goods declaration as well as tax payment receipts verified by the Customs Appraisement (East), Karachi, by letter dated 29.07.2022. The Tribunal took into account the fact that there was no other vehicle according to the record that had the same chassis number and that there was no proof of smuggling in the matter. The findings were rendered while taking into account the fact that the vehicle was stolen on 29.06.2019 and the vehicle's owner registered an FIR in this regard. It was subsequently recovered from Holy Family Hospital in Satellite Town Rawalpindi on 07.12.2020 and the owner was granted superdari under Section 561-A of the Code of Criminal Procedure, 1898 **("Cr.PC")**, by the Judicial Magistrate, Rawalpindi. During the hearing of the reference, this Court had

Islamabad High Court

directed the Customs Department to provide details with regard to disposal of vehicles confiscated by the Customs Department. The Customs Department relied on ECC decision dated 08.03.2006 and submitted that vehicles with tampered chassis numbers could not be registered by Motor Vehicle Registration Authorities **("MRA")**. Such vehicles were to be given to the Government Departments offering the highest price. And any remaining vehicles were to be distributed free of cost to Government owned educational, medical and scientific institutions. The report stated that 122 confiscated vehicles, duly registered with MRA over the last 5 years, were being used by public officials. 404 vehicles that had been confiscated due to tampered chassis numbers had been sold to Government Departments in terms of CGO No.05 of 2018. 555 vehicles with tampered chassis numbers were being used by Field Formations of the Customs Department. 109 vehicles with tampered chassis numbers were being used by Field Formations of the Internal Revenue Service. Such vehicles could not be driven on the roads by private individuals due to security concerns as the authentic identity of such vehicles was not verifiable. However, such vehicles could be used while they were under the control of Government Departments. It was submitted that the total cost of such confiscated vehicles, calculated on the basis of sale of scrap, was Rs.250 million. However, the replacement cost of such vehicles was Rs.9,354 million.

Custom Reference No.100 of 2023

8. A Toyota Land Cruiser Prado, Registration No.JAE-040 (Quetta), Model 2007 (Chassis No.TRJ120-5094993), was intercepted and detained on 17.06.2020. The vehicle was seized

Islamabad High Court

on 24.06.2020. A Show-Cause Notice was issued to the vehicle owner and by Order-in-Original dated 29.07.2020 the vehicle was ordered to be released to the owner despite an FSL report dated 18.06.2020 establishing that the chassis frame of the vehicle was cut and welded. The Collector (Adjudication) found that the Customs Department had failed to establish that the vehicle was not the one cleared under Amnesty Scheme, 2013. The Tribunal took note of the FSL report that the chassis number of the vehicle was cut and welded. It observed that while the vehicle may have been cleared in the Amnesty Scheme, 2013, but by virtue of SRO No.568(I)/2008 dated 11.06.2008 such scheme excluded vehicles with cut and welded chassis plates. The Tribunal noted the vehicle owner's assertion that the original owner, Sher Muhammad, surrendered the vehicle to avail the benefit of an Amnesty Scheme and paid the requisite duties and taxes. Consequently, a No Objection Certificate was issued for registration of the vehicle after seeking an affidavit that the vehicle was not cut and welded. It also noted that by ECC decision dated 03.03.2006 the Government had decided that vehicles with tampered chassis numbers could not be released and it was therefore the owner and not the Customs Department that was responsible even to the extent that the vehicle was cleared through an Amnesty Scheme. The Tribunal noted that the notion of bonafide purchaser was alien to the Customs Act. In terms of background, an FIR No.143/2016 dated 25.04.2016 was registered against the vehicle owner for offences under Sections 420, 468 and 471 of the Pakistan Penal Code, 1860 ***("PPC")***. The owner's application under Section 249-A of Cr.PC was dismissed. The vehicle owner then filed Writ Petition No.2364 of 2016 before the Islamabad High Court, which after

Islamabad High Court

taking into account the Amnesty Scheme details and verifying that duties and taxes had been paid pursuant to such scheme ordered the release of the vehicle on superdari by judgment dated 23.04.2016. The vehicle was then detained, as discussed above, on 17.06.2020. The vehicle owner then filed Writ Petition No.2817 of 2020 before the Islamabad High Court, which by judgment dated 17.11.2020 ordered the release of the vehicle subject to furnishing of surety. The Customs Department filed an appeal against such judgment, but the Supreme Court refused to grant leave by order dated 28.09.2021 in CP No.3462 of 2020. The Customs Department, however, refused to release the vehicle to the owner, despite court orders, during the pendency of adjudicatory proceedings.

Custom Reference No.214 of 2023

9. A Toyota Premio, Registration No.ARQ-007 (Sindh), Model 2004 (Chassis No.ZTT240-0044208), was intercepted and detained on 23.09.2020. The vehicle was seized on 28.09.2020 and Show-Cause Notice dated 03.11.2020 was issued to the owner of the vehicle. The Order-in-Original dated 24.11.2020 ordered the confiscation of the vehicle on the basis of FSL report dated 24.09.2020, which found that the chassis number was grinded and self-punched. The chassis number, as apparent, was ZZT240-0091512, which after chemical treatment was deciphered to be ZZT240-0044208. The Order-in-Original noted the owner's response that the vehicle had been purchased from Raja Riaz Hussain on 05.12.2017 and Rs.900,000/- was paid in consideration through banking channels. The seller disappeared and FIR No.297/19 dated 03.04.2019 was registered against the seller, when the owner realized that the vehicle was tampered as

Islamabad High Court

a consequence of FSL report dated 10.04.2019. The custody of the vehicle was granted to the owner on superdari after the seller/accused was declared a proclaimed offender. The Order-in-Original was based on the fact that it was not denied that the vehicle was tampered and therefore its confiscation was ordered. The Tribunal by order dated 09.08.2023 set-aside the Order-in-Original on the basis that the forensic examination was carried out without associating the owner with the fact that the vehicle was lawfully registered in the name of the owner who was a *bonafide* purchaser and the Customs Department possessed no evidence of smuggling of the vehicle. It was also noted that the vehicle had remained in the possession of the Customs Department for a significant period creating doubt about how its chassis number was tempered.

Custom Reference No.05 of 2024

10. A black Toyota Land Cruiser, Registration No.AAH-418 (Punjab), Model 2017 (Chassis No.URJ202-4142902), was detained on 16.08.2023 and seized on 24.08.2023 due to its chassis number being manually punched. A Show-Cause Notice dated 08.09.2023 was issued to the owner of the vehicle. The Order-in-Original dated 08.09.2023 ordered the confiscation of the vehicle on the basis of FSL report dated 07.08.2023, which concluded that the chassis number was manually punched and the vehicle was smuggled in terms of Section 2(s) of the Customs Act. The Tribunal by order dated 21.12.2023 upheld the Order-in-Original while relying on the law laid down by the Peshawar High Court in ***Sultan Muhammad vs. Collector Customs and another*** ***(2015 PTD 570)*** and the Supreme Court in ***Government of Khyber Pakhtunkhwa vs. Sarfraz and others*** ***(2020 SCMR 1410)*** and ***Ch. Maqbool Ahmed vs.***

Islamabad High Court

***Customs, Federal Excise and Sales Tax, Appellate Tribunal and 3 others* (2009 SCMR 226)**. The Tribunal also ordered a second forensic examination, which was done and a report was submitted on 08.12.2023, which also concluded that the original chassis numbers had been erased and could not be deciphered due to deep grinding and such report had been rendered after associating the owner with the examination process, and was conducted on the owner's request. The Tribunal concluded that the registration book in itself was not evidence of import in a case where the chassis number was found to be tampered and that the notion of *bonafide* purchaser was alien to the Customs Act. During the proceedings before this Court, the Customs Department submitted that another vehicle with the same chassis number had been traced by the Customs Department. It was this vehicle that was cleared by the Customs Department on the basis of import documents being used by the confiscated vehicle. It bore Sindh registration number BT-0999 and was originally registered by Sheikh Naseer Ahmed on 21.06.2017. It was then purchased by Pir Syed Saleh Shah Jillani. The registration documents of such vehicle reflected that the vehicle was imported and rendered out of charge on 24.03.2017 and had been imported by Auto Mall. It was on the basis of such import documents that the vehicle was registered by the MRA in Sindh. The applicant in rejoinder submitted that the chassis number of the applicant's vehicle was URJ202-41429O2, and confusion was being caused as the second last number in the chassis number of the applicant's vehicle was the alphabet O and not the digit 0. The applicant was, however, unable to produce any import documents that were different from those on the

Islamabad High Court

basis of which the vehicle of Pir Syed Saleh Shah Jillani (registration number BT-0999) was registered in Sindh.

Custom Reference No.31 of 2024

11. A Toyota Aqua, Registration No.ADV-989 (ICT), Model-2015 (Chassis No.NHP10-6372366), was intercepted and detained on 23.02.2022. It was seized on 11.04.2022. A Show-Cause Notice dated 12.05.2022 was issued to the vehicle's owner. The vehicle was confiscated through Order-in-Original dated 30.06.2022 on the basis of FSL report dated 28.03.2022, which concluded that the chassis number was tampered and many of the digits could not be deciphered due to deep metallic filling. The chassis number reflected after treatment was NHP10-X3XXXXX. The contention of the vehicle's owner before the Customs Department was that the vehicle was imported by ARB International after auction in Japan. Customs duty in the amount of Rs.684,020/- was paid at the time of import and the vehicle was registered on 14.02.2019. The vehicle was then stolen, which event was reported in FIR No.363/19 dated 17.08.2019. It was subsequently recovered from Peshawar and was handed to the vehicle's owner on superdari by Judicial Magistrate on 16.11.2019. The Magistrate, while passing such order, had taken into account the fact that the engine and chassis numbers had been defaced, but that the vehicle had been opened and started by the owner using the master key in his possession. The Tribunal set-aside the Order-in-Original and noted that the order had been passed 50 days after the issuance of the Show-Cause Notice and was beyond the limit prescribed in Section 179(3) of the Customs Act. On merits, the Tribunal found that the superdari of the vehicle was handed over to the respondent as

Islamabad High Court

there was no rival claimant of the vehicle. It also noted that the impugned order relied on a replaceable Vehicle Identification Number **("VIN")** plate on the door of the vehicle and a manipulated chassis plate, which reasoning was beyond the allegations stated in the Show-Cause Notice. In view of the physical state of the vehicle as well as the literature associated with the vehicle, the Tribunal concluded that it was a 2015 model car. The Tribunal found that the FSL report did not establish smuggling, when the vehicle was lawfully registered and the owner had established the onus of lawful import by producing original auction documents issued in Japan alongwith the relevant import documents, which documents had been provided to the Excise & Taxation Office ***("ETO")*** for purposes of registration. In these circumstances, the owner discharged his burden establishing lawful excuse to possess the vehicle and the Customs Department failed to discharge its onus to establish that the vehicle was smuggled in terms of Section 2(s) of the Customs Act.

Custom Reference No.42 of 2024

12. A Toyota Aqua, Registration No.AES-159-ICT, Model-2013 (Chassis No.NHP10-6155549), was intercepted and detained on 20.07.2023. It was seized on 21.08.2023. A Show-Cause Notice dated 12.10.2023 was issued to the vehicle's owner for failure to produce import documents and stated that the vehicle's record was not found in PRAL database. The Order-in-Original dated 10.11.2023 concluded on the basis of FSL report that the chassis number of the vehicle was cut and welded. The vehicle's owner had contended before the Collector that the vehicle had suffered a major accident, while also providing the import documents reflecting the chassis number of the vehicle. An FIR in relation to

Islamabad High Court

the accident was registered on 20.03.2019. The vehicle's owner asserted that the right pillar of the vehicle was damaged. The Collector dismissed such explanation on the basis that the FIR was insufficient to establish legal import in case where the chassis plate was cut and welded and took note of the fact that no reporting of the accident and the changes effected to the chassis plate had been reported under Section 33 of the Motor Vehicles Ordinance, 1965 ***("Motor Vehicles Ordinance")***, while relying on the law laid down by the Peshawar High Court in ***Sultan Muhammad***. The Tribunal set-aside the Order-in-Original while finding that the owner had discharged the onus of proof by producing an accident report and that the Customs Department had failed to discharge its onus to establish that the vehicle was smuggled.

Custom Reference No.61 of 2024

13. A Toyota Prado Jeep, Registration No.BF-4027 (Sindh), Model 2003 (Chassis No.RZJ120-0009742), was intercepted and detained on 08.01.2023 and was seized on 02.02.2023. A Show-Cause Notice dated 27.02.2023 was issued to the owner. An Order-in-Original dated 08.03.2023 ordered the confiscation of the vehicle on the basis of FSL report dated 09.01.2023, which found that the chassis number was grinded and tampered and while the chassis number, as reflected in the record of the vehicle, was RZJ120-0009742, the chassis number after chemical treatment was found to be RZJ120-0001XX4. The owner submitted before the Collector that the vehicle was imported from Japan in 2005 by Samina Zahid. It was not registered and was purchased by Munir Ahmed in 2013, who then got it registered. The Bill of Entry and Import Permit for the vehicle were verified by the Collectorate of Appraisement,

Islamabad High Court

Customs House, Karachi, by letter dated 03.10.2013. The vehicle was subsequently purchased by Abdul Ghafoor (the father of Danish Ghafoor) on 15.05.2019. The Order-in-Original noted that chassis numbers of legally imported vehicles were often used to hide the identity of smuggled vehicles and that the import details available in the PRAL database related to some other vehicle. But the vehicle in question had been brought into Pakistan through an unauthorized route and was therefore smuggled. The Tribunal by order dated 29.03.2024 set-aside the Order-in-Original through a split verdict. The Member (Judicial) found that the owner had paid full price for the vehicle and was an innocent third party, who had completed all codal formalities to have the vehicle registered. That there was no record establishing that the chassis number of the vehicle had been allotted to any other vehicle, in support of the assertion of the Customs Department that such chassis number belonged to another legally imported vehicle. And the Customs Department had failed to trace the whereabouts of the imported vehicle, the record of which was available in the PRAL database. The Member (Technical) upheld the Order-in-Original on the basis that the FSL report had determined that the vehicle was tampered, while holding that the concept of *bonafide* purchaser was alien to the Customs Act. The Referee Member found that the owner had produced import documents, including the goods declaration verified by PRAL database as well as the registration documents of the vehicle, thus shifting the onus on to the Customs Department, which failed to discharge such onus as there was no proof of the assertion that the vehicle was smuggled. The Tribunal also took into account the assertion of the vehicle's

Islamabad High Court

owner that the engine number of the vehicle was the same as that reflected in the import documents of the vehicle.

Custom Reference No.74 of 2024

14. A Toyota Corolla Axio, Registration No.AAD-793 (KP), Model 2007 (Chassis No.NZE141-6056808), was intercepted and detained on 15.09.2023. It was seized on 28.09.2023 and a Show-Cause Notice dated 14.12.2023 was issued to the vehicle's owner. The vehicle was confiscated by Order-in-Original dated 02.01.2024, which order stated that the import documents had not been duly verified and produced by the vehicle's owner. The vehicle's owner submitted before the Customs Department that the vehicle was registered for the first time on 20.11.2007 in Khyber Pakhtunkhwa and had continued to be used for a period of 16 years before it was seized and subsequently confiscated. The ETO in Jaffarabad did not deny that the import documents were not provided, but stated that the record of the office had been burnt down on 28.12.2007 after riots broke out due to the assassination of Mohtarma Benazir Bhutto. The Tribunal upheld the confiscation order by noting that the import documents had not been provided and the record from the ETO had been burnt down in 2007. It found that the vehicle's owner had failed to discharge onus of proof in terms of Section 187 of the Customs Act while noting that there was no concept of *bonafide* purchaser under provisions of the Customs Act. During the proceedings before this Court, the applicant/vehicle’s owner produced the original registration book, which had purportedly also been provided to the Customs Department and the Tribunal during the adjudicatory proceedings. The Customs Department, on the

Islamabad High Court

other hand, submitted that the vehicle had already been auctioned.

Custom Reference No.07 of 2025

15. A Toyota Aqua, Registration No.EA-882, Model 2015 (Chassis No.NHP10-2131103), was intercepted and detained on 13.02.2024 and subsequently it was seized. A Show-Cause Notice dated 07.03.2024 was issued to the vehicle's owner and through Order-in-Original dated 29.03.2024 the confiscation of the vehicle was ordered on the basis that its chassis number was tampered and the data being relied on by the owner was in relation to some other vehicle. The Collector held that the owner had failed to produce documents of legal import. In terms of factual background, the vehicle was stolen on 27.07.2018 and the owner registered an FIR No.331/2018 on the same date. The vehicle was recovered by Anti-Car Lifting Cell and its possession was handed over to the vehicle's owner on superdari by Additional Sessions Judge by order dated 20.11.2018 and in such order the Additional Sessions Judge noted that the owner had identified the vehicle on the basis of the physical state of the vehicle and had opened it with the keys that he had in his possession. A forensic examination had been carried out and a FSL report dated 08.11.2018 established that the chassis number had been tampered through metallic filling. The Additional Sessions Judge in the superdari order took note of the fact that the chassis number revealed after the chemical examination was close to that reflected in the registration documents as only two digits could not be made out. The Tribunal by judgment dated 13.11.2024 set-aside the Order-in-Original. The Tribunal noted that the vehicle owner had discharged the burden in terms of Section 187 of the Customs

Islamabad High Court

Act by producing the registration book and the auction documents through which the vehicle had been purchased. It noted that the burden of proof then shifted to the Customs Department, which failed to discharge such burden by establishing that the vehicle was brought into Pakistan through an unauthorized route. And that on the basis of FSL report dated 13.02.2024 that the chassis number had been tampered with, a finding could not be rendered that the vehicle was smuggled. The Tribunal found that no one could be deprived of property without establishment of wrongdoing. In view of the facts of the case, it could not be ruled out that the vehicle had been tampered by the Car Lifter. And that the vehicle owner had established that he was the last owner and possessor of the vehicle and had provided the relevant documents to establish that the vehicle had been purchased through an Amnesty Scheme Auction, and there existed no other claimant of such vehicle.

Scope of Reference Jurisdiction

16. Section 196(1) of the Customs Act vests in an aggrieved person and/or Collector/Director of Intelligence & Investigation/Director of Valuation the right to prefer an application against an order of the Tribunal before the High Court *"stating any question of law arising out of such order."* Section 196(5) of the Customs Act then provides that the High Court, *"shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly."* As has been stated in the introductory part of this judgment, the grounds on which this judgment is

Islamabad High Court

based include, *inter alia*, application of provisions of the Constitution, as enumerated by case law, and interpretation of provisions of the Customs Act. It would therefore be beneficial to consider the scope of reference jurisdiction for this Court to satisfy itself that in articulating or answering the questions of law through this judgment the Court has not exceeded its jurisdiction.

17. The language of Section 196 of the Customs Act is similar to the language used in Section 47 of the Sales Tax Act, 1990 ***("Sales Tax Act")***, and Section 133 of the Income Tax Ordinance, 2001 ***("Income Tax Ordinance")***. The scope of reference jurisdiction of the High Court under these provisions, as enunciated by the Supreme Court, is therefore relevant while interpreting the scope of reference jurisdiction for purposes of Section 196 of the Customs Act.

18. The Supreme Court up until ***F.M.Y Industries Ltd. vs. Deputy Commissioner Income Tax (2014 SCMR 907)*** took a restrictive view of the High Court's reference jurisdiction under various fiscal statutes. This view was reconsidered by the Supreme Court in ***Messrs Squibb Pakistan Pvt. Ltd. vs. Commissioner of Income Tax (2017 SCMR 1006)***. The Supreme Court while tracing the history of jurisprudence that had evolved on the scope of reference jurisdiction, while considering the provisions of income tax statutes in relation to which case law had evolved, restated the scope of reference jurisdiction in ***Squibb Pakistan*** as follows:

> *48. To recapitulate, the problem all along has been the unfortunate legacy of the Act, 1918. This provided a true illustration of advisory jurisdiction, since advice was to be rendered to the Revenue Authority prior to its having passed*

Islamabad High Court

an order. In 1922, this advisory jurisdiction was retained under section 66(1) of the Act, 1922 which was similarly framed. However, this subsection had, in sum and substance, lost its importance because of subsection (2), which conferred the right to challenge the decision of the Tribunal on questions of law. It was this remedy which was followed thereafter. Section 66(1) ibid thereafter became redundant for all practical purposes and was eventually deleted through a subsequent amendment in 1939 and the same position continued under the Ordinance, 1979 and succeeding law. Thereafter, no advisory jurisdiction remained in any shape or form. But since the significance of the change was not appreciated, the concept of advisory jurisdiction continued to confuse the courts the corpus had disappeared, but the shadow remained. The law as it stands after the 2005 amendment is now clear beyond any conceptual doubt. There is no question of advisory jurisdiction (which phrase was never used in the law at any stage) and the plain words of the section must now be given their ordinary meaning. No hyper technicalities now stand as barriers in the way of substantive justice.

49. An independent interpretation of section 133 of the Ordinance, 2001, as it stands today, on the plain language of the law, liberated from the burden or benefit of earlier judgments, would make the position very clear. Subsection (1) confers a right on any person or the Commissioner aggrieved by a final order of the Appellate Tribunal to file an application before the High Court along with a statement of the case stating any questions of law arising out of the Tribunal's order. There is a direct right to approach the High Court in a similar manner as in appeals, revisions, reviews etc. The order being challenged is the final order but the challenge is limited to questions of law only. The statement must set out the facts, the Tribunal's determination and the questions of law which arise out of its order in terms of subsection (3). The questions of law which may be referred are only those which "arise" out of the order of the Tribunal. On the plain language of the law, this would include any question which can be made out from the order of the Tribunal. There is nothing in the scheme of the section to impute any extraordinary limitations on the type of questions which may be posed. The facts as stated in the Tribunal's order have to be taken as recorded and any question which can be made out from those facts may be raised in an application under section 133 ibid, regardless of whether it was

Islamabad High Court

previously urged or not. There is absolutely no reason for confining the questions which may be referred to only those which were argued before the Tribunal on the hypothesis that this is an advisory jurisdiction as that is not what the language of the law contemplates. The law, as it stands, allows all questions "arising" out of the order to be referred and not just questions "argued" or "raised" before the Tribunal.

19. The Supreme Court in ***Pakistan Television Corporation Limited vs. Commissioner Inland Revenue (Legal), LTU, Islamabad (2017 SCMR 1136)*** went even further and held that, *"undoubtedly, a reference under section 133 of the Ordinance would lie before the High Court on a question of law only, however, in the instant cases, the issues (and in the statement of case) before the High Court required an interpretation of various provisions of the Ordinance including sections 21, 153 and 233 which were essentially questions of law. We have examined the order of the Tribunal and find that the above questions of law do arise therefrom, resultantly the tax references before the learned High Court were maintainable."*

20. In ***Commissioner of Inland Revenue, Legal Division, Lahore and others vs. Messrs Rafeh Limited (2020 PTD 1657)*** the Supreme Court once again reiterated that, *"the Application under Section 133(1), also referred to as the Tax Reference, is in effect an Appeal and it must be construed as such. The misimpression and confusion in some quarters that a tax reference invokes advisory jurisdiction of the High Court and therefore the High Court is bound to answer the question of law brought before it is a misconception and is hereby dispelled."*

21. The Islamabad High Court in ***Commissioner Inland Revenue, Legal Zone, Large Taxpayers Office vs. M/s***

Islamabad High Court

Wateen Telecom Ltd. etc. ***(2021 PTD 1827)***, while summarizing the law laid down by the Supreme Court, held as follows:

> *(1) Proceedings before the High Court under section 133 of the Ordinance are appellate proceedings.*
>
> *(2) The decision of the Tribunal in its capacity as the second appellate authority is final to the extent of factual controversies between the parties. The High Court, in proceedings under section 133 of the Ordinance, is to proceed to adjudicate questions of law on the basis of the facts as determined by the Tribunal.*
>
> *(3) The High Court, in proceedings under section 133 of the Ordinance, may decide any question of law emanating from the proceedings before the Tribunal and is not bound to consider only such questions that arise from the order passed by the Tribunal.*

22. The question of the extent to be which the factual determinations made by the Tribunal can be impugned before the High Court has also remained a matter of discussion. In ***Pakistan Match Industries (Pvt.) Ltd. vs. Assistant Collector, Sales Tax and Central Excise, Mardan*** ***(2019 SCMR 906)***, the Supreme Court held that in reference jurisdiction, *"it is only questions of law that can travel to the High Court. Factual points cannot be allowed to be opened or (re-)agitated unless there has been a material misreading or non-reading of the evidence, which is itself a question of law that can be taken to the High Court."*

23. Similarly, in ***Commissioner of Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd., Faisalabad*** ***(2022 SCMR 1082)***, it was held that the Tribunal was, *"the final fact-finding body and its findings of fact are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its*

Islamabad High Court

conclusion and record such findings, or the same are perverse or based on surmises and conjectures."

24. In ***The Collector of Sales Tax and Central Excise, Lahore vs. Qadbros Engineering (Pvt.) Ltd., Lahore* (2023 SCMR 939)**, the Supreme Court explained that, *"the elementary characteristic of this jurisdiction is that it has been conferred to deal only with questions of law and not questions of fact. When we talk of a question of law, it connotes a tangible and substantial question of law on the rights and obligations of the parties founded on the decision of the Tribunal."*

25. The use of the term aggrieved person in Section 196(1) of the Customs Act is not without purpose. The High Court, while considering an application filed by an aggrieved person against an order of the Tribunal, cannot pretend to be engaging in an academic exercise merely because the scope of its jurisdiction is limited to adjudicating questions of law. As explained by the Supreme Court in ***Qadbros Engineering***, the outcome reached by the Tribunal affects the rights and obligations of the relevant parties and the questions of law being adjudicated by the Court similarly affect the rights of such parties by virtue of modifying the order of the Tribunal in terms of Section 196(5) of the Customs Act. The Supreme Court clarified in ***Pakistan Television Corporation***, cited above, that interpretation of provisions of a statute is a question of law and it falls within the domain of the High Court to undertake statutory interpretation where the outcome produced, that affects the rights and obligations of the parties, is contingent on such interpretation. And ***Squibb Pakistan*** has clarified that, *"no hyper technicalities now stand as barriers in the way of substantive justice."*

Islamabad High Court

26. The hierarchy of the sources of law that affects the rights and obligations of parties are well settled when it comes to the application of law by municipal Courts. The Constitution remains the foremost source of law and the provisions of a statute in conflict with the prescriptions of the Constitution must give way to the latter. Similarly, provisions of any Rules and Regulations, sometimes referred to as subordinate legislation, and any administrative instructions issued in exercise of delegated authority flowing from provisions of the statute, must be interpreted such that they are in consonance with the object and language of the parent statute. It is also a well understood proposition that within a common law jurisdiction, the Courts of law are vested with inherent jurisdiction to interpret and apply relevant provisions of law, whether rooted in the Constitution or statutory law, while adjudicating the disputes brought before them. It is in this context that the reference jurisdiction of the High Court in terms of Section 196 of the Customs Act is to be understood. This reference jurisdiction is vested in the Division Bench of a Constitutional Court to uphold the principle of separation of powers in terms of Article 175 of the Constitution, while rendering dispositive decisions. It is a misconception that merely because the adjudication of a question of law requires application of constitutional principles or statutory interpretation or the manner of exercise of statutory authority delegated by the Legislature to the Executive, that such adjudication would fall beyond the scope of reference jurisdiction. As an appellate forum exercising judicial power that impinges on the rights and obligations of parties before it, the High Court cannot remain oblivious to the hierarchy of sources of law that need to be taken account of while answering a question of law brought to it. A

Islamabad High Court

Division Bench of the High Court exercising reference jurisdiction remains a High Court in terms of Article 192 of the Constitution. It can always exercise another jurisdiction vested by the Constitution or the law to mold and grant relief where the facts and circumstances of the case so dictate. But it need not exercise writ jurisdiction or convert a reference into a writ merely because the question of law that arises from the proceedings and/or order of the Tribunal brought before it in reference jurisdiction requires constitutional and/or statutory interpretation. Such interpretation falls squarely within its scope when so required to answer a question of law properly brought before it in terms of Section 196 of the Custom Act.

The scope of Section 187A of the Customs Act

27. The Legislature through the Finance Act, 2025, has introduced Section 187A into the Customs Act, which states the following:

> ***187A. Presumption of legal character of vehicle. -*** *Where any vehicle is detained or seized under this Act or the rules made thereunder and such vehicle upon forensic examination is found to be having a tampered chassis number or cut and weld chassis or chassis number filled with welding material or re-stamped, such vehicle shall be presumed to be smuggled, even if registered with Motor Registration Authority, and shall be confiscated and the Board may authorize the use of such confiscated vehicles for operational purposes in the manner provided in section 182, of this Act, within ninety days of confiscation.*

28. During the course of arguments as to what constitutes smuggling in terms of Section 2(s) of the Customs Act, Section 187A of the Customs Act was relied on by the learned counsels representing the Customs Department. It was argued that Section 187A of the Customs Act being an explanatory provision

Islamabad High Court

would apply retrospectively even though it became a part of law as of July 2025. It is therefore essential to consider the scope of Section 187A of the Customs Act and whether a forensic examination report concluding that a vehicle has a tampered chassis number, whether by virtue of the chassis plate being cut and welded or the chassis number being filled with welding material or being re-stamped, is conclusive proof that the vehicle is smuggled, vesting in the State the authority to confiscate such vehicle and use it for operational purposes in terms of Section 182 of the Customs Act.

29. There are a few points to be noted in view of the language used in Section 187A of the Customs Act: One, Section 187A of the Customs Act is in the nature of a deeming clause that creates a presumption that a vehicle with a tampered chassis number is smuggled even if such vehicle is registered with a MRA. Two, it purportedly vests in the Federal Board of Revenue ***("FBR")*** the power to authorize the use of such confiscated vehicle for operational purposes in terms of Section 182 of the Customs Act. And three, it prescribes a timeline for such authorization, by stating that the same can be granted within 90 days of confiscation. In this part of the judgment, we will only deal with the scope of a deeming provision. We will consider the scope of FBR's power to authorize the use of confiscated vehicles later in this judgment while considering the scope of the power created by Sections 169(4) and 182 of the Customs Act together with the scope of CGOs issued in exercise of authority under Section 223 of the Customs Act.

Islamabad High Court

30. In ***Mehreen Zaibun Nisa vs. Land Commissioner, Multan and others (PLD 1975 SC 397)***, the Supreme Court summarized the effect of deeming clauses as follows:

> *(i) When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time but by a legal fiction we are to assume as if it did exist.*
>
> *(ii) Where a statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.*
>
> *(iii) At the same time, it cannot be denied that the Court has to determine the limits within which and the purposes for which the Legislature has created the fiction.*
>
> *(iv) When a statute enacts that something shall be deemed to have been done which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."*

31. In ***Begum B. H Syed vs. Mst. Afzal Jehan Begum (PLD 1970 SC 29)***, the Supreme Court explained that it fell within the Province of the Court, *"to determine the limits within which and the purpose for which the Legislature has created a fiction."*

32. While considering the scope of a deeming clause under provisions of the West Pakistan Urban Rent Restriction Ordinance, 1959, the Supreme Court in ***Muhammad Yasin vs. Sheikh Ghulam Murtaza and another (PLD 1988 SC 163)*** held that the power of a Rent Controller to execute an order in the manner of a decree included the power to decide objections while doing so. It noted that the deeming provisions vesting in the Controller the power to execute an order in the manner of a decree of a Civil Court was to be taken to its logical conclusion

Islamabad High Court

and that the deeming clause, *"has to be given full effect and the logical consequence of the empowering provision must follow."*

33. In ***Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others*** ***(PLD 2006 SC 602)***, the Supreme Court considered the scope of a deeming provision at length and cited with approval S.M. Zafar's commentary in *Understanding Statutes* (2nd Edition, PP at 101). It went on to observe that, *"two important concepts have been introduced by the learned author in the construction of the provision creating a statutory fiction, namely; "statutory fiction should be carried to its logical conclusion as held in Muhammad Yasin v. Sheikh Ghulam Murtaza and another (PLD 1988 SC 163) but the fiction cannot be extended beyond the language of the section by which it is created or by importing another fiction," therefore, to find a solution, it has been observed that "principle of harmonization shall be attracted" and ultimately it was held that "the impact of deeming clause could be curtailed if it produces a disgraceful result."* The Supreme Court reiterated that it remained for the Court to determine the limits and the purpose for which the Legislature had created a legal fiction by virtue of a deeming clause.

34. In ***All Pakistan Newspaper Society and others vs. Federation of Pakistan and others*** ***(PLD 2012 SC 01)***, the Supreme Court once again emphasized that the fiction created by a deeming clause could not be extended beyond the language of the Section by which it was created.

35. The aforesaid principles of interpretation in relation to a deeming clause were reiterated in ***Syed Muddasar Shah***

Islamabad High Court

Termizi vs. Peshawar High Court, Peshawar through Registrar, Peshawar ***(2021 SCMR 116)*** and ***Pak Leather Crafts Limited vs. Al-Baraka Bank Pakistan Limited*** ***(2022 SCMR 1868)***.

36. In ***Mushtaque Ahmed Memon and another vs. Arshad Hussain Bhutto and others*** ***(2023 SCMR 174)***, it was held that a deeming clause, *"has to be accepted to the extent which it is in conformity with the original Act."* In ***Dr. Abdul Nabi, Professor, Department of Chemistry, University of Balochistan, Quetta vs. Executive Officer, Cantonment Board, Quetta*** ***(2023 SCMR 1267)***, the Supreme Court held that, *"in order to interpret the statute, the Court is obligated to give effect to the deeming provisions while taking into consideration the object of such legal fiction and also dredge up the rationales of statutory fiction to its cogent finale vis-à-vis the intention of legislature so it should not cause any injustice."* The Supreme Court noted that, *"the classic statement as to the effect of a deeming clause is to be found in the observations of Lord Asquith in East End Dwelling Company Ltd. vs. Finsbury Borough Council that "where the statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs."*

37. In ***Messrs Shan Traders, Lahore vs. Income Tax Appellate Tribunal, Lahore and 2 others*** ***(2007 PTD 512)***, the Division Bench of the Lahore High Court noted that *"a deeming clause in a taxation statute must be construed very strictly".*

Islamabad High Court

38. The first point to note for our purposes is that Section 187A of the Customs Act does not seek to define or redefine smuggling or augment the definition provided in terms of section 2(s) of the Customs Act. It is for purposes of adjudicating the questions of law before the Court and what material/evidence is sufficient to render a determination of smuggling, that this Court is required to interpret the scope of Section 187A of the Customs Act, as a deeming clause, and the purpose for which the Legislature created a legal fiction through such clause. In doing so, this Court must interpret such provision harmoniously with other provisions of the Customs Act, such that the interpretation attributed to Section 187A of the Customs Act neither produces 'injustice' nor 'a disgraceful result'. The deeming provision within Section 187A of the Customs Act is part of a fiscal statute. What is more is that in terms of Section 2(s) read with Sections 15, 16, 17, 168, 182 and 156 of the Customs Act, the consequence of a finding that a vehicle is smuggled are penal in nature and result in confiscation of such vehicle together with the possibility of the owner of such vehicle being prosecuted for an offence in terms of Section 156 of the Customs Act. It is therefore essential to construe such deeming provision strictly, such that it promotes the objects of the Customs Act, is interpreted harmoniously with other provisions of the Customs Act, including Sections 2(s) of the Customs Act that defines the term smuggling, and does not produce any unjust or disgraceful result.

39. According to its preamble, the Customs Act was promulgated to, *"consolidate and amend the law relating to the levy and collection of customs duties, fee and service charges*

Islamabad High Court

and to provide for other allied matters." Such allied matters include preventing and deterring smuggling of goods into Pakistan and prosecuting those found liable for the offence of smuggling or that of possessing/dealing with smuggled goods. In interpreting Section 187A of the Customs Act, it must therefore be borne in mind that while introducing such provision, the Legislature did not seek to bring any amendment to the definition of the word 'smuggle' as provided under section 2(s) of the Customs Act. What constitutes smuggling and when can a good be characterized as being smuggled would continue to be controlled by the definition provided in Section 2(s) of the Customs Act.

40. One interpretation of Section 187A of the Customs Act could be that any vehicle, whether imported or locally manufactured in Pakistan, if found to have a tampered chassis number would qualify as a smuggled vehicle. This interpretation would raise questions about the constitutionality of such provision as it could be seen as removing a causal link between a wrongful act (i.e. smuggling a vehicle into Pakistan), and the penal consequence of such act (i.e. confiscation of the vehicle and prosecution of the smuggler or person in possession of such smuggled vehicle). Such interpretation would not promote the object of the Customs Act, which is to control, prevent and deter smuggling as defined in Section 2(s) of the Customs Act. A vehicle that is locally manufactured and/or has been legally imported into Pakistan after payment of duties and taxes cannot be characterized as a smuggled vehicle merely because its chassis number has been defaced or tampered for reasons other than that of hiding the true identity of a smuggled vehicle. To

Islamabad High Court

slap penal consequences such as confiscation of property or criminal prosecution on the owner of a vehicle on the sole basis that vehicle's chassis number is tampered, when there is logical explanation for such tampering and/or the owner is not liable for the act of tampering, would most certainly produce an unjust and disgraceful result, which the Legislature could most certainly not have intended. It is also understood that locally manufactured vehicles, that are not imported, fall beyond the scope of provisions of the Customs Act. Section 187A of the Customs Act can therefore not be given a meaning that would result in an absurdity i.e. result in the declaration of a locally-manufactured vehicle as a smuggled vehicle merely because its chassis number has been tampered.

41. It is in this context that the deeming provision of Section 187A of the Customs Act must be given a restrictive meaning, for being a provision within a fiscal statute creating penal consequences. It must be understood as vesting in the FBR and the Customs Department jurisdiction in relation to a vehicle with a tampered chassis number by virtue of creating a presumption that such vehicle may be smuggled. But for such provision, Customs Authorities may arguably not be vested with jurisdiction to exercise their police powers to detain and seize vehicles and initiate adjudicatory proceedings for purposes of confiscation in relation to vehicles that are registered with the MRA and have not been freshly imported. Section 187A of the Customs Act is therefore to be understood as a deeming provision vesting jurisdiction in the Customs Authorities to exercise powers in relation to vehicles with tampered chassis numbers, which power, but for such deeming provision, would ordinarily vest in

Islamabad High Court

police authorities and MRA. Notwithstanding such jurisdiction-vesting provision, Section 2(s) of the Customs Act would continue to control what constitutes a smuggled good and the ultimate legal onus to prove that a vehicle is smuggled would remain with the State, subject to the requirements of Section 187 read with Section 156 of the Customs Act, as will be explained later in this judgment. The presumption created by Section 187A of the Customs Act would thus be a rebuttable presumption and the mere fact that a vehicle with a tampered chassis number is purportedly registered with a MRA would not be dispositive of the fact that such vehicle is not smuggled.

Civil forfeiture and constitutional right to property

42. Within our jurisprudence there has been no extensive analysis of whether or not penalties imposed in terms of Section 156 of the Customs Act in the form of civil forfeiture of property, impinges on the constitutional right to property guaranteed by Articles 23 and 24 of the Constitution. And to the extent that the consequence of civil forfeiture (without a criminal trial of the person deemed liable for the offence of smuggling or for the offence of possessing a smuggled item) constitutes a penalty, in what circumstances can an individual not liable for an offence be deprived of his property while upholding the guarantees of due process and fair trial in terms of Article 10A of the Constitution?

43. We need to undertake a three-tier analysis for our present purpose. As step one, we will consider imposition of penalty in terms of Section 156 of the Customs Act that is in the nature of civil forfeiture of property and the constitutional and/or policy concerns such penal action raise. Step two would be to consider the nature of property rights guaranteed by the Constitution and

Islamabad High Court

whether Articles 23 and 24 of the Constitution afford any protection to an individual suspected of possessing property that is deemed to be smuggled. And step three would be to consider the requirements for attribution of liability and imposition of penalty on an individual who is not deemed to be guilty as a person, but is the owner of property that is deemed to be guilty and liable to confiscation. Civil forfeiture is understood to be an action against property. It is therefore referred to as a consequence of proceedings *in rem* as opposed to proceedings against the person referred to as proceedings *in persona*m. By virtue of civil forfeiture the State ordinarily seeks to confiscate proceeds of criminal activity in order to deprive the possessor of the property of illicit gains without initiating criminal proceedings against an individual.

44. Civil forfeiture, as a consequence of proceedings *in rem*, has its roots in common law. Through such action the Crown would traditionally bring proceedings in the Court of Exchequer to obtain a judicial decree to seek recognition of its ownership of items of property. The Court of Exchequer was the forum in England for actions to enforce forfeitures under customs statutes (see for example Daniel Howard, *A Treatise on Summary Proceedings under the Law of Excise and Customs*, London, 1812). Civil forfeitures came to be seen as a legal means authorizing proceedings *in rem* against 'property' that was 'guilty' in the eyes of law. While historically the use of *in rem* process was restricted to property itself involved in illegal conduct, over time such process has also been employed in various jurisdictions against property acquired as a result of illegal conduct.

Islamabad High Court

45. The policy argument in support of civil forfeiture has been that it remains an effective means to recover assets derived from criminal or unlawful activity without the need to seek criminal conviction of an individual found guilty of criminal or illegal conduct. Thus, where guilt can be assigned to property for being a product of criminal or illegal activity, the State seeks to claim ownership of such property as a means to prevent illicit or unjust enrichment by organized crime and to suppress conditions that incentivize unlawful activities. The critique of such approach to legal enforcement is that it infringes on property rights, enables the State to impose penalties on property owners without affording them the protections that due process within the criminal justice system mandates, and creates a lazy alternative for the State to take confiscatory action without the need to establish wrongdoing beyond reasonable doubt. These legal and policy concerns have resulted in legal actions challenging the scope and legitimacy of civil forfeitures and various jurisdictions have come up with their own tests to ensure that civil forfeiture is undertaken such that it does not breach fundamental rights to property and due process, and that the punishment is proportionate to the wrongdoing that the State seeks to prevent.

46. The European Court of Human Rights employs a three-pronged test to ensure that there is no breach of constitutionally protected property rights when it comes to civil forfeiture. The three questions it asks are: is the measure lawful (i.e. provided for by Domestic Law); is it directed towards a legitimate aim (i.e. is it justified by State necessity); and is the measure proportionate to the ill that it seeks to prevent. It is

Islamabad High Court

through this three-part test that a balance is struck between the interests of the person suffering the forfeiture and the interests of the community in preventing and deterring criminal/illegal conduct.

47. The Courts in United Kingdom (UK) apply the proportionality test to ensure that civil forfeiture does not arbitrarily interfere with property rights. An exception to the penalty of forfeiture is available where the property may be traceable to a crime, but the owner in question acquired it in good faith, for full value, without notice of the crime. Other common law jurisdictions employ similar protections to create exceptions to civil forfeiture. Canada allows "interests of justice" and "legitimate owner" defences. New Zealand and Australia similarly allow "undue hardship" defences. In the United States (U.S.), the burden to initiate a forfeiture case was historically not too high. However, since promulgation of the Civil Assets Forfeiture Reform Act, 2000, it is now for the State to prove its case on a balance of probabilities. And the law also provides for an "innocent owner defence" (i.e. where an owner can establish that he/she had no knowledge that the property had been used in a crime or was a product of proceeds of crime, and had acquired the property in good faith at full value without notice of its criminal origin, such property is not liable for confiscation).

48. The academic commentaries in relation to States initiating *in rem* proceedings to affect civil forfeiture flag the constitutional concern that rendering dispositive judgments that have the effect of confiscating property fall within the province of the judiciary and such forfeitures must only be given effect when the decision to confiscate has been scrutinized and upheld by the

Islamabad High Court

judicial branch of the State. It is also pointed out that where law permits enforcement agencies to retain the property confiscated through civil forfeiture or put it to its own use, such incentives create a conflict of interest that adversely affect enforcement priorities and enforcement methods. The incentivization of civil forfeiture creates an alternative to criminal prosecution, as the lower standard of proof for confiscating property (without bringing home a charge against an individual beyond reasonable doubt) is an easy way out for law enforcement agencies. And where its effect is to deprive an innocent owner of his/her property and benefits individuals within the law enforcement agency, who retain or derive direct or indirect benefits from such forfeiture, the norms of honest policing and the underlying object of deterring criminal activity and preventing unjust enrichment are undermined.

49. There is scant case law on the scope and constitutionality of *in rem* civil forfeiture in Pakistan. While the question of constitutionality of civil forfeitures has not been raised before us in these matters, we will briefly consider cases where civil forfeiture has been considered or alluded to in our jurisprudence. And in such context, we will consider the right to private property as philosophically understood and as guaranteed by Articles 23 and 24 of the Constitution and whether civil forfeiture impinges on such right where the owner of goods/vehicles is not found liable for wrongdoing.

50. The most coherent account of how departmental proceedings leading to confiscation of goods qualify as proceedings *in rem* is provided in ***Punjab Cables vs. Government of Pakistan (PLD 1989 Lahore 121)***, where the

Islamabad High Court

Lahore High Court borrowed the jurisprudence from India while enumerating clause (9) of Section 156(1) of the Customs Act as follows:

> *"It is obvious from this provision that two penalties are provided; one relating to the goods, which are liable to confiscation, and the other relating to the person concerned, who is liable to a penalty not exceeding twice the value of the goods. Section 167(8) of the Sea Customs Act, 1978, which is a somewhat similar provision, was discussed by the Supreme Court of India in Sewpunjanrai Indrasanarai Ltd. v. Collector of Customs (AIR 1958 S.C. 845), where it was held that proceedings so far as they related to the confiscation of the goods were basically proceedings in rem, as the penalty was enforced against the goods, whether the offender was known or not known, and that the order of confiscation under section 182 of the Sea Customs Act operated directly upon the status of the property and by virtue of section 184 it transferred an absolute title to Government. It is, therefore, clear that proceedings under section 156(1)(9) of the Customs Act, 1969, are proceedings in rem, that the penalty is enforced against the goods and that the order of confiscation operates directly upon the status of the property, in view of section 182 of the Act, which clearly states that when goods are confiscated, they shall forthwith vest in the Federal Government and the officer who orders confiscation shall take and hold possession of the same."*

51. The other judgment that has been cited to explain how departmental proceedings leading to confiscation are distinguishable from criminal proceedings before the Special Judge is ***Adam vs. Collector of Customs, Karachi (PLD 1969 SC 446)***, wherein it was held as follows:

> *"The intention of the Legislature is thus clear that the disposal of the goods seized under the Sea Customs Act is left entirely in the jurisdiction of the customs authorities. The proceedings taken by the customs authorities for the confiscation of the goods are more in the nature of departmental proceedings which have been characterized in English and American jurisprudence as proceedings in condemnation of the goods for*

Islamabad High Court

purposes of revenue and are regarded as proceedings of a civil nature, despite their penal character."

The Supreme Court went on to hold that as the two remedies were independent of each other, *"no question of double jeopardy arises when simultaneously or subsequently a trial is held to determine the guilt of the individual, who has been concerned in the offences in respect of the goods, which are the subject-matter of the adjudication proceedings."* ***Adam*** has been cited at length by the Sindh High Court in ***Shoukat Ali v. Special Judge (Customs and Taxation) (PTCL 2014 Cl. 141)*** to reaffirm the power vested in customs authorities to impose fines and order confiscation of property, while also referring to other judgments rendered by the High Courts, following the principle laid down in ***Adam***.

52. The conclusions that can be drawn from the academic and judicial literature available is that a judgment *in rem* is a judgment against the whole world, which determines rights in the property itself and does not determine the liability of the individual who owns/possesses such property. It is thus that a finding that a property is liable to be confiscated for being the product of a criminal or illegal activity, when rendered *in rem*, does not amount to imposition of penalty on the individual who claims to be the owner of such property. And it is in this perspective that proceedings *in rem* ordering the confiscation of property are treated as proceedings separate from proceedings *in personam* against an individual deemed liable for an offence of smuggling under provisions of the Customs Act, which proceedings are of a judicial nature and brought before the Special Judge appointed under the Customs Act. The principle cited in support of *in rem* proceedings is that such proceedings

Islamabad High Court

merely determine title in property, and as property that is the product of criminal or illegal activity is to be treated as "guilty property", no one can claim clean title in such property. But the missing link in such analysis is why shouldn't proceedings *in rem* ordering confiscation of property also be viewed as imposition of civil penalty on an individual, who claims to be the owner of the property, and consequently in derogation of his/her civil/property rights guaranteed by Articles 23 and 24 of the Constitution, to the extent that such individual is not found culpable.

53. The relevant question that arises is where no wrongdoing is attributable to or established against the owner of property, can the property itself be confiscated on the basis that the penalty is being imposed on the property and not on the owner? It is in this context that the principle of culpability in relation to any penal sanction becomes relevant, which when read with the three-part test applied by the European Court of Human Rights and the exceptions or defences to confiscation upheld in other jurisdictions, including the defence of "*bonafide* purchaser" or "legitimate owner" or "undue hardship" begin to make sense as the correct approach to balance the rights of the community in preventing crime and smuggling vis-à-vis the rights of an individual to retain and enjoy his/her property. There appears to be no reasonable or valid legal argument in favor of the proposition that confiscation of property does not constitute a penalty for the property owner deprived of property, or that a property owner can be saddled with penalty without being found culpable in any manner.

Islamabad High Court

54. Before we engage in a discussion with regard to the nature of property rights, let us first consider the law laid down by the Supreme Court in ***Haji Abdul Razzak vs. Pakistan through Secretary, Ministry of Finance, Islamabad and another (PLD 1974 SC 5)***, where the principle of culpability as a necessary precondition to imposition of a penalty was applied to a customs case under provisions of the Sea Customs Act, 1878. The customs authorities had confiscated a pickup belonging to Qadri Silk Mills Ltd. On the day that the vehicle was seized, the company had also filed a report stating that the vehicle had been stolen. This explanation was deemed unsatisfactory by the customs authorities and the vehicle was ordered to be confiscated for being loaded with smuggled goods. The Supreme Court set-aside the order of confiscation and held that:

> *"One of the accepted principles for the imposition of a penalty is that there must be some culpability or negligence in the person sought to be made liable. Therefore, if the property of a wholly innocent person had been used without his consent, connivance or even knowledge, it would be grossly unjust to confiscate his property. It could not possibly have been the intention of a Legislature to penalise wholly innocent persons far less could persons be deprived of their property used by others after obtaining possession of the same by unlawful means or under circumstances over which they could not possibly have any control.*
>
> *Could it be said that if contraband goods were found being carried in a railway carriage, the railway carriage would be liable to confiscation; or, if contraband goods were carried in a Government truck, the Government truck would be liable for confiscation?...*
>
> *If the words "liable to confiscation" give a discretion to the confiscating authority to deprive a person of his property, then it follows that this discretion must be exercised upon the principles of natural justice; that is to say, the persons sought*

Islamabad High Court

to be deprived of the property must be given notice to show cause, they must be furnished with adequate opportunity of forwarding their point of view and the same must receive due consideration. Furthermore, according to one of the principles now well-accepted, no person should be deprived of his property by way of penalty unless it is clear that he is in some measure responsible for assisting or furthering the commission of the offence committed.

No innocent person should be unjustly punished or deprived of his property."

After emphasizing the above principles of natural justice, culpability and proportionality, the Supreme Court found that it had not been established by the customs authorities that the owner of the vehicle had knowledge of illegal or improper use of the vehicle and the confiscation of such vehicle was set-aside.

55. Article 23 of the Constitution vests in every citizen the right to acquire, hold and dispose of property subject to *"reasonable restrictions imposed by law in public interest".* Article 24 of the Constitution includes a prohibition against deprivation of property and provides that property cannot be compulsorily acquired except for a public purpose and without making a provision for compensation of such property. For purposes of fiscal laws, the articles guaranteeing property rights have been interpreted to mean that any measure resulting in confiscation of property (except when taken in accordance with law) would be ultra vires the Constitution. And consequently, actions taken under fiscal laws such as taxation when found to be confiscatory are declared ultra vires the Constitution. Articles 23 and 24 of the Constitution are read together with Article 9 of the Constitution that guarantees the right of citizens to liberty. In terms of its philosophical origins, the right to private property has been regarded as a subset of the right to liberty, and in the

Islamabad High Court

context of the relationship between the citizen and the State, the protection of property is regarded as an essential feature of the rule of law.

56. John Locke argued in *Two Treatises (II, SEC-138)* that, *"the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property…"* From the perspective of liberal thought property rights, alongwith rights to life and liberty, are treated as the basis of political morality in a rule of law system. (See for example G.W.F. Hegel's *The Philosophy of Right (Oxford University Press, 1967)*. The acceptance of right to private property is thus logically tied to the rule that expropriation of such property without compensation is prohibited. Jeremy Waldron in *The Right to Private Property (2002, Clarendon Press, Oxford, pp. 31)* argues that, *"the concept of property is the concept of a system of rules governing access to and control of material resources… In all times and places with which we are familiar, material resources are scarce relative to human demands that are made on them."* He argues that while such scarcity prevails, individuals disagree about how to make use of the resources, which raises the problem of allocation: *"This is the problem of determining peacefully and reasonably predictably who is to have access to which resources for what purpose and when. The system of social rules, which I call property rules are always solving that problem."* Waldron further argues that, *"in a system of private property, the rules governing access to and control of material resources are organized around the idea that resources are on the whole separate objects each assigned and therefore*

Islamabad High Court

belonging to some particular individual", while highlighting that "belonging" is the "organizing idea" in relation to private property. He continues that, *"in a private property system, a rule is laid down that, in case of each object, the individual person whose name is attached to the object is to determine how the object shall be used and by whom. His decision is to be upheld by the society as final."*

57. Our Constitution endorses a system of private property in terms of Articles 23 and 24 of the Constitution, which rights are not absolute and can be regulated by law in public interest and can even be compulsorily acquired for a public purpose subject to provision of compensation. In the instant matter, the question before us is the circumstances in which control of property in a vehicle can be assigned to the State at the expense of the individual who lays claim to the ownership of such property. And whether such confiscatory action can be explained away as having no relevance to Article 23 and 24 rights guaranteed by the Constitution. The short answer to the question is that a person who is the owner of a property cannot be deprived of such property in disregard of the guarantees in Articles 9, 23 and 24, read together with the guarantees in Article 10A of the Constitution, by creating a fiction that the penalty is imposed on the property itself and not on the individual. It is not in contention that where a vehicle is confiscated for the benefit of the State through *in rem* proceedings, the effect is the substitution of title in relation to such property (i.e. the property claimed by an individual as his/her own is deemed not to belong to such person by virtue of it being a product of a crime or illegal activity, and the property is declared to vest in the State). Such

Islamabad High Court

confiscatory action can therefore not be taken while pretending that it does not interfere with the right of a citizen to liberty or property or due process guaranteed by the Constitution. In order for such forfeiture to be seen as a legal and moral act by the State, it must be found that the action leading to confiscation of private property is a reasonable restriction imposed by law in the public interest, and such penalty has been imposed while upholding due process rights of the individual who claims to be the owner of such property, and consequently such action does not fall foul of the fundamental rights guaranteed by the Constitution.

58. One of the foundational concepts in the justification of penal systems is the principle of individual autonomy (i.e. each individual is responsible and accountable for his/her own behavior). In *Punishment and Responsibility (1968, Oxford University Press)* HLA Hart argued that, *"an individual ought not be held liable unless he/she had the "capacity" and "opportunity" to do otherwise. Prohibition of conduct in a penal system is rooted in the "harm principle"; the reduction or prevention of harm to others is a legitimate reason to support sanctions. Penal systems as a means of social control constitute a preventive mechanism."*

59. In *Principles of Criminal Law (1999, Oxford University Press)* Professor Andrew Ashworth argues that, *"at the heart of the principle of autonomy lies the idea of respect for individuals as rational, choosing persons... that an individual should only be held criminally liable for consequences that were knowingly brought about or knowingly risked. The principle of culpability is*

Islamabad High Court

therefore equally attracted even in relation to an offence of possession."

60. A person must not be punished if no wrongdoing can be attributed to him/her. Calling the punishment one against property (*in rem*) as opposed to one against the person *(in personam)* doesn't help get around the right to possession and enjoyment of property as a fundamental right guaranteed by the Constitution. Equally important is the voluntariness requirement of wrongdoing, which comes alongwith the requirement of establishing causation. In other words, without focus on causation and the culpability of an individual being subjected to a penal sanction, the penal system would stop being a mechanism for social control designed to inform and regulate the conduct of individuals within the society as rational beings, and would degenerate into an arbitrary punishment system. The legal system established in accordance with the provisions of our Constitution is also based on individual responsibility for action. Any penal scheme established under it requires, as a first step, the attribution of wrongdoing to an individual before he/she can be burdened with a penalty.

61. It is at the stage of determination of wrongdoing that questions about guilty act (actus reus) and guilty intent (*mens rea*) are asked. Once the question of culpability or wrongdoing is settled, the system moves on to stage two, which deals with the question of sanctions to be imposed on the wrongdoing. To argue that an individual can be deprived of his property by imposition of a penal sanction under provisions of the Customs Act without any attribution of culpability or wrongdoing to the property owner would amount to stating that our Constitution

Islamabad High Court

permits imposition of penalty without attribution or finding of culpability. This cannot be countenanced. To the extent that confiscation acts as a punishment, whether as a consequence of departmental/adjudicatory proceedings resulting in civil forfeiture or as a consequence of punishment after conviction, the penalty must be a consequence flowing from a finding of wrongdoing to pass constitutional muster.

62. The next question that arises is that of proportionality i.e. is the penalty imposed proportionate to the mischief that is sought to be curbed in public interest? We note here that the constitutional jurisprudence that has evolved in Pakistan supports an endorsement of the three-part test that has been articulated by the European Court of Human Rights while considering the legality of civil forfeiture. The first prong of such test (detailed earlier in this judgment) requires that the principle of legality be satisfied. Article 4 of the Constitution provides that the State can only do what it is authorized by law to do. Likewise, Articles 23 and 24 of the Constitution also provide that a citizen cannot be deprived of property except when property is taken in accordance with law. Under our constitutional scheme, the state can only impinge on property rights of an individual when authorized by law to do so.

63. The second prong of the three-part test is that deprivation of property (i.e. confiscation) satisfies the requirement of necessity. In our context this means that confiscation promotes the objects of the Customs Act and is necessary for achieving the purpose for which such penal sanction has been created by the Legislature. The third prong in the three-part test is to

Islamabad High Court

ensure that the sanction imposed is proportionate to the mischief that is sought to be prevented or deterred.

64. There are a few principles of statutory interpretation, when it comes to application of statutory law within a realm inhabited by constitutionally protected rights, that are well settled. The first principle relevant for our purposes is that fundamental rights are to be liberally construed and any fetters placed on their enjoyment is to be strictly construed.

65. It was held by the Supreme Court in ***Sardar Farooq Ahmed Khan Laghari and others vs. Federation of Pakistan and others (PLD 1999 SC 57)*** that, *"all efforts should be made to preserve and enlarge the scope of Fundamental Rights while interpreting Constitutional provisions".*

66. In ***Mian Muhammad Nawaz Sharif vs. President of Pakistan and others (PLD 1993 SC 473)***, it was held in relation to Article 17 of the Constitution that, *"the courts while interpreting a provision of the Constitution relating to enforcement of Fundamental Rights, will lean towards its more liberal and beneficial construction."*

67. In ***Muhammad Jameel Das (W. Gopal Das) and another vs. The Pakistan through Secretary, Ministry of Communication, Government of Pakistan and 2 others (1999 CLC 541)***, the Lahore High Court held that, *"the right of a Pakistani citizen to be dealt with in accordance with law in respect of his life, liberty, body, repetition or property is guaranteed under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. This recognizes the supremacy of law for providing the aforesaid guarantee to every citizen till he is*

Islamabad High Court

disqualified in accordance with law. Since it is a constitutional guarantee, therefore; any law, which restricts or invades such right should be strictly construed."

68. The second principle of relevance for our purposes is that where public interest or community interest requires placing of fetters on the right of an individual guaranteed by the Constitution, the balancing of competing rights must be undertaken in a manner that is least restrictive to the private rights guaranteed by the Constitution. Article 23 of the Constitution creates room to subject the right to acquire, hold and dispose of property to *"any reasonable restrictions imposed by law in the public interest"*.

69. The concept of reasonable restrictions was enumerated by the Supreme Court in ***Messrs East and West Steamship Company vs. Pakistan (PLD 1958 SC (Pak.) 41)*** as follows:

> *"A reasonable restriction" in the sense of Article 11 is one which is imposed with due regard to the public requirement which it is designed to meet. Anything which is arbitrary or excessive will of course be outside the bounds of reason in the relevant regard, but in considering the disadvantage imposed upon the subject in relation to the advantage which the public derives, it is necessary that the Court should have a clear appreciation of the public need which is to be met and where the statute prescribes a restraint upon the individual, the Court should consider whether it is a reasonable restraint, in the sense of not bearing excessively on the subject and at the same time being the minimum that is required to preserve the public interest."*

70. The Supreme Court held in ***Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others vs. Federation of Pakistan through Secretary Ministry of Interior (PLD 2007 SC 642)*** that, *"a balance has to be struck*

Islamabad High Court

between these rights of individuals and the interests of the community… No infringement or curtailment of any Fundamental Right can be made unless it is in the public interest and in accordance with valid law." It further held that, *"an equilibrium has to be maintained between the two contending interests at stake; one, the individual liberties and the positive rights of the citizen which are declared by the Constitution to be Fundamental, and the other, the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of the society."* While explaining what constitutes a reasonable restriction, it was held that, *"a restriction is unreasonable if it is for an indefinite or an unlimited period or a disproportionate to the mischief sought to be prevented or if the law imposing the restrictions has not provided any safeguard at all against arbitrary exercise of power."*

71. The third principle relevant for our purposes, which may seem to be an extension of the principle of necessity discussed above, is the principle of proportionality. The Supreme Court held in ***Pakistan Electronic Media Regulatory Authority (PEMRA) through Chairman and another vs. Messrs ARY Communications Private Limited (ARY Digital) through Chief Executive Officer and another (PLD 2023 SC 431)***, (where the question related to the manner in which the right to speech and information guaranteed by Articles 19 and 19A of the Constitution were to be regulated), that *"given the pivotal importance of these fundamental rights in a democratic society, it is not enough for the State and its instrumentalities (including PEMRA) simply to claim that the restriction relates to a*

Islamabad High Court

legitimate objective. The reasonable restrictions must also be proportionate in that the legitimate objective cannot reasonably be achieved through a means less restrictive of the right protected by the Constitution. The reasonable restrictions should therefore not only be rationally connected to, but also be no more than necessary to accomplish, any of the legitimate objectives mentioned in Articles 19 and 19A of the Constitution."

72. The Supreme Court explained in ***Sabir Iqbal vs. Cantonment Board, Peshawar through Executive Officer and others (PLD 2019 SC 189)*** that, *"proportionality is a standard that examines the relationship between the objective the executive branch wishes to achieve, which has the potential of infringing upon a human right, and the means it has chosen in order to achieve that infringing objective."*

73. In ***Muhammad Nasir Ismail vs. Government of Punjab through Secretary Law and Parliamentary Affairs Division, Lahore and others (2025 SCMR 708)***, it was held that, *"a key principle in judicial review is proportionality – the penalty must not be excessively harsh in relation to the offense. Courts frequently set aside penalties that are disproportionately severe, ensuring fairness in disciplinary actions. Similarly, courts apply the principle of rationality and reasonableness, which requires that disciplinary decisions be based on objective evidence and not be arbitrary or politically motivated… courts must balance individual rights with the larger public interest."* This case involved the imposition of disproportionate penalty in a service matter.

74. The question before the Court in the instant references relates to the legality of confiscation of vehicles that constitute

Islamabad High Court

property for purposes of Articles 23 and 24 of the Constitution. Merely because a penalty is being imposed in the form of civil forfeiture through *in rem* adjudicatory proceedings does not mean that the penalty does not also have the effect of depriving a citizen of property that he/she claims. In view of the principles of statutory interpretation in a domain where fundamental rights guaranteed by individuals come into play, the three-part test employed by the European Court of Human Rights in relation to civil forfeitures is therefore also squarely applicable under provisions of the Constitution read with provisions of the Customs Act.

75. Before the property can be confiscated as a consequence of *in rem* proceedings, such imposition of penalty must satisfy a three-part test: one, the penalty satisfies the principle of lawfulness (i.e. it is imposed by law); two, it satisfies the principle of necessity (i.e. it is necessary in public interest); and three it satisfies the principle of proportionality (i.e. it is the least restrictive means to uphold public interest in accordance with objects of the Customs Act, where it has the effect of fettering an individual's property right).

76. One of the principles employed to deny title to property is summarized by the Latin phrase *res transit cum onere suo*; *"the thing passes with its burden."* It was noted in ***Bishopsgate Motor Finance Corporation Limited vs. Transport Brakes Limited [(1949) 1 KB 322]*** that, *"in the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and*

Islamabad High Court

for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times."

77. The two principles highlighted in ***Bishopsgate*** compete with each other when it comes to forfeiture of property claimed by an individual to be his/her own on the one hand and claimed by the State to be the product of criminal or illegal activity on the other. The two competing principles also have statutory basis as Section 14 of the Sale of Goods Act, 1930 ***("Sale of Goods Act")***, makes an assumption with regard to the title of property and Section 27 of the Sale of Goods Act makes a presumption in favor of denying title. For convenience, the text of Sections 14 and 27 of the Sale of Goods Act is reproduced below:

> ***14. Implied undertaking as to title, etc.--*** *In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is —*
>
> *(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;*
>
> *(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;*
>
> *(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.*
>
> ***27. Sale by person not the owner.-*** *Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is*

Islamabad High Court

by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

78. Another provision that may be relevant for our purposes is Section 23 of the Contract Act, 1872 ***("Contract Act")***, which provides the following:

23. What considerations and objects are lawful and what not.– *The consideration or object of an agreement is lawful, unless- it is forbidden by law; or*

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

79. The argument on behalf of the State in cases of civil forfeiture is that smuggled goods being the products of criminal or illegal activity cannot be the objects of a lawful agreement in terms of Section 23 of the Contract Act. The counter-argument in favor of private individuals, who own such property, is that being *bonafide* owners for full value without notice of any deficiency or illegality with regard to the property in question, their right to property cannot be usurped by the State. Another principle that is of relevance is that private property cannot be

Islamabad High Court

expropriated without compensation (as enshrined within Article 24 of the Constitution).

80. It was held by the U.S. Supreme Court in ***Webster vs. Cooper*** **[U.S. 488 (1852)]** that, *"the Constitution of the State has secured to every citizen the right of acquiring, possessing, and enjoying property and that, by the true intent and meaning of this action, property cannot, by a mere act of the legislature, be taken from one man and vested in another directly; nor can it, by the retrospective operation of law, be indirectly transferred from one to another, or be subjected to the government of principles in a court of justice, which must necessarily produce that effect."*

81. It was held by the Indian Supreme Court in ***Kawalappara Kottarathil Kochuni vs. The State of Madras (AIR 1960 SC 1080)***, while considering the legality of a statute enacted by the State of Madras, that, *"the impugned act is only a legislative device to take the property of one invest it in another without compensation, and, therefore, on its face stamped with unreasonableness."*

82. It is well established as part of the jurisprudence produced in Pakistan that the taking of the property of one individual and vesting it in another, without compensation and without being back by law, would be unreasonable and expropriatory, and therefore unconstitutional. [See for example ***Province of Punjab through Secretary Irrigation, Government of Punjab, Lahore and 2 others vs. Abdur Rehman Shaukat (1999 SCMR 2610)*** and ***Rao Tariq Islam and others vs. Federation of Pakistan through Ministry of Finance, Islamabad and others (2023 PTD 223)***].

Islamabad High Court

83. As the confiscation of property in terms of Section 156 of the Customs Act, impinges on the right of the individual to property guaranteed by Articles 23 and 24 of the Constitution, as part of the three-part test highlighted above, it becomes imperative for the State to establish that the property sought to be confiscated is the product of a criminal or illegal activity, and the confiscation of such property is the necessary and proportionate means to uphold public interest in prevention of smuggling and crime. The competing interest, on the other hand, is that of the private individual, and it is for the individual to establish that he/she is the *bonafide* purchaser of the property in question, which he/she has acquired upon payment of full market value, and without notice of any liability attaching to the title of such property. As in circumstances where a penalty is imposed on a certain property by virtue of the State asserting that it is a product of criminal or illegal activity, which has the effect of divesting the individual of title in such property and vesting the same in the State, the result would be unreasonable and unjust to the extent that no culpability or wrongdoing can be attributed to the property owner.

84. This fact sequence in a case of civil forfeiture also raises questions related to causation and proportionality. What public interest would confiscation of private property serve when it has the effect of taking property away from a citizen and vesting it in the State, in circumstances where the citizen is neither to blame for the illegality in question nor would such action have the effect of preventing and/or deterring future illegal activity such as smuggling?

Islamabad High Court

85. One of the objects of the penal system is to seek retribution from somebody found culpable of wrongdoing. Another object of the penal system is to deter malefactors from wrongdoing in the future. However, if penalty is imposed on an innocent person as opposed to a malefactor, such action neither promotes public interest in seeking retribution nor in deterring illegal conduct in the future, as there is no causal link between the illegal act being punished and the person left to bear the consequences of such act. It is in view of these competing interests that the question of (i) whether or not the property sought to be confiscated by the State is the product of illegal activity, (ii) whether the person who is the owner of such property is a *bonafide* purchaser for full value without notice of any deficiency of title, become relevant matters of evidence.

86. There are some dicta scattered over case law in relation to confiscatory actions under provisions of the Customs Act where it has been declared, without such declarations being backed by legal reasoning, that the defence of a *bonafide* purchaser is alien to provisions of the Customs Act. This Court has been unable to trace any constitutional or legal basis for such declaration. As has already been discussed above, a citizen cannot be deprived of property except after satisfying the three-part test establishing legality, necessity and proportionality of confiscatory action. Similarly, no punishment can be imposed on a citizen who has not been found to have committed any wrongdoing. It is in this context that the defence of a *bonafide* purchaser becomes relevant and applicable in proceedings being undertaken for confiscation of property in terms of Section 156 of the Customs Act, as will be discussed in some detail later in

Islamabad High Court

this judgment. We will just note here that such defence has been made available to property owners in cases of civil forfeiture by the State in other common law jurisdictions (as has already been noted above). It is only where the State succeeds in discharging its legal burden that the property in question is the product of criminal or illegal activity, and a private individual fails to establish that he/she is a *bonafide* purchaser, having paid full value for the property, with no notice of any discrepancy in title, that the State would have a legitimate cause to expropriate such property and claim title to it.

The shifting burden of proof

87. Section 187 of the Customs Act states the following:

> ***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 goods declaration or sales tax invoice in his name 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 goods declaration or sales tax invoice in his name 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 owned by him in his name or someone else name was not acquired from the proceeds of such crime:*
>
> *Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules:*

Further, clause (89) of Section 156(1) of the Customs Act that defines the offence of possession of smuggled goods states the following:

S. No.	Offences	Penalties	Sec. of this Act, to which offence has reference

Islamabad High Court

1	2	3	4
89(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.	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.	

88. The question of where the onus of proof lies in a case where proceedings for confiscation of smuggled property have been initiated has remained a matter of much debate. Let us start with the basics. The standard principle in criminal law is that every person is deemed innocent until proven guilty in accordance with law. Article 122 of the Qanun-e-Shahadat Order, 1984 ***("QSO")***, provides that, *"when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."* Let us also reproduce here Article 126 of the QSO, which states that, *"when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

89. It was held by the Supreme Court in ***Rehmat alias Rhaman alias Waryam alias Badshah vs. The State (PLD 1977 SC 515)***, while explaining where the burden of proof lies in relation to a fact especially within the knowledge of a person,

Islamabad High Court

that, *"it is only after the prosecution has on the evidence adduced by it, succeeded in raising reasonable inference of the guilt of the accused, unless the same is rebutted, that this section wherever applicable, comes into play and the accused may negative the inference by proof of some facts within his special knowledge. If, however, the prosecution fails to prove the essential ingredients of the offence, no duty is cast on the accused to prove his innocence."*

90. The National Accountability Ordinance, 1999 ***("NAB Ordinance")***, includes Section 14 which also seeks to place the burden of proof on an accused. This provision was interpreted by the Supreme Court in ***Khan Asfandyar Wali vs. Federation of Pakistan (PLD 2001 SC 607)***, where notwithstanding the language used by the Legislature, it was held that, *"the prosecution has to establish the preliminary facts, where after the onus shifts and the defence is called upon to disprove the presumption… In case the prosecution succeeds in making out a reasonable case to the satisfaction of the accountability court, the prosecution would be deemed to have discharged the prima facie burden of proof and then the burden of proof shall shift to the accused to rebut the presumption of guilt."*

91. The Supreme Court explained in ***Pir Mazhar ul Haq and others vs. The State through Chief Ehtesab Commission, Islamabad (PLD 2005 SC 63)*** that Section 14 of the NAB Ordinance, *"cannot be used to undermine the well-established rule of law that save in very exceptional class of cases, the burden to prove the guilt of the accused is on the prosecution and never shifts. This section does not affect the onus of providing the guilt of an accused which always rests on the*

Islamabad High Court

prosecution and it does not cast any burden on an accused person to prove that no crime was committed, by providing facts specially within his knowledge, nor does it warrant the conclusion that if anything is unexplained, which the Court thinks the accused could explain, he ought therefore to be found guilty."

92. It was held in ***Mansur-ul-Haque vs. Government of Pakistan (PLD 2008 SC 166)*** that, *"notwithstanding the special provision contained in the NAB Ordinance regarding shifting of the burden of proof, the fundamental principle of the law of criminal administration of justice that basic onus is always on the prosecution to establish the commission of an offence is not changed."*

93. It was held in ***The State vs. Anwar Saif Ullah Khan (PLD 2016 SC 276)*** that, *"it would be a misconception of law that every accused who faced trial in the Accountability Court or against whom a reference has been sent the "presumption as envisaged in section 14 of the NAB Ordinance, 1999" would start running against him. Where the prosecution has failed to discharge the onus of "proof" by adducing cogent, concrete and forthright evidence the presumption of guilt would not arise against him and thus the question of conviction would have not arisen."*

94. The manner in which the burden of proof continues to shift under provisions of the Customs Act was considered by the Sindh High Court in ***Kamran Industries vs. Collector of Customs (PTCL 1996 CL 15)***, wherein it was held that, *"on a closer scrutiny of the provisions of Section 187 and the case law settled by our courts on the subject it appears that in such a*

Islamabad High Court

situation it is only the evidential and tactical burden of proof which is cast upon the accused while the legal burden to bring home the allegations remains with the prosecution."

95. The Sindh High Court explained in ***Abdul Razzaq vs. Directorate General of Intelligence and Investigation-FBR, Regional Office, Karachi and 2 others*** ***(2016 PTD 1861)*** that, *"the evidential and tactical burden being initially placed on the accused in a Customs offence is now well settled law as is the principle that the accused only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same will shift on the Customs authorities."*

96. The manner in which legal and evidential burden is to be distinguished and understood, and how the best evidence rule works, was summarized by the Islamabad High Court, after scrutinizing relevant case law, in ***Messrs Naseem & Company and others vs. Capital Development Authority and others (2022 MLD 1426)***, wherein the Court's findings were summarized as follows:

i) *Burden of proof has two interrelated but distinct facets: legal burden and evidential burden. The former remains on a party throughout the trial. It is the outcome of the entirety of the evidence before a court, regardless from which party or source the evidence originates. The evidential burden however is a shifting phenomenon. It is meant to originate from the party alleging the existence of certain facts, but may shift to the other party as the trial progresses.*

ii) *The best evidence rule postulates that each party must produce all material evidence in its possession or power and failure to do so entitles the court to draw an adverse inference against the party failing to produce it.*

Islamabad High Court

97. In ***Abdul Qadir vs. The Additional Collector Customs (Customs Reference No.44 of 2015)*** this Court relied on the law laid down by the Supreme Court in ***Nazakat Khan vs. The Collector of Customs, Custom House, Peshawar*** ***(Civil Appeal No.452 of 2015***, judgment dated 16.02.2021) to reiterate that tampering of a Vehicle Identification Number (**VIN**) was not synonymous with smuggling. Further relying on the law laid down by the Sindh High Court in ***Kamran Industries*** and ***Abdul Razzaq vs. Director General Intelligence and Investigation-FBR, Regional Office Karachi and 2 others*** ***(2016 PTD 1861)***, this Court noted that, *"no doubt that the initial burden of proof to show that any act done by or anything in possession of an accused is with lawful authority or under a permit, license or other document prescribed by any law is upon the accused person under Section 187 of the Act. However, it is now well settled that it is only the evidential and tactical burden which is initially placed on the accused in a customs offence and that the accused need only show some evidence to prima facie discharge his evidential burden and thereafter the onus shifts upon the customs authorities."* The Court further clarified that where the owner of the vehicle, *"is able to raise a probable defence which creates doubt, the benefit of such doubt must go to the accused whereas the ultimate burden remains on the customs authorities to prove the case against the accused beyond reasonable doubt as was explained in the case of Collector Customs, Sales Tax and Central Excise, Customs House, Quetta Vs. Naimtullah, 2003 PTD 2118, by the Honorable Quetta High Court."* In the facts of the case, the Court concluded that the vehicle owner had discharged his burden of proof in terms of Sections 156(2) and

Islamabad High Court

187 of the Customs Act while establishing a *prima facie* case in his favor, whereas the Customs Department had failed to discharge its onus to establish that the vehicle was not duty paid/smuggled. The vehicle was therefore ordered to be released.

98. The Islamabad High Court in ***Iftikhar Ahmed Khan vs. The Customs Appellate Tribunal and others (Custom Reference No.112 of 2023)*** ordered the release of a vehicle by judgment dated 22.04.2024. In the said case, a vehicle had been confiscated on the basis that data with regard to import of the vehicle was not available in the PRAL database and the registration documents of the vehicle could not be verified by the Motor Registration Authority in Jacobabad, as the said documentation was destroyed by a fire in the year 2007 amidst riots in the aftermath of the assassination of Mohtarma Benazir Bhutto. The Court held that in the absence of Customs authorities establishing the charge of smuggling in terms of Section 2(s) of the Customs Act, the detention of the vehicle was ordered arbitrarily and was therefore not sustainable. The Court also took into account the fact that the Order-in-Original had been issued beyond the period of limitation prescribed in Section 179 of the Customs Act.

99. The latest view of the Supreme Court in relation to, *inter alia*, manner of proof in a customs case involving confiscation of a vehicle is reflected in ***The Intelligence Officer, Directorate of Intelligence & Investigation, FBR and others vs. Abdul Karim (2025 SCMR 969)***. While explaining what constitutes smuggling, the Supreme Court noted that, *"for clause 89 [Section 156(1)] to apply, the condition precedent is that the*

Islamabad High Court

goods in question should be smuggled. In terms of Section 2(s) read with the applicable notification thereunder it seems that the 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." Notwithstanding contrary observations in past judgments, the Supreme Court acknowledged that the doctrine of a *bonafide* purchaser may apply in a case of smuggling. In relation to how the presumption of a *bonafide* owner applies in case of a registered vehicle, the Supreme Court held that:

> *"…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 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 exists... Section 27 of [the Motor Vehicles Ordinance, 1965] even provides the production of the vehicle at the time of registration and if the registration of a vehicle*

Islamabad High Court

passes through this statutory process conducted by officials responsible under M.V.O 1965, then presumption of truthfulness is eminent."

100. The Supreme Court went on to reiterate the law laid down by the Privy Council back in 1955 to draw a distinction between the term lawful excuse as used in clauses (89) and (90) of Section 156(1) of the Customs Act and lawful authority as used in Section 187 of the Customs Act. While emphasizing that, "lawful excuse is an expression that is of wider import and lesser degree of burden than lawful authority", the Supreme Court explained that, *"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 accused."* The Supreme Court held that expiry of the limitation period prescribed in Section 211 of the Customs Act would provide, *a "lawful excuse" to the person (retaining the possession of the vehicle under valid registration), who is accused of an offence under Section 156(89) or (90) (for not showing required import documents),*

Islamabad High Court

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." And thus*, "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 the date of registration if not before, as auction date in other vehicles is also a legitimate claim to count time."*

101. The Customs Department in the instant cases has relied upon Para-22 of the ruling in ***Abdul Karim*** to argue that the law laid down with regard to lawful excuse to possess a vehicle does not apply to vehicles with tampered chassis and engine numbers. Para-22 of the ***Abdul Karim*** states the following:

> *"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."*

102. The Supreme Court went on to explain the manner in which the exception was to apply in cases of vehicles with tampered chassis numbers in Para-25 as follows:

> *"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,*

Islamabad High Court

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."

103. There are a few key points to note with regard to the law laid down by the Supreme Court in ***Abdul Karim***. The first point is that in view of the limitation period prescribed in Section 211 of the Customs Act, in case of a registered vehicle, no adverse inference in relation to the import or payment of taxes and duties can be drawn after a period of five years from the registration of a vehicle and/or its import/auction. In such cases, a presumption would apply after the registration of the vehicle that the State has discharged its duty to perform due diligence and satisfy itself prior to its registration that the vehicle in question is not smuggled. The second point is that a *bonafide* purchaser and owner of a vehicle need only establish lawful excuse to be in possession of the vehicle, and production of a valid registration book would discharge such onus. And the third point is that the owner of a tampered vehicle would not be found to have discharged his onus to establish lawful excuse to possess such vehicle, "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 requirement to establish that the tampering of the chassis number has happened after an auction or registration of the vehicle then becomes an evidentiary matter to be established by the Customs Department.

104. What emerges from the above discussion is that where Customs authorities initiate proceedings for confiscation of property in terms of Section 156 of the Customs Act, the initial

Islamabad High Court

evidential burden to prove on a balance of probabilities that such person has a lawful excuse to possess such property is on the private individual/owner of the vehicle. Once purported owner of the vehicle discharges his/her burden by making out a prima facie case re legal excuse to own/possess the vehicle by producing valid registration with the MRA, the burden shifts back to the State to establish as a legal matter that the State has succeeded in proving on a balance of probabilities that the property in question is smuggled and consequently the product of illegal activity. It is only after the State discharges such onus to prove that the property is tainted with illegality or is a product of crime, and the purported owner fails to discharge the onus of establishing a lawful excuse to own/possess the vehicle, including a defence such as being a *bonafide* purchaser for full value without notice of any infirmity in the vehicle's title backed by a valid registration, that a penalty can be imposed resulting in the confiscation of such vehicle in favor of the State. It is in this context that the interpretation of the term lawful excuse as used in clause (89) of Section 156(1) of the Customs Act becomes relevant.

105. The Sindh High Court in ***The Additional Director, Directorate General of Intelligence and Investigation vs. Imran and another (2021 PTD 1683)*** considered when private individuals would be deemed to have succeeded in establishing lawful excuse for possession of vehicles that were claimed to be smuggled by the Customs Department. The Sindh High Court observed that where the owner of a vehicle was able to produce the original registration book issued by Motor Vehicle Registration Authority alongwith customs auction documents,

Islamabad High Court

bank challans and documents reflecting payment of duties and taxes, the vehicle owner would be seen as having discharged the initial burden of proof in terms of Section 187 of the Customs Act. The Sindh High Court further held that in the context of Section 211 of the Customs Act and the duty imposed by it demanding record beyond the period of five years that, *"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 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."* The Sindh High Court held that, *"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, in spite 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."* After documenting such a rebuke, the vehicles were ordered to be released.

Islamabad High Court

106. It was held by the Supreme Court in ***Nazakat Khan vs. The Collector of Customs, Custom House, Peshawar (Civil Appeal No.452 of 2015)***, by judgment dated 16.02.2021, in an appeal filed against the judgment of the Peshawar High Court reported as ***Sultan Muhammad vs. Collector of Customs and another (2015 PTD 570)*** [which judgment had previously been relied on by the Supreme Court in ***Government of Khyber Pakhtunkhwa vs. Sarfraz Khan (2020 SCMR 1410)***], that:

> *"The question is always whether there has been smuggling within the meaning, and for purposes, of the Customs Act. To simply jump from a (factual) conclusion that there has been "tampering" (if such be the case) to the (legal) determination that there must therefore have been smuggling is facile. It must be recognized that the term "tampering" is used in the context of smuggling in a special, and restricted, sense. To put the matter a bit differently, in a context such as the present while every "tampering" may involve an "alteration", every "alteration" is not "tampering". These, and related, questions (including as to the correct meaning of S. 156(1), clause (89) of the Customs Act) were not properly raised before the learned High Court and cannot be raised now before us. However, we would leave them open for future consideration in an appropriate case."*

Motor Vehicles Ordinance and Warranties by the State

107. Before we proceed further, let us consider the import of provisions of the Motor Vehicles Ordinance, 1965 **("Motor Vehicles Ordinance")** and the effect of registration of a vehicle to comprehend (i) the distinction between tampering and smuggling drawn by the Supreme Court in ***Nazakat Khan***, and (ii) law laid down in ***Abdul Karim***.

108. In view of ***Nazakat Khan***, it is evident that the Customs Department cannot conflate the provisions of the Motor Vehicles

Islamabad High Court

Ordinance with those of the Customs Act for the purpose of establishing an offence under the later. The Motor Vehicles Ordinance is a provincial statute administered by the Provincial Governments and provides for independent offences, penalties, and adjudicatory mechanisms. Notwithstanding this clarification, for the purpose of discharge of the onus of proof by a vehicle owner, in a smuggling case built by the Customs authorities, the registration of the vehicle issued by the MRA under the provisions of the Motor Vehicles Ordinance remains relevant. In terms of Article 7 of the Constitution, instrumentalities of the Federal Government (such as the Customs Department) and instrumentalities of the Provincial Government (such as MRAs) both qualify as the State. It is a settled principle that a presumption of truth and correctness attaches to acts of State authorities. Consequently, a citizen, in discharging his onus of proof to establish that he/she is the lawful owner of a vehicle can rely on the registration issued by the MRA.

109. Section 25 of the Motor Vehicles Ordinance details the manner in which the registration of a vehicle is to be made. Section 25(2) provides that a certificate of registration is to be issued to the owner of the vehicle. In other words, no person other than the owner of the vehicle can have a vehicle registered. Section 27 of the Motor Vehicles Ordinance requires the owner of the vehicle to produce the same before the MRA at the time of registration. Section 28 of the Motor Vehicles Ordinance provides grounds for refusal of registration, which include, *inter alia*, that the owner/applicant fails to produce import documents of the vehicle (in case of first-time registration) or the previous registration documents of the

Islamabad High Court

vehicle (in case of transfer of an already registered vehicle). The prescribed application form for registration of a vehicle includes the name of the owner and his credentials together with the particulars of the vehicle, including its chassis number, engine number and the year of manufacture, among other details. The certificate of registration (Form G), prescribed under sections 25(2) and 41(2) of the Motor Vehicles Ordinance, records the name of the owner as well as the particulars of the vehicle.

110. The provisions of the Motor Vehicles Ordinance comprise a regulatory framework enabling the State to exercise oversight over vehicles. These provisions require that any change in the address of the owner be communicated to the MRA and that the vehicle be re-registered if it is used in another province for a period exceeding the prescribed duration. Section 33 requires that where a vehicle is altered in such manner that the particulars reflected in the certificate of registration, are no longer accurate, the owner must report such alteration to the MRA, which may then issue an amended certificate of registration, if necessary. Sections 34 and 35 provide for suspension and cancellation of registration in the event that the owner has furnished false statements or incorrect particulars as part of the application for registration of the vehicle.

111. In exercise of the authority under Section 43 of the Motor Vehicles Ordinance, the Islamabad Capital Territory (Seizure and Disposal of Motor Vehicles) Rules, 2014 **("Seizure and Disposal Rules")** have been promulgated. Rule 3 of the Seizure and Disposal Rules provides that a vehicle, whose registration certificate has been cancelled, or in relation to which the keeper of the vehicle fails to produce valid ownership documents, may

Islamabad High Court

be taken into possession by the Excise and Taxation Officer. Rule 5(3) prescribes the issuance of notice to the owner of the vehicle requiring him to establish that he/she is a *bona fide* owner of the vehicle. Rule 7, which provides for confiscation of vehicles, stipulates that such consequence only flows in a case where a claimant is unable to prove his bona fide ownership of the vehicle. In other words, within the regulatory framework provided in terms of the Motor Vehicles Ordinance read with the Seizure and Disposal Rules, bona fide ownership of a vehicle is recognized as a defence against the penalty of confiscation by the MRA.

112. The scheme of the Motor Vehicles Ordinance, particularly Chapter III that deals with registration of vehicles, provides for a title-based system for motor vehicles. The statute mandates that vehicles must be registered and prohibits their use without such registration. The regulatory framework prescribes the manner of registration, which includes scrutiny of the title of the owner through verification of import permits and/or purchase documents of the vehicle and scrutiny of the vehicle itself by verifying its particulars, including the year of manufacture, engine number, and chassis number etc. A certificate of registration is issued following such scrutiny and constitutes a title document that certifies the title of the owner, in whose name the vehicle is registered, as well as the particulars of the vehicle inscribed on the certificate of registration. Such document establishes that the registered owner is the bona fide owner of the vehicle whose particulars are reflected on the certificate of registration/registration card. In order to establish that the registered owner is not the bona fide owner of the

Islamabad High Court

vehicle, or that the particulars reflected in the certificate of registration are not the particulars of the vehicle in question but some other vehicle, it is for the Customs Department to dislodge the presumption of truth regarding ownership and particulars of the vehicle inscribed on the certificate of registration issued by the MRA. It simply cannot be that one arm of the State i.e. the Customs Department, is allowed to contest or deny a title document issued by another arm of the State i.e. the MRA, without rebutting the presumption of correctness on the basis of evidence adduced to establish, on a balance of probabilities, that the vehicle in possession of the registered owner of the vehicle is not the one whose particulars are mentioned in the certificate of registration. The certificate of registration issued by the MRA therefore works as a representation by the State re the title of the vehicle as well as its particulars, the benefit of which goes to the owner. It is thus that for purposes of establishing a *prima facie* case that the person in possession of the vehicle is the bona fide owner of the vehicle, it is sufficient to prove a valid registration certificate/registration card. The Customs Department cannot be allowed to disregard the registration certificate as a title document because the State owes a fiduciary duty to its citizens. The State is a trustee of public power and must exercise its police and revenue-collection powers for the benefit of citizens. The duty that the State owes to a citizen includes the duty to protect the fundamental rights of citizens, as well as putting in place effective regulatory frameworks to prevent citizens from being harmed by illegal activities, without such frameworks becoming traps for innocent citizens. The State has a duty to act reasonably, which in terms of exercise of authority as part of public administration, includes the duty of

Islamabad High Court

care and diligence. This duty is attracted where a vehicle is imported and cleared after scrutiny by Customs officials, where non-duty-paid or confiscated vehicles are auctioned by the State under any amnesty scheme or otherwise, and where the State verifies the particulars of the owner and the vehicle before issuing a registration certificate. Having assumed regulatory authority and having exercised it, whether as part of the customs clearance process, or as part of the vehicle registration process, the State cannot deny that a citizen is entitled to rely on the efficacy of the regulatory process and that the citizen cannot be burdened with the consequences of any negligence by the State as part of such process. If the State fails to exercise due care and diligence at the time of customs clearance or registration of a vehicle, a subsequent bona fide purchaser cannot be arbitrarily penalized for the State's prior negligence.

113. The proposition that the law must not be employed such that it functions as a trap for the citizen is conceptualized by the doctrine of legal certainty and rule of law. These doctrines dictate that the law must be clear, predictable and accessible so that a person of ordinary intelligence can understand what is required of him/her and can foresee and manage the legal consequences of his/her actions. The principle of individual autonomy (i.e. that the law respects citizens as rational beings capable of making choices), and the fault requirement as a precondition for imposing penal sanction, form part of the notion of rule of law. It is in this context that the claim of a bona fide owner of a vehicle, who has not been proven culpable by virtue of either knowing or reasonably suspecting that a vehicle is smuggled, cannot be disregarded while deciding whether such

Islamabad High Court

owner or his property is liable for an offence in terms of clauses (89) and (90) of Section 156(1) of the Customs Act.

114. While the Supreme Court in ***Abdul Karim*** has drawn a distinction between the concept of "lawful authority" used in Section 187 and "lawful excuse" used in clauses (89) and (90) of Section 156(1) of the Customs Act, it bears mention here that the owner of a registered vehicle who is able to establish his title in relation to such property by virtue of a registration certificate issued by the MRA discharges the *prima facie onus* to establish lawful authority to possess such vehicle. Where such owner further establishes that he purchased such vehicle for full market value, which he can establish through banking transactions, such owner also discharges the *prima facie* burden of proof to establish that the vehicle cannot be regarded as the proceeds of crime in terms of the first proviso to Section 187 of the Customs Act. In such circumstances, it then falls on the Customs Department to prove on a balance of probability through relevant material that the presumptions in favor of the owner of the vehicle stand rebutted on the basis of evidence that either the owner had knowledge or reasonable basis to suspect that the vehicle was smuggled, or because the particulars of the vehicle claimed by the owner, as reflected in the registration book, relate to another vehicle that has been identified and/or traced by the Customs authorities. How the legal onus stands discharged by the Customs Department on a balance of probabilities will obviously depend on the facts and circumstances of each case and no objective test can be laid down in such regard.

Islamabad High Court

115. We have taken cognizance of the larger constitutional context within which provisions of the Customs Act generally and the offences and penalties prescribed under Section 156 of the Customs Act more particularly are to be understood. Let us now consider the case law that has evolved in relation to application of penalties under the Customs Act, while identifying infirmities in the proceedings leading up to the application of penalties rendering the penalty of confiscation of property unsustainable in the eyes of law. We will consider the case law in accordance with the various stages in an adjudicatory proceeding leading up to imposition of penalty and use of confiscated property sequentially. After having considered such law, we will analyze certain issues that continue to arise in relation to imposition of penalties under clauses (9), (89) and (90) of Section 156(1) of the Customs Act, including, *inter alia,* the question of wrongdoing on the basis of which a penalty can be imposed, the question of attribution of *bonafides* to an owner as a defence against imposition of penalty and the question of use and disposal of confiscated property under various CGOs issued by the FBR.

The Show-Cause Notice and due process requirements

116. It was held by the Supreme Court in ***The Collector Central Excise and the Land Customs and others vs. Rahm Din (1987 SCMR 1840)*** that, *"section 180 of the Act requires that no order for confiscation of any goods, can be passed, unless the owner of the goods is informed in writing (or if the person concerned consents in writing, then orally) of the grounds on which it was proposed to confiscate the goods. The section also makes a mandatory provision for giving an opportunity of*

Islamabad High Court

being heard to the affected person. On a plain reading of the provisions of section 180, it is fairly plain that the grounds on which the Customs Authorities proposed to confiscate the goods must state precisely and clearly the facts which constitute the customs offence. Therefore the requirements of reasonable opportunity of being heard would be satisfied only when the particulars of the facts alleged and grounds are brought to the notice of the person proceeded against and the order of confiscation is fully passed upon such grounds." In the said case, the Show-Cause Notice asserted that an individual had failed to make a declaration with regard to foreign currency in his possession when asked by the Customs Staff to do so. The imposition of penalty was however based on the finding that the individual had brought foreign currency into the country through an unauthorized route constituting the offence of smuggling in terms of Section 2(s) of the Customs Act. In such circumstances, the confiscation order based on a ground not mentioned in the Show-Cause Notice was held to be palpably illegal.

117. It was explained by Division Bench of the Lahore High Court in ***Caretex vs. Collector Sales Tax and Federal Excise and others (2013 PTD 1536)*** that, *"Show-Cause Notice, is a foundational document, which is to comprehensively describe the case made out against the taxpayer by making reference to the evidence collected in support of the same. It is the narration of facts in the Show Cause Notice along with the supporting evidence which determines the offense attracted in a particular case. Show Cause Notice is not a casual correspondence or a tool or license to commence a roving inquiry into the affairs of the taxpayer based on assumptions and speculations but is a*

Islamabad High Court

fundamental document that carries definitive legal and factual position of the department against the taxpayer."

118. In ***Muhammad Riaz vs. Collector of Customs (2020 PTD 2197)***, it was alleged by the Customs Department that the chassis number of the vehicle was tampered/self-punched. In this matter, the Lahore High Court found that the Show-Cause Notice had not been issued within two months of the seizure. Consequently, the vehicle was ordered to be released and for determination of the question of smuggling on the factual side, the vehicle was remanded back to the Tribunal.

119. It was affirmed by the Supreme Court in ***Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad vs. Messrs Rose Food Industries, Faisalabad and another (2023 SCMR 2070)*** that:

> *"The principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10A of the Constitution. It guarantees that every person is entitled to a fair trial and due process for determination of rights and obligations. The issuance of a show cause notice is the most crucial in the context of a fair trial and due process. It enables a taxpayer to precisely know what allegations are to be met, explained and answered to the satisfaction of the adjudication officer. It is the duty of the Department to ensure that a show cause notice is issued after a proper inquiry and investigation. It should be manifest from the contents of the show cause notice that it was issued after ascertaining the facts and the allegations are not vague or ambiguous. The charges or allegations should be specific, otherwise the taxpayer would be prejudiced and denied the right to a fair trial. As a corollary, the adjudication authority has to confine the proceedings to the specific charges and allegations clearly mentioned in the show cause notice and cannot*

Islamabad High Court

adjudicate any charge or allegation beyond it. Adjudicating a charge or allegation not confronted in the show cause notice would not be sustainable in law."

120. It is well settled, as is manifest from the case law cited above, that a Show-Cause Notice must put to the individual threatened with the imposition of a penalty, the precise case against him in order for him to discharge his onus to establish in terms of Section 187 of the Customs Act read with relevant provisions of Section 156 of the Customs Act that he is not liable for the penalty proposed to be inflicted on him. The adjudicatory proceedings are therefore confined to the charge as articulated within the Show-Cause Notice. To comply with requirements of Article 10A of the Constitution, neither can adjudicatory proceedings be broadened beyond the scope of the Show-Cause Notice nor can a penalty be imposed on a basis different from one that naturally flows from the content of the Show-Cause Notice.

Seizure cannot be made on the basis of suspicion

121. Section 168 of the Customs Act vests in officers of the Customs Department the discretionary authority to seize any goods liable to confiscation. Section 168(1) of the Customs Act further provides that when not practicable to seize any such goods, the officer *"may serve on the owner of the goods or any person holding them in his possession or charge and order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer."* The plain language of Section 168 of the Customs Act clearly provides that the authority created by it is discretionary in nature and must be exercised bearing in mind the constitutional framework, which vests in citizens the right to liberty and the right to hold their

Islamabad High Court

property in terms of Article 9 and 23 of the Constitution. Such discretionary authority must therefore be exercised in a manner that is least restrictive to the rights of an individual pending adjudication of whether or not the property in question is liable to be confiscated.

122. Where property is indeed seized in exercise of authority under Section 168 of the Customs Act, Section 169 of the Customs Act provides how it must be dealt with: it must be delivered into the care of a customs officer or be deposited at a customs house nearest to the place of seizure. Section 169(4) of the Customs Act provides that property seized may be sold in accordance with provisions of Section 201 even during the pendency of adjudicatory proceedings. The scope of such power and the manner of its exercise will be dealt with later in this judgment when we consider the matter of disposal of confiscated goods.

123. It bears mention that the FBR has issued detailed instructions in exercise of authority under Section 223 of the Customs Act prescribing the steps to be taken for the storage of seized/confiscated goods in the State warehouses. These instructions in Chapter-IX of the CGOs appear to be in conflict with CGOs issued to make allowance for the use and disposal of confiscated vehicles. The legality of CGOs providing for use and disposal of confiscated vehicles will also be discussed later in this judgment.

124. For our present purpose, it would suffice to re-emphasize that it was held by the Supreme Court in ***Collector Customs, Sales Tax and Central Excise vs. Professor Muhammad Khan (2007 SCMR 10)*** that vehicles cannot be detained and

Islamabad High Court

seized on grounds of suspicion alone. In the said matter, a vehicle was detained even after the owner showed documents of registration of the vehicle, which was registered in his name. The vehicle was however detained for failure to produce import documents. The Supreme Court held that the Customs authorities were not vested with unbridled powers under provisions of the Customs Act *"to detain the goods of foreign origin at any time by raising the presumption that the same were not brought into Pakistan in a lawful manner. The Customs Authorities and such other public functionaries are not above the law to command absolute authority in exercise of their power and in the absence of any proof that goods in possession of a person were brought into Pakistan in violation of any law, have no authority to detain such goods merely on the basis of suspicion."* The Supreme Court went on to note that the detention of the vehicle in such circumstances was an act of high handedness that rendered the officials concerned liable to be proceeded against for misconduct in terms of the Civil Servants (E&D) Rules, 1973, read with Removal from Service (Special Powers) Ordinance, 2000. The matter was referred to Chairman FBR for further action.

Relevance of the Chain of Custody

125. The principle that case property must remain in safe custody, starting with the recovery of such property and continuing through trial/adjudicatory proceedings, is a well settled proposition. Where characteristics of property are being relied on by the State to prove a case against an accused, such property forms an essential link in the evidentiary chain and any break in this chain creates doubt about the State's case, the

Islamabad High Court

benefit of which goes to the accused [see for example ***Wahid Bux alias Wahido vs. The State (2022 Pcr. LJ 1631)***, ***Muhammad Ahsan Kamal and others vs. The State (2020 Pcr. LJ (Note) 12)***, and ***Muhammad Shakeel alias Banarsi vs. The State (2021 Pcr. LJ 1887)***].

126. The importance of chain of custody has been highlighted in the case law that has developed in relation to provisions of the Control of Narcotics Substances Act, 1997. In ***The State through Regional Director ANF vs. Imam Bakhsh (2018 SCMR 2039)***, the Supreme Court held that the chain of custody of samples of the seized drug and its dispatch to the narcotics testing laboratory, *"is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."* The Supreme Court went on to hold that the report of the Government Analyst must follow internationally recognized protocols, without which such report would have no sanctity.

127. It was once again held by the Supreme Court in ***Zahir Shah alias Shat vs. The State (2019 SCMR 2004)*** that, *"this court has repeatedly held that safe and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics*

Islamabad High Court

Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."

128. It was held by a Division Branch of the Sindh High Court in ***The Collector of Customs and others vs. Zeeshan and others (2022 PTD 1330)***, in relation to a case involving a vehicle that allegedly had a tampered Vehicle Identification Number ***("VIN")***, that, *"goods under examination are sent out to third party's examination, the chain of safe custody is broken and examination reports coming from an alien department (to the controversy) would always be shrouded in doubts and be considered with a pinch of salt. In usual legal processes, such an evidence or incriminating material is not to be relied upon unless the test is conducted in the presence of the affected party (i.e. the importer in the case at hand), such an outcome also vitiates Article 10-A of the Constitution which provides for transparency and fair trial."*

129. The principle laid down with regard to safe custody of case property and safe transmission of property to a laboratory in circumstances where the laboratory report is a pivotal piece of evidence relied upon by the State to establish wrongdoing and impose penalty, as highlighted in relation to CNSA offences, are applicable to the allegation of wrongdoing and liability for owning and/or possessing a vehicle alleged to be smuggled on the basis

Islamabad High Court

that such vehicle has a tampered chassis number. In such cases, the pivotal piece of evidence on the basis of which it is presumed that the vehicle is smuggled is that its chassis number is tampered. The allegation of tampering of the chassis number is then backed by a Forensic Science Laboratory (FSL) report. Where the vehicle has not retained in safe custody starting with its detention and/or seizure, and the vehicle has not been subjected to examination for purposes of producing the FSL report in the presence of the vehicle owner, the state will be unable to establish safe custody of the vehicle and its safe transmission for purposes of producing an FSL report. This, in turn, raises questions about the reliability of the evidence on the basis of which liability is being attributed to the vehicle owner, resulting in confiscation of such vehicle. In view of Article 187A read with Section 2(s) of the Customs Act, an FSL report stating that the vehicle has a tampered chassis number is often used as the only evidence to establish that the vehicle is smuggled. However, examination of the vehicle leading to an FSL report is mostly undertaken days or weeks after the vehicle has been detained and seized by Customs authorities, without the vehicle being detained in a customs warehouse such that its safe custody and lack of access to irrelevant individuals can be established. Further, the examination of the vehicle is often undertaken without associating the owner of the vehicle with the process. This raises doubts about when the chassis number was tampered and who was responsible for such tampering. In the cases before us, the Customs Department has liberally exercised its power to seize in terms of Section 168 of the Customs Act and has not followed protocols for safe custody of vehicles in terms of Section 169 of the Customs Act, raising questions about

Islamabad High Court

whether the tampering of the chassis number took place while the vehicle was in the possession of the owner of such vehicle, or thereafter once it was in the possession of the Customs Department. The use of seized vehicles by the Customs Department has been flagged by superior Courts repeatedly, without the Customs Department and the FBR paying heed and taking corrective steps.

130. In the matter of ***Muhammad Farooq vs. Muhammad Mubeen Akhtar and 7 others*** ***(2004 Pcr. LJ 1958)***, the Lahore High Court was seized of a case, wherein buses made by Hino Pak were seized by the Customs Department on the basis of an FSL report that the chassis number was fake. While holding that the seizure was not sustainable in terms of Section 171 of the Customs Act, the Customs Department had failed to produce any evidence of smuggling, and that the FSL report in itself was insufficient, the Lahore High Court issued a general direction stating that, *"the Forensic Science Laboratory will submit a report after examining the vehicle in the presences of the concerned person/party and ex parte report would not be accepted."*

131. In ***Collector of Customs, Peshawar vs. Saleh Jan (Civil Appeal No.58-P of 2010)***, the matter before the Supreme Court related to a vehicle, the chassis number of which had been tampered with. It was revealed during the adjudicatory proceedings before the Tribunal that the chassis number as deciphered from the first FSL report was different from that reported by the second FSL report. The Customs authorities explained that the vehicle had remained in use by Customs authorities and had met a serious accident due to which the

Islamabad High Court

chassis number had been totally defaced. The Supreme Court noted that, *"it appears that some tampering was done to the chassis number of the vehicle as a result of which it became defaced and this perhaps happened when the vehicle was in the use of the Customs authorities."* The Supreme Court found that this created doubt, the benefit of which would go to the owner of the vehicle, especially in circumstances where the Customs authorities had not carried out any investigation and diligence in relation to the entire record related to the vehicle, including the record available with Port authorities as well as MRA.

132. This Court in ***Collector of Customs, Model Customs Collectorate (MCC), Islamabad vs. M/s. Aurangzeb and 2 others (Customs Reference No.20 of 2020)*** in its judgment dated 21.02.2022, while upholding the order of the Tribunal noting that the Customs Department had failed to discharge the onus that the vehicle was smuggled in terms of Section 2(s) of the Customs Act, held that, *"the report of the Forensic Science Laboratory obtained without associating the respondents was definitely not sufficient to establish commission of the offence under Section 2(s)."*

133. To the extent that attribution of liability and imposition of penalty under clauses (9), (89) and (90) of Section 156(1) of the Customs Act entail a fault-element, it is imperative that the evidence produced to discharge the legal burden establishing fault/wrongdoing and providing the justification for imposition of penalty should be such that is safe and reliable. Where the allegation is that the chassis number of a vehicle has been tampered to obfuscate its identity, either because it has been brought in through an unauthorized route or that duties and

Islamabad High Court

taxes have otherwise not been paid in relation to it and its chassis number has been tampered or altered to match the chassis number of another lawfully imported vehicle, it is imperative that the safe custody of the vehicle and its safe transmission for purposes of generating an FSL report is established through record. And further that the report of the FSL is issued after following standard protocols such that its finding can be treated as a reliable with regard to the identity and particulars of the vehicle. It is important to note that as a safety feature, as well as due to regulatory requirements across various jurisdictions, manufacturers of vehicles inscribe the VIN at multiple places in a vehicle. The chassis number is one such VIN. The VINs are also often inscribed on the pillar of the door and in other hidden places so that if the VIN in one place is defaced the other VINs inscribed on the vehicle and its parts can be used to determine the true identity of the vehicle.

134. During the proceedings that form the subject-matter of the references before us, we have not seen an FSL report or any other material produced by Customs authorities that seeks to determine the identity of the vehicle based on tracing the VINs inscribed at various places in the vehicles in question, even in relation to models produced over the last decade where the practice of inscribing VINs in multiple places in vehicles has become a standard practice with vehicle manufacturers. In a case where the chassis number (i.e. the VIN number stamped on the vehicle frame) is found to be tampered, the other VIN numbers (often stamped or printed on the dashboard, door jamb, under the seat or spare tire etc.) can be located to determine if they match with one another and the particulars of

Islamabad High Court

the vehicle as mentioned in the import/registration documents to verify the identity of the vehicle with some certainty. No such inquiry was undertaken by the Customs Departments in any of the cases before us.

The standard of proof and the onus of proof

135. There appears to have been some confusion created due to conflicting case law as to whether an FSL report stating that the chassis number of a vehicle is tampered is sufficient proof to attract the penalty of confiscation of a vehicle. The associated question of relevance is what material or evidence must the Customs Department produce to bring home the charge that a vehicle with a tampered chassis number is to be regarded as a smuggled vehicle on the balance of probabilities. In this regard, we will first consider the cases relied on by the Customs Department in support of confiscation on the basis that the chassis number is tampered, followed by cases where it has been held that the FSL report or the fact that the chassis number of a vehicle is tampered is not dispositive of the question of whether the vehicle is in fact smuggled.

136. In ***Ch. Maqbool Ahmed***, the case before a two-member Bench of the Supreme Court related to a vehicle with a cut and weld chassis plate, the confiscation of which was ordered in terms of Section 156(1)(89) of the Customs Act. The Supreme Court took into account the fact that the vehicle according to its registration book was a 1987 model Mitsubishi Pajero. Its physical verification however established that it was a 1991 model Mitsubishi Pajero. The Supreme Court held that the particulars entered in the registration book related to another vehicle and turned down the request that the vehicle be released

Islamabad High Court

subject to payment of duty. The Supreme Court also rejected the request for cross-examination of the FSL expert on the basis that there were three FSL reports on record establishing that the chassis plate was cut and weld and that presumption of truth attached to such FSL reports.

137. The second most cited case in support of confiscation of vehicles with tampered chassis numbers is ***Sultan Muhammad***. The Peshawar High Court in the said matter summarized applicable principles of law after reviewing existing case law. It was held by the Peshawar High Court that a presumption of truth attached to FSL reports being official acts, but that in case of serious infirmities appearing on the record evidence of the official who carried out the forensic examination could be recorded. However, *"in case repeated forensic examinations confirm tampering of the chassis number of the vehicle, then there is no requirement for the maker of the report to be summoned and cross-examined by the owner."* Tampering of the chassis number was defined to include, *"any alteration of the original chassis number of the vehicle, whether manual or otherwise or cutting a piece of the frame and re-welding another piece thereon or chassis number filled with welding material and then re-stamped."* The Peshawar High Court further held that, *"tampering of chassis number as a result of an accident of the vehicle could only be a valid ground, if the same was reported to and confirmed by the Motor Vehicle Authorities under Section 33 of the Motor Vehicles Ordinance, 1965,"* and that, *"public auction of vehicles having tampered chassis numbers have been prohibited and are liable to be confiscated."* The Peshawar High Court also found that, confiscated vehicles having tampered

Islamabad High Court

chassis numbers are only allowed for use by Government Departments on payment of nominal/token prices in view of Customs Circular No.10(1)AS/2004 dated 11.12.2007. The Peshawar High Court took into account the judgment of the Supreme Court in ***Federation of Pakistan through Director-General of Intelligence and Investigation-FBR, Karachi vs. Muhammad Jamal Rizvi and others*** ***(2012 SCMR 169)*** and other cases where Customs authorities had continued to use detained vehicles and held that, *"even a positive FSL report of a vehicle in use of the Customs authorities would create a doubt on the presumption of truth attached to the said report that the tampering took place when the vehicle was being used by the Customs authorities."*

138. The judgment of the Peshawar High Court was relied upon by a three-member Bench of the Supreme Court in ***Sarfraz Khan***. While relying on the definition of tampering provided in ***Sultan Muhammad***, the Supreme Court held that, *"presenting documentation, relating to the said tampered vehicle from the Motor Vehicle Authority, without specific approval for the alteration in the chassis or engine number, as envisaged under Section 33 of the Motor Vehicles Ordinance, 1965, would be of no legal avail."* In the said matter, the vehicle owner conceded that some alteration had been made to the vehicle, but that such alteration had been made by the person from whom the vehicle was purchased. The Supreme Court disregarded such explanation and held that if the owner had purchased the vehicle, *"without taking due care and complying with the requirements of law, he cannot claim to be a bonafide purchaser.*

Islamabad High Court

Needless to say that he may, if so advised, claim damages from the person from whom he purchased the subject vehicle."

139. The Lahore High Court in ***Collector of Customs, Multan vs. Muhammad Tasleem*** ***(2002 MLD 296)*** endorsed observations of the Tribunal rendered in the matter holding that the principle of *bonafide* purchaser in good faith and without notice was not applicable when it came to goods confiscated under provisions of the Customs Act. This same observation was repeated in ***Aman Ullah vs. Customs, Central Excise and Sales Tax Appellate Tribunal, Lahore and 4 others*** ***(2007 PTD 983)*** in the context of liability to pay customs duties, taxes and fine, while holding that even a *bonafide* purchaser for consideration could not be absolved of the duty to pay duties and taxes in relation to the goods owned by such purchaser.

140. It is well understood that not every vehicle with a tampered chassis number falls within the domain of Customs authorities for purposes of enforcement of provisions of the Customs Act. For example, vehicles that are either not found to be smuggled or in relation to which there is no allegation that taxes and duties at the time of import were not paid fall beyond the scope of the Customs Act. Similarly, locally manufactured vehicles, even those with tampered chassis numbers, do not attract provisions of the Customs Act. With this clarification, let us now consider the case law highlighting infirmities in adjudicatory proceedings resulting in imposition of the penalty of confiscation of a vehicle.

141. It was held by the Lahore High Court in ***Commercial Union Insurance Company vs. Collector, Customs*** ***(1994 MLD 2154)*** that, *"the registration of a stolen vehicle on the*

Islamabad High Court

basis of fake document not involving any tax liability is a matter to be resolved on the basis of title by the Court having jurisdiction and not by the customs people. The function of the authorities under Customs Act, 1969, is to decide the matter of leviable taxes and in case it is found that an item was smuggled, an appropriate order including confiscation of the property can be passed under the relevant provisions of law. The mere finding that the goods to have been initially brought into the country against a prohibition or restriction in the absence of any proof through an enquiry regarding the payment of customs duty is not sufficient to pass the order of confiscation." It was reiterated by the Peshawar High Court in ***Sultan Muhammad*** that, *"locally manufactured vehicles are beyond the legal mandate of the Revenue under the Act."*

142. Logically speaking, it is not just imported vehicles whose chassis numbers can be tampered with. Locally manufactured vehicles and vehicles lawfully imported into Pakistan and released by Customs authorities after payment of taxes and duties are equally vulnerable to having their chassis numbers tampered. The literature on the phenomenon of tampering establishes that stolen vehicles are susceptible to having their chassis numbers tampered. The object of such exercise is to clone the identity of a stolen vehicle to transform it into another legally registered vehicle. The cloned identity then includes the tampered VIN, registration documents and fake license plates. The second object of tampering chassis numbers is to prepare them for use in illicit activities such that their identities are untraceable, so that the vehicles cannot be linked back to the perpetrators of crime. In many jurisdictions vehicles that are

Islamabad High Court

subjected to a major accident after which they are deemed by the insurance company to be a total loss, vehicles can be illegally rebuilt to obfuscate the accident history. In such cases too, the VIN is tampered to hide the reconstruction of the vehicle, which raises concerns about the safety of the vehicle for driving purposes. The point is that tampering with the identity of a smuggled vehicle is not the only incidence of tampering. It is only where a chassis number has been tampered in order to clone its identity and hide the fact that it is either smuggled or has been illegally imported and released without payment of taxes and duties that Customs authorities acquire a role under provisions of the Customs Act.

143. In the matter of ***Collector of Customs and another vs. Zeeshan Iftikhar (Civil Petition No.1217 of 2003)*** an appeal came before the Supreme Court against a judgment of the Division Bench of the Peshawar High Court that involved a vehicle that had been detained on the charge of having been smuggled. But the vehicle was subsequently forfeited on the basis that the parts installed in the vehicle were smuggled. The Peshawar High Court ordered the release of the vehicle, which was upheld by the Supreme Court, while noting that, *"no investigation was conducted to ascertain as to whether accessories allegedly changed by the owner of the vehicle were custom paid or otherwise."* And that in such circumstances without the Customs authorities discharging their onus of proof to establish that the parts installed were smuggled the vehicle could not have been confiscated.

144. In the matter of ***Collector of Customs, Peshawar vs. Fahim Khan and another (Civil Petition No. 117 of 2006)***

Islamabad High Court

an appeal came before the Supreme Court against an order passed by the Peshawar High Court, wherein the Peshawar High Court had held that, *"where Customs authorities had no evidence that the vehicle in question was smuggled in/imported into Pakistan without payment of leviable duties and where to the contrary bill of entry was confirmed, mere fact that chassis number was refitted and in absence of any evidence that with such chassis number some other vehicle is plying, the seizure, forfeiture/confiscation of the vehicle would thus be beyond the jurisdiction of Customs authorities."* These observations were reproduced and endorsed by the Supreme Court.

145. The Peshawar High Court once again in ***Sudeer vs. Collector Customs, Peshawar and 2 others (2010 PTD 1333)*** reiterated that the tampering of a chassis number without additional evidence establishing that the vehicle in question was not one that was legally imported and in relation to which duties and taxes were paid, the vehicle was not liable for confiscation.

146. In ***Raja Sahadat Nawaz vs. Superintendent of Police (2003 YLR 1431)***, the Lahore High Court was seized of a matter seeking quashment of the FIR in a case involving a vehicle with a tampered chassis number. The Lahore High Court held that the FSL report was antedated and maneuvered and that where no fraud or forgery was established and there was no rival claimant or owner of the vehicle, the petitioner had successfully proved that he was a *bonafide* purchaser.

147. In ***Collector of Customs vs. Hilal Muhammad (2003 PTD 562)***, the case involved a Toyota Hiace with a cut and weld chassis plate. The Court took into account that the chassis plate

Islamabad High Court

had rusted and three of its sides were welded and that the Federal Investigation Report and the FSL report were in conflict. It concluded that there was no evidence establishing that the vehicle was imported in an unauthorized manner or through an unauthorized route, which was then ordered to be released.

148. In ***Muhammad Aslam Azad vs. Collector of Customs (2005 PTD 1949)***, the Lahore High Court dealt with the matter involving a 1991 model Toyota Land Cruiser, registered in 1996, that had been confiscated for having a refitted chassis plate. The Lahore High Court noted that merely by virtue of the last four digits of the chassis number not being deciphered according to the FSL report, *"the appellant could not be saddled with mens rea that he smuggled the vehicle of which all other particulars resemble with the vehicle imported… Furthermore, there is also no evidence that chassis plate was tampered with by the applicant."* In such circumstances, benefit of doubt was given to the *bonafide* purchaser.

149. In ***Haji Rab Nawaz vs. The State (2009 Pcr. LJ 945)***, the allegation against the owner was that the chassis number was tampered and the registration book was bogus. The Peshawar High Court noted that there was no rival claimant of the vehicle and it had not been established that the vehicle was stolen. It was held that only because the chassis number was tampered the, *"vehicle cannot be confiscated to the State because under West Pakistan Motor Vehicles Ordinance, 1965, 1965, at the most, such vehicle cannot be driven on the road under Section 23 of the ordinance."* It was directed that the vehicle be released after registration under Section 25 of the Motor Vehicles Ordinance and entry of alterations by the Motor

Islamabad High Court

Registration Authority in terms of Section 33 of the Motor Vehicles Ordinance.

150. In ***Manzoor Ahmad and another vs. Customs Appellate Tribunal, Islamabad Bench, etc.*** **(Custom Reference No.41 of 2015)**, the Peshawar High Court in judgment dated 13.04.2022 held that, *"there is no force in the contention raised by the learned counsel for the Department that since the Laboratory had confirmed the chassis to be cut and weld, therefore, the factum of the vehicle being smuggled stood established. This argument is misconceived because confirmation of the chassis being cut and weld is not the sole and conclusive factor to establish that the vehicle was smuggled. The vehicle was registered long ago and the likelihood of damage on account of accident cannot be ruled out. However, in the case in hand, we are satisfied that a reasonable opportunity ought to be extended to the applicants to controvert the prosecution case on the factual side. The principles of procedural fairness are embedded in Article 10-A of the Constitution and their observance is mandatory."* The matter was then remanded back to the Tribunal.

151. Let us now consider the manner in which property is to be preserved during the pendency of the adjudicatory process, in the context of the power vested in Customs authorities under Section 169(4) of the Customs Act to *"cause the thing [liable to confiscation seized under Section 168] to be sold in accordance with the provisions of section 201 and have the proceeds kept in deposit pending adjudication of the case or as the case may be, disposal of the appeal or the final judgment by the Court."*

Islamabad High Court

152. The first thing to note about this provision is that it is a discretionary power that is to be exercised in a just, fair and reasonable manner while preserving the requirements of due process during the adjudicatory proceedings. While this provision applies across the board to any and all goods seized by Customs authorities under Section 168 of the Customs Act, there are considerations that are to be borne in mind when such discretion is exercised in relation to vehicles that are alleged to be smuggled, as has been touched upon earlier in this judgment while discussing the need for safe custody of case property and safe transmission in undertaking examination of the vehicle for purposes of producing FSL reports. The first such special consideration to note is that a vehicle is not a property subject to speedy or natural decay. And as has been held in the earlier part of this judgment, as the primary evidence in support of the Customs case that a tampered vehicle is a smuggled vehicle, is the tampered chassis plate (in the category of cases that we are dealing with), it is imperative to preserve the vehicle as case property alongwith the tampered chassis plate on which is founded the claim of the Customs Department that the vehicle be regarded as smuggled. The confiscation of a vehicle can be ordered by Collector Customs, who, while empowered to exercise adjudicatory authority, falls within the hierarchy of the Customs Department. It is the Tribunal that is regarded as the last fact finding forum within the adjudicatory hierarchy, and consequently the case property (in this case the vehicle itself) ought not be disposed of in discharge of the discretionary authority vested in Customs officials under Section 169(4) of the Customs Act until a definitive factual determination has been rendered by the Tribunal after appraising the relevant

Islamabad High Court

evidence/material on which the case of the Customs Department is built.

153. The second point to note is that Section 201(2) prescribes the manner in which sale proceeds are to be applied, and includes, *inter alia*, that such proceeds are to be applied to pay customs duty, and other taxes and dues payable to the Federal Government in respect of the goods in question. The question of whether a vehicle is smuggled and/or whether or not taxes and duties have been paid in relation thereto, is a matter that is to be determined upon conclusion of the adjudicatory proceedings. Consequently, the purpose of providing this extraordinary discretionary authority to sell a seized good liable to confiscation pending adjudication of the matter (i.e. to cater to situations where the goods in question may lose value when susceptible to natural decay or otherwise may frustrate the interest of the State in disposing of the goods to recover taxes and duties due to the Government), are not attracted in a case involving a seized vehicle suspected of being smuggled. On the contrary, in the case of a fire sale undertaken under provisions of Section 169(4) read with Section 201 of the Customs Act, the value received in such auction proceedings is expected to be less than the fair market value of such vehicle. In the event that at the conclusion of adjudicatory proceedings, the conclusion drawn by the Court is that the vehicle is not smuggled and/or liable to confiscation, the effect of premature sales/disposal of such vehicle would be that of exposing the State and public revenue to a claim of damages by the owner of the vehicle. Such exercise of discretionary authority under Section 169(4) of the Customs Act is therefore not just, fair and reasonable and falls foul of the

Islamabad High Court

requirements of Section 24-A of the General Clauses Act, 1897 ***("General Clauses Act")***.

154. The third consideration re disposal of a vehicle pending adjudication is of a constitutional nature. Article 10-A guarantees the right of a citizen to due process and fair trial in adjudication of his/her civil rights and liabilities. Such adjudicatory process must be structured in consonance with Article 175 of the Constitution that provides for separation of powers. The principle of separation of powers, for purposes of adjudicatory proceedings under the provisions of the Customs Act, is upheld by providing an appropriate remedy before the High Court in terms of Section 196 of the Customs Act. In a matter where on the basis of an order of seizure passed by Customs authorities, pending adjudication of the claim of the Customs Department, the vehicle in question is disposed of by the Customs Department in a manner that the fair market value of the vehicle has not been independently determined, resulting in a loss to the vehicle owner, who at the end of the adjudicatory proceedings stands vindicated in terms of his/her ownership of the property, the premature sales/disposal of the vehicle would amount to a confiscatory action in breach of the rights guaranteed by Article 24 read with Article 10-A of the Constitution. In order not to raise such constitutional concerns, it is imperative that the discretionary power vested in Customs authorities under Section 169(4) of the Customs Act to auction/dispose of a seized vehicle not be exercised till the adjudicatory proceedings have attained finality before the Tribunal or before the High Court, in the event that a reference is filed.

Islamabad High Court

155. A natural corollary of the above principle is that seized and/or confiscated vehicles must be preserved as case property till such time that the decision with regard to civil forfeiture and/or imposition of taxes and duties attains finality in terms of the adjudicatory remedies provided under the Customs Act all the way up to the High Court. In this context, let us consider Section 182 of the Customs Act, which provides that goods confiscated under the Customs Act shall vest in the Federal Government forthwith and that Customs officials shall take possession of such confiscated goods. The proviso to Section 182 of the Customs Act then provides that, *"the Board may authorize the use of confiscated vehicles for operational purposes by the Board or, with the approval of the Board, its subordinate offices."* The principles enumerated in relation to disposal of vehicles in terms of Section 168(4) of the Customs Act squarely apply to the use of confiscated vehicles during the pendency of adjudicatory proceedings till such time that they have attained finality.

156. As has been emphasized in the earlier part of this judgment, Article 23 of the Constitution protects the right of a citizen to hold and enjoy his/her property. We have noted above in detail how any reasonable restrictions imposed in relation to the enjoyment of such right must constitute the least restrictive means to protect and promote legitimate State purpose. Section 182 of the Customs Act is to be read as contemplating goods the declaration of confiscation in relation to which has attained finality through the adjudicatory process. Any other reading would fall foul of the principles of separation of power as well as fair trial and due process already highlighted above. Section 182

Islamabad High Court

of the Customs Act cannot be read as an arbitrary power vested in Customs authorities or the FBR to commandeer property belonging to a citizen, the status and fate of which is yet to be adjudicated within the adjudicatory hierarchy provided under the Customs Act. It cannot be contemplated that the Legislature, while introducing Section 182 of the Customs Act, sought to vest in the Customs Department the right to compulsorily acquire the possession of a vehicle, constituting private property of a citizen, for enjoyment and use of public officials free of charge, without compensating the citizen of such acquisition of his/her property without compensation, in the event that it is ultimately determined by the Tribunal or the High Court that the vehicle did not constitute a smuggled good and was not liable to confiscation.

157. It is in the context of the proviso to Section 182 of the Customs Act that the legal sanctity of the CGOs issued for purposes of determining the use and/or disposal of confiscated vehicles is to be considered. In the earlier part of this judgment, we have already considered how delegated authority to enact subsidiary legislation and/or issue administrative instructions must be exercised within the four corners of the parent legislation to realize the objects of such legislation. From this perspective, it must be borne in mind that the limited authorization for use of confiscated vehicles in terms of the proviso to Section 182 of the Customs Act is limited to *"operational purposes by the Board or, with approval of the Board, its subordinate offices."* We have already noted above that the time when such power of the FBR to authorize use of confiscated vehicles vests is once the adjudicatory remedies

Islamabad High Court

stand exhausted, and the title of the vehicle definitively vests in the Federal Government.

158. The second point to note is that neither Section 182 nor any other provision of the Customs Act vests in either the Federal Government or the FBR the power to sell confiscated vehicles, that constitute State property, in a non-transparent manner to other Government departments on nominal rates. With this prelude, let us now consider the CGOs issued with regard to regulating the disposal of confiscated vehicles.

159. At the outset, it is important to note that such CGOs may be considered as instructions or directions issued in terms of Section 223 of the Customs Act, which provision does not vest in FBR the authority to issue subordinate legal instruments for purposes of disposing State property. CGOs are not rules framed in exercise of powers under Section 219 of the Customs Act.

160. The learned counsels for the Customs Department during the pendency of the proceedings relied on various CGOs to justify the disposal of confiscated vehicles to various Government Departments. We will consider the content of such CGOs before proceeding with the legal questions that arise in relation to them. The first CGO brought to the attention of this Court is an order issued by the FBR dated 11.12.2007, while relying on a decision of the Economic Coordination Committee (ECC) dated 03.03.2006, re disposal of confiscated tampered vehicles. The ECC decision, as reflected in the CGO, states the following:

> *(i) Buses and vans may be utilized for pick and drop of officers and staff working in CBR headquarters and its field formations;*

Islamabad High Court

(ii) Other vehicles (cars, jeeps etc.) may be sold to the Government/semi-Government departments on the highest prices offered by them; and

(iii) Any leftover vehicles may be offered free of cost to the Government owned educational, medical and scientific institutions, as recommended by the respective Ministries, on first come first served basis.

161. The Customs Department also placed on record SRO 568(I)/2008 dated 11.06.2008, which provided that smuggled vehicles other than ones with tempered engine or chassis numbers seized on or before 31.05.2008 could be released on payment of leviable duties and taxes in addition to redemption fine. The latest CGO relied on by the Customs Department is CGO No.05 of 2018 dated 24.05.2018 **("CGO No.05")**. This CGO also relies on ECC decision dated 03.03.2006. In terms of eligibility it provides that, *"Federal/Provincial Government/Semi-Government departments and Government owned educational, medical and scientific institutions"* are eligible for purchase of tampered vehicles. Clause 3(3) of CGO No.05 then provides that the purchasing department is responsible for registration of the tampered vehicle in its own name with the relevant Motor Registration Authority. Clause 3(5) of CGO No.05 seeks to retain for the Customs Department *"the right to call back the sold vehicle in case same is required to be presented before any judicial forum or court of law."* It therefore contemplates that such vehicles may constitute case property in sub-judice matters and their production may be required before a court of law to determine the status/title of such vehicles. Unlike Section 201 of the Customs Act, that requires goods to be sold in a public auction, clause 4 of CGO No.05 provides for an opaque mechanism for sale by requiring Customs authorities to regularly

Islamabad High Court

inform/circulate the details of tampered vehicles ripe for disposal to eligible departments. Clause (iv)(ii) of CGO No.05 similarly does not create a mechanism for determining the fair value of disposable vehicles, but provides that the sale/token price of these vehicles shall be determined in accordance with its make, model and physical condition.

162. Despite repeated directions, the Customs authorities failed to provide any documentation to establish how disposal of vehicles and price determination was being undertaken in a transparent manner. When asked as to why such vehicles could not be disposed of through a regular auction, the response was that the vehicles could not be allowed to ply on the roads due to security concerns and also because such vehicles could not be registered by private individuals. It was the contention of the Customs Department that were tampered vehicles to be used by private individuals, their cloned identities would be a security concern. However, if such vehicles are in possession of Government departments, being used by officials of such departments, no security concerns arise. Likewise, when asked as to why the vehicles could not be sold through an auction process and registered by the successful bidders, when CGO No.05 required that such vehicles were to be registered with MRAs by the purchasing Departments, no satisfactory answer was furnished. When asked as to the quantum of revenue that was being lost by virtue of not putting the confiscated vehicles through an auction process for sale to the highest bidder, the Customs Department filed a report dated 10.05.2025.

163. The starting point of the Customs Department argument is that confiscated vehicles cannot be auctioned and can only be

Islamabad High Court

sold as scrap. The value of all vehicles confiscated in the last five years when sold as scrap was projected by the Customs Department to be approximately Rs.250 million. The report however also provided that the replacement value of such vehicles i.e. if such vehicles were to be replaced with vehicles purchased by the Federal Government, would amount to approximately Rs.9,354 million.

164. There are various legal concerns that mar CGO No.05 and CGO dated 11.07.2007 issued under the garb of implementing ECC decision dated 03.03.2006. This Court has previously highlighted the limitations placed on the freedom of the Government to act at its whim in terms of Article 4 of the Constitution. It was held in ***Usama Khilji vs. Federation of Pakistan (Writ Petition No.1561 of 2023)*** that, *"the government in a rule of law polity is a government of limited powers as it can only do what the law permits it to do. Article 4 of the Constitution, which articulates the right of individuals to be dealt with in accordance with law, summarizes this framework, whereby individuals are free to do what the law doesn't prohibit them from doing and the state can only do what the law authorizes it to do."*

165. The Federation and the Customs Authorities were repeatedly asked to assist the Court as to the relevant statutory provisions under which the ECC had issued directions for the disposal of vehicles confiscated under provisions of the Customs Act. No statutory provision was brought to the notice of the Court.

166. Section 219 of the Customs Act that vests in the FBR the power to make rules, includes, *inter alia*, the power to make

Islamabad High Court

rules in relation to *"any other matter necessary for giving effect to the provisions of this Act,"* other than the matters listed in Third Schedule of the Customs Act. The CGOs, mentioned above, are admittedly not rules framed in terms of Section 219 of the Customs Act. The ECC is vested with no overriding power and authority under the Customs Act to determine the manner in which vehicles confiscated in terms of provisions of the Customs Act are to be disposed of.

167. As has been discussed above, the proviso to Section 182 of the Customs Act vests limited power in the FBR to authorize the use of confiscated vehicles (limited to use by officials of the FBR or its subordinate officers for operational purposes). The Customs Act vests no authority in the Federal Government or the FBR to undertake private sales of confiscated vehicles to Government and Semi-Government departments in an opaque manner that does not result in realizing the maximum value from the sale of state property for the benefit of the public exchequer.

168. It is evident from their content that CGO dated 11.07.2007 and CGO No.05 exceed the scope of power vested in the FBR in terms of Section 182 of the Customs Act. These instruments are ultra vires the parent Act pursuant to which they have been issued. The principles regulating the manner in which delegated legislation is to be promulgated and the authority to issue administrative instructions in discharge of delegated authority is to be exercised apply squarely to the question of legality of the CGOs in question. The CGOs go beyond the provisions of the Customs Act, including, *inter alia*, Section 182, and cannot be allowed to override or modify the parent law.

Islamabad High Court

169. It is settled that the State is not at liberty to dispense its largesse in an arbitrary manner and that arbitrary, discriminatory or non-transparent conferral of largesse violates public statutory duties, constitutional rights and principles of the equality guaranteed by the Constitution.

170. It was explained by the Supreme Court in ***Suo Motu Case No.13 of 2009*** ***(PLD 2011 SC 619)*** that, *"transparency lies at the heart of every transaction entered into by, or on behalf of, a public body. To ensure transparency and fairness in contracts, inviting of open bids is a prerequisite."* It was reiterated in ***Khwaja Muhammad Asif vs. Federation of Pakistan*** ***(PLD 2014 SC 206)*** that, *"any transaction which is not transparent and goes against the interests of the general public constitutes violation of Article 9 of the Constitution."*

171. The Supreme Court has endorsed the law laid down by the Indian Supreme Court in ***Ram and Shyam Company vs. State of Haryana and others*** ***(AIR 1985 SC 1147)***, wherein it was held that, *"disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose… where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy."* In ***Ram and Shyam Company***, the Indian Supreme Court endorsed a dissenting opinion rendered in ***Punnen Thomas vs. State of Kerala*** ***(AIR 1969 Kerala 81)***, which noted that, *"the Government is not and should not be as free as an individual in selecting the recipients for largess. Whatever its*

Islamabad High Court

activity the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

172. The Customs Department in support of its contention that public auction of confiscated vehicles with tampered chassis numbers generate security concerns relied on judgments of the Lahore High Court in ***Khawar Shabbir vs. Members Judicial/Technical, Customs Excise and Sales Tax Appellate Tribunal*** ***(2008 PTD 1928)*** *and* ***Muhammad Sajjad vs. State*** ***(2014 PCr.LJ 1733)***. Perusal of the judgments reflects that they include scant reasoning to support the conclusion that vehicles with tampered chassis numbers must not be allowed to ply on roads as they constitute a security threat. That vehicles are cloned for use in criminal activities is well understood. But why are tampered vehicles only a threat when being used by private individuals and not when in the use of public officials?

173. There is no denying that a vehicle with a cloned identity cannot be allowed on the roads as in the absence of certainty that the particulars reflected in the registration documents of the vehicle relate to the vehicle in question, neither the safety of the vehicle as a driving machine nor the identity of the owner of the vehicle can be confirmed. This much is not contested by anyone. The question that arises is with regard to the fate of a vehicle that has been confiscated for having been found to be smuggled and therefore the product of an illegal activity, after the Customs Department has discharged the legal onus in such regard.

Islamabad High Court

174. This Court had issued notices to the MRA and the Excise and Taxation Officer appeared to assist the Court. It was submitted on the behalf of the MRA that creating a new VIN for a vehicle with a tampered chassis number is not problematic and can easily be done. Similarly, a separate number series can be issued for purposes of registration of vehicles with tampered chassis numbers to give them a verifiable identity, even in the event that their previous identity has been besmirched or cloned. The Court was informed that even presently the practice is that vehicles with tampered chassis numbers sold to Government departments are issued registration numbers to enable them to be driven around.

175. It is logically understandable that there is need for a verifiable vehicle identity. The chassis number of a vehicle referred to as the VIN is used for such purpose as a proxy. Where the chassis number has been tampered due to an accident or due to corrosion or deliberately for purposes of cloning the identity of the vehicle, the safety and identity of the vehicle no longer remains verifiable. But this can be fixed by creating unique VINs for tampered vehicles through a regulated process overseen by MRA and by creating a separate series of registration numbers for such vehicles, which would have the effect of such vehicles being sold at a discount, but would prevent them from becoming unusable and would also put on notice any subsequent buyers with regard to the tampering of the original chassis number. Such allocation of a VIN by State authorities would then take care of the concerns with regard to lack of identity and/or use of such vehicles in criminal activities

Islamabad High Court

due to their owners being untraceable or having the benefit of plausible deniability.

176. The contrary approach being followed by the FBR pursuant to CGO No.05 is completely irrational, other than being illegal. A vehicle with a tampered chassis number and an unverifiable identity continues to generate security as well as vehicle safety concerns, irrespective of who is driving it around. The concern regarding a private individual driving a vehicle with a tampered chassis number is that the true identity of the vehicle is not verifiable. The concern remains equally applicable where such vehicle is being driven by a public official.

177. The report filed by the FBR, stating that the replacement value of confiscated vehicles being used by Government departments under provisions of CGO No.5 is significant, reflects that the use by public officials of private vehicles confiscated for being tempered is deliberate policy. From a policy perspective, this creates perverse incentives for the Customs Department and thus a conflict of interest when it comes to exercise of detention, seizure and confiscatory powers under provisions of the Customs Act. While Customs officials are fiduciaries, they have an incentive to exercise their police and adjudicatory powers to confiscate vehicles, which can then be employed for the benefit of officials within the Customs Department and other Government departments. The corresponding loss is that to the public exchequer. Instead of maximizing the value to be added to the public exchequer by sale of vehicles through a transparent auction process fetching the right market value, the confiscated vehicles are sold off to other Government departments in a non-transparent manner at a pittance. This undermines the principles

Islamabad High Court

of transparency and equality in sale of state property, adversely affects the interests of Revenue, creates perverse incentives for law enforcement, and results in distribution of State largesse in a whimsical manner for the hand-picked public officials.

178. We need not get into individual cases in significant detail to document abuse of authority by the Customs Department in relation to use of confiscated vehicles. One example may suffice to illustrate the point. In ***Customs Reference No.12***, this court ordered that the confiscated vehicle be handed to the owner. The order was not complied with. When the owner brought forth a contempt application, it turned out the vehicle, purportedly sold to the Archeology Department of Khyber Pakhtunkhwa, was being used by a Commissioner of the Tax Department in Karachi. This was not acknowledged by the Customs Department, but established by a report filed by the Inspector General Police Sindh. When the vehicle was finally recovered, to be handed over to the owner, it came fitted with a fake number plate, which belonged to a Sukuzi Alto having been issued by the MRA in Sindh. The relevant Collector feigned ignorance re the use of such vehicle in Sindh (after initially suggesting the KP Archeology Department may have a branch office in Karachi), and placed the blame for installation of the fake number plate on minions within the department.

179. The record establishes that high value vehicles such as Land Cruisers etc. with a market value ranging from Rs 20-40 million are handed over to select officials across Government departments, with the relevant departments paying anything between Rs.50,000/- and Rs.100,000/- as cost of such vehicles. The invidious effects include lack of safe custody of case

Islamabad High Court

property, due to an eagerness to employ such property for the use of public officials and its premature sale even while the matter remains sub-judice before adjudication authorities. This undermines the requirements of due process and fair adjudication. The ancillary effect of such perverse practice is delay and/or refusal by Customs authorities to abide by orders of adjudicatory authorities to release vehicles to their owners. In many instances where the Tribunal orders the release of a vehicle, the vehicle is seldom handed over to the owner on the basis that the remedy of filing a reference is being availed before the High Court in the absence of any stay order. In some cases where this Court passed explicit orders that the vehicle was to be retained in the Customs warehouse and not used during the pendency of the reference, it was brought to the attention of the Court that the the vehicle remained under continuing use of Customs officials in defiance of court orders. As a consequence of CGO No.5 (i) private property is converted to public use without payment of any compensation, even in cases where the Court ultimately comes to the conclusion that the vehicle is not smuggled and therefore not liable to confiscation, and (ii) possession of a vehicle by public officials and its continuing use during the pendency of the adjudicatory process undermines the state's case, rendering it impossible to determine the timing and liability for tampering of the chassis number.

180. There are two other deleterious consequences of the policy in place under the aforementioned CGOs. One, the policy of dealing with vehicles with tampered chassis numbers, instead of preventing the entry of smuggled vehicles with tampered chassis number into the country, has had the effect of facilitating

Islamabad High Court

the entry and use of such vehicles. If a vehicle with a tampered chassis number is seized at a border post, it is not refused entry or dismantled and sold off as scrap. Instead, it is treated as a smuggled vehicle with a tampered chassis number and sold to a Government department for use in Pakistan. This facilitates the entry and use of smuggled vehicles into the country, while also permanently disabling the resale of such vehicles in terms of the CGOs in field. And two, such policy creates a disincentive to come up with a comprehensive policy framework to regulate the entire ecosystem that permits smuggling of vehicles into the country and/or the continuing use of smuggled vehicles with tampered chassis plates. The consequence being that the population of such smuggled vehicles with tampered chassis numbers continues to grow, defeating the objects of the Customs Act.

181. We are only concerned here with adjudication of questions of law and legality of acts of confiscation brought before us as a matter of law. It is not for this Court to make policy prescriptions or issue directions to curb various invidious practices incidentally referred to in this judgment. That would fall beyond the scope of our jurisdiction. However, as part of the adjudication of these references, our attention has been drawn by the learned counsels for the parties appearing before us to best international practices where other jurisdictions have employed logical and transparent mechanisms for purposes of branding and handling salvage, rebuilt salvage, junk and other calamity damaged vehicles. State authorities in such jurisdictions have come up with mechanisms to brand vehicles such that where the identity, value or safety of a vehicle is affected, an appropriate

Islamabad High Court

brand/label is attached to such vehicle as part of the registration process to put buyers and/or prospective buyers on notice as to the status of such vehicle. Whether the chassis number of a vehicle is damaged or tampered due to an accident, corrosion, theft or any other act of trying to clone the vehicle, it is for State authorities as regulators and fiduciaries to brand the vehicle appropriately so that the antecedents of such vehicle, including tampered chassis number, is naturally brought to the attention of a diligent buyer. And where the vehicle is such that it can no longer be used on roads due to safety or security concerns, the vehicle is taken out of commission by virtue of the refusal of the MRA to register the same and/or cancel the registration previously granted, in consonance with a reasonable regulatory framework providing for such branding. The inscription of a State granted VIN as part of the regulatory framework to deal with tampered chassis number can easily be made part of such framework. The interpretation of Articles 9, 23 and 24 of the Constitution naturally requires that regulation, which is least restrictive for the enjoyment of property rights of vehicle owners, be given precedence over a sledgehammer approach that triggers confiscation over any other outcome, in disregard of the requirement of establishing fault on part of a property owner before subjecting him/her to a penalty of confiscation.

182. The best practices from other jurisdictions reflect that the entire cycle and ecosystem surrounding the import/purchase and use of vehicles is effectively regulated with vehicles being declared roadworthy on an annual basis subject to inspections. The verification of the VIN (including the cassis number) can easily be a part of such regulatory framework to ensure that

Islamabad High Court

while the legitimate interests of the State in preventing smuggling and ensuring that imported vehicles are only released upon payment of taxes and duties is achieved, the police powers of the State are exercised in a manner that is least restrictive to the rights of citizens to liberty and property.

183. While clarifying the law with regard to the manner in which FSL reports are to be prepared in order to be reliable, High Courts have continued to issue directions that such reports must be prepared in the presence of the owner of the vehicle. Notwithstanding such directions, the practice of detaining, seizing and confiscating vehicles on the grounds that their chassis numbers are tampered, continues on the basis of FSL reports prepared without associating vehicle owners with the examination process. Similarly, the Supreme Court, while enumerating the law in relation to Section 156(1)(89) and (90) read with Section 2(s) of the Customs Act, directed in ***Abdul Karim***, as a means to prevent the abuse of law and curb smuggling while giving effect to provisions of the Customs Act, that the Customs Department *"should work out 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."* This direction can be complied with by ensuring that the Customs Department seeks the issuance of an FSL report to verify the particulars of all vehicles at the time of import. And likewise, the MRAs also seeks the issuance of an FLS report at the time of registration and re-re-registration of each vehicle. This will enable the state to satisfy the evidentiary test laid down by the Supreme Court in ***Abdul Karim***. Where all vehicles duly imported and released

Islamabad High Court

after Customs' scrutiny and all vehicles duly registered and re-registered are supported by FSL reports, such documentation in support of legally imported and registered vehicles will make it easier for the state to establish genuine cases of smuggling.

184. The failure of Executive authorities to put together an effective regulatory and preventive framework such that smuggling of vehicles is prevented and deterred falls within the policy domain. As already noted, it is not for this Court to issue directions for adoption of a certain policy. The Executive authorities are free to choose between available policies options, so long as such policies operate within the framework of the law. However, there is no room for application of judicial restraint where Executive authorities adopt a policy framework that fall fouls of requirement of the law and the Constitution. It is in this context that this Court has scrutinized the regime put together by the Customs authorities, in purported compliance of ECC directives, manifested through the CGOs discussed above, which have been found to be ultra vires provisions of the Customs Act.

185. As has been explained above, the Customs authorities are not vested with power and jurisdiction to dispose of or put to use seized and/or confiscated vehicles till such time that a dispositive judgment with regard to the status of such vehicle has been passed by the Tribunal, or in case a reference is filed against the judgment of the Tribunal, by the High Court. The Executive is, however, at liberty to come up with a policy framework to dispose of or otherwise employ for its use vehicles that are confiscated and the title in relation to which vests in the Federal Government, so long as such policies are in accordance with law and any disposal of vehicles is in accordance with the principles

Islamabad High Court

of transparency and equality laid down by the Supreme Court in the context of public officials dealing with State largesse.

186. Before we summarize and conclude our legal analysis, and highlight the principles of law applicable to the facts of the references being adjudicated, let us contextualize this discussion. The starting point of a conversation about constitutional rights is the manner in which rights and responsibilities are to be balanced in the context of the relationship between the citizen and the State. The laws put in place under the framework of the Constitution are conceived as a means of social control for the purpose of regulating individual behavior. It is in this context that the fault element in individual conduct becomes a prerequisite for purposes of imposition of a sanction on citizens.

187. The preventive aim of penal law cannot be served by crafting a standard of liability for imposing penalties that does not require a fault element: deterrence requires rational reflection by an individual and is linked to moral agency (manifested by individual autonomy and capacity) and consequent responsibility. An individual who does not know that he is indulging in wrongdoing or is committing an illegal or prohibited act, cannot be deterred from doing so by virtue of the punishment that may follow. It is thus that law assumes that the intent of the Legislature while crafting law cannot be to punish a person who lacks the capacity or ability to conform his behavior to the required standard prescribed by law. The demands of administrative efficiency certainly have a role to play in any penal system. But the State's need for such efficiency cannot be applied in a manner that upends the foundational objects of the

Islamabad High Court

penal system. The demand for efficiency cannot trump the fault element that must exist for imposition of punishment (except in limited cases involving strict liability offences that we are not dealing with here).

188. The cases before us involve application of clauses (9), (89) and (90) of Section 156(1) of the Customs Act. The first thing to note about Section 156 of the Customs Act is that it deals with offences and penalties in a consolidated fashion such that the constituent elements of an offence on the basis of which an individual liable for such offence can be prosecuted and subjected to jail time are no different even for purposes of imposition of civil forfeitures. In other words, while the offence and/or penalty is defined in identical terms, whether the penalty is to be applied while following the criminal justice framework or while adopting the civil adjudicatory framework becomes relevant in terms of imposition of penalties. Thus, notwithstanding whether a penalty is a consequence of civil adjudication or criminal prosecution, the constituent elements of the offence are identical and must be established in the first instance. And where the constituent elements of an offence require the establishment of a fault element or *mens rea*, such fault is required to be established before the matter can move on to the stage of imposition of penalties. In this regard, the key difference between the civil adjudicatory framework and the criminal prosecution framework is that in the latter, it is for the State to establish its case beyond all reasonable doubt, while in the former, the legal onus of proof stands discharged if a case is established on the balance of probabilities. What is relevant for our purposes is that the fault element as part of the definition of

Islamabad High Court

the offence remains the same in both cases. Clause (9) of Section 156(1) of the Customs Act speaks of import or export of goods "evading payment of leviable customs duties or in violation of any prohibition or restriction" on the import or export of the goods in question. The element of fault is built into the definition of the offence under the said clause. Likewise, clauses (89) and (90) of Section 156(1) of the Customs Act include within the definition of the offence elements such as a person acting "without lawful excuse", and "dealing with smuggling goods or any goods in respect to which there may be reasonable suspicion that they are smuggled goods" and goods in relation to which there is reasonable suspicion that any prohibition or restriction in law in relation to them has been contravened. In a nutshell, all the three offences that we are dealing with include a fault element within the description of the offence, which is required to be established before one can move on to the stage of imposing penalties.

189. It is in this backdrop that the penal system cannot turn a blind eye to the ecosystem within which smuggling takes place and tampered vehicles come into use within the country in terms of the matrix of rights and responsibilities between the State and the citizens. The definition of smuggling, as explained by the Supreme Court in ***Abdul Karim***, focuses on vehicles brought into the country other than through a declared custom post or in relation to which evasion of payment of customs duties or taxes is established. Given the control now exercised by the State over its borders, there are not many opportunities for individuals to smuggle in goods as large as vehicles. The borders and custom posts on such borders fall within the control of the Executive

Islamabad High Court

authorities of the State. To the extent that vehicles are released from such customs posts without payment of requisite duties and taxes, such customs posts fall within the control of and function under the scrutiny of Executive authorities. Once vehicles are released by Customs authorities, they are registered by MRAs that also fall under the control of Executive authorities. Vehicles brought into the country and not registered by MRAs are subject to the oversight and control by MRAs and police authorities, as the law prohibits vehicles from being driven around without being registered.

190. It is within this ecosystem of State control over various stages of the process through which a vehicle is brought into the country and then registered, that the question of the subsequent purchaser of a registered vehicle arises in circumstances where the Customs authorities assert that the chassis number of a vehicle is tampered. It is in this overall context that the question of protection of property rights of individual owners arises on the one hand, and the question of possession of a vehicle with a tampered chassis number arises on the other, with a presumption overhanging such a vehicle that it is smuggled. It is in this perspective that the question of interpretation of the constituent elements of offences defined under Section 156(1) of the Customs Act and the manner in which onus of proof is to be discharged by the individual owner and by the State in terms of Section 187 read with the relevant sub-clause of Section 156(1) of the Customs Act, is to be dealt with.

191. Let us now summarize the legal analysis and the relevant principles identified above that are applicable to cases where clauses (9), (89) and (90) of Section 156(1) of the Customs Act

Islamabad High Court

are employed by Customs authority to seek confiscation of vehicles alleged to have tampered chassis numbers:

i. The notion of an action *in rem* resulting in civil forfeiture/confiscation of property does not operate as a carve out against the right to own, possess and dispose of property guaranteed by Articles 23 and 24 of the Constitution. Within our constitutional framework all that an action *in rem* signifies is that the penalty imposed in terms of Section 156(1) is limited to the action taken against the property and no assumptions with regard to the culpability of the owner of the property in question can be made on the basis of such action. The penal action is an outcome of adjudicatory proceedings and not criminal prosecution, the standard of proof is balance of probabilities and not beyond reasonable doubt, and the defence of double jeopardy is not available to the owner of the property in the event that the State chooses to prosecute him and adjudge whether or not he/she is liable as a criminal matter.

ii. Merely because there is no stigma attached to the person of the owner of the property being confiscated does not mean that civil forfeiture/confiscation of property is not a penalty. Such penalty is a consequence of the finding that the offence as defined in the relevant clause under Section 156(1) of the Customs Act is made out, and that the constituent elements of the offence as described in the relevant clause stand established, including, *inter alia*, the fault

Islamabad High Court

element that is required to be established. Except in limited cases where the legislative intent as manifest from the words used to define and characterize an offence clearly establishes that the offence is designed as a strict liability offence, the presumption remains that the Legislature seeks to impose a penalty following the finding of culpability, notwithstanding whether the penalty is a consequence of civil adjudication or criminal prosecution.

iii. The guarantee of due and fair process provided by Article 10A of the Constitution applies equally whether proceedings involve determination of civil liabilities or criminal charges. The principles of natural justice as well as the principle of causation in finding fault and the principle of proportionality when it comes to imposition of penalty is a subset of the right to procedural and substantive constitutional due process guaranteed by Article 10A read with Articles 23 and 24 of the Constitution, when the punishment involves dispossession of property. The doctrine of reasonability and proportionality as employed by Articles 23 and 24 of the Constitution require that any enforcement action taken for purposes of upholding the law should constitute the least restrictive means to realize a legitimate state objective where it impinges on protected property rights.

iv. Chapter XVII of the Customs Act vests broad police powers in officials of the Customs Department for purposes of prevention of smuggling. Such powers must be exercised in a manner that is least restrictive

Islamabad High Court

to the enjoyment of the rights of owners of vehicles, when it comes to exercise of such powers in departmental action that has the effect of denying a vehicle owner the right to continue to possess and enjoy his/her property. This entails, *inter alia,* that a vehicle cannot be detained and/or seized on suspicion alone. Where there exists *prima facie* basis to detain and seize a vehicle, such seizure can be ordered while letting the vehicle remain within the possession of the owner in terms of the guidance provided in the later part of section 168(1) of the Customs Act, except where seizure is deemed essential for safe custody of case property in a case where there is reasonable basis for the Customs Department to suspect that the property will be made to disappear.

v. Any seized vehicle that constitutes case property must be detained in safe custody in a manner that is verifiable, and the state can establish before adjudicatory authorities that the detained vehicle was not left unmonitored such that tampering of its chassis number could possibly transpire after such seizure. Where the tampering of the chassis number is the primary basis for an allegation that the vehicle is smuggled and its identity has been cloned, it is for the Customs Department having seized the vehicle and taken it into custody, to establish through credible material that such tampering took place prior to the seizure of the vehicle and not thereafter.

vi. Where the FSL report is the primary basis to establish that the chassis number is tampered, such FSL report

Islamabad High Court

must be the product of a process where the Customs Department is able to establish that the vehicle was safely transmitted for forensic examination, while associating the owner of the vehicle with such process. The FSL report must follow prescribed protocols in accordance with best international practices, keeping in view the safety features used by vehicle manufacturers, to give a definitive report that the vehicle identity is besmirched and none of the VIN numbers inscribed on the vehicle can be traced and matched to the particulars reflected on the registration and import documents related to the vehicle.

vii. The tampering of the chassis plate is not definitive proof of the act of smuggling, which needs to be established on a balance of probabilities and an FSL report is part of the evidence/material for purposes of discharging such legal onus. However, where the vehicle is not retained in safe custody by the Customs Department after seizure and the FSL report is not the outcome of examination of a safely transmitted vehicle, such report is of limited evidentiary value for purposes of discharge of legal onus by the Customs Department that the vehicle is smuggled.

viii. The initial onus of proof in terms of section 187 read with clauses (89) and (90) of section 156(1) of the Customs Act is on the owner of the vehicle to make out a prima facie case establishing a lawful excuse to possess the vehicle. The registration document establishing title of the vehicle owner is sufficient for purposes of establishing such prima facie case. In

Islamabad High Court

relation to a vehicle the import/auction/registration of which was is five years old, the Customs Department lacks legal basis to demand import documents from the registered owner of the vehicle in view of section 211 of the Customs Act. In cases where the limitation period in terms of section 211 of the Customs Act has not expired, the evidentiary burden to establish a prima facie case remains with the vehicle owner. But the ultimate legal burden to establish that the vehicle is smuggled rests with the Customs Department.

ix. The exception in relation to lack of lawful excuse for possessing a vehicle with a tampered chassis plate, as explained in ***Abdul Karim***, applies only *"where it is established [by the Customs Department] that the chassis/engine numbers have been tampered with after auction or registration to match the description of the auctioned or registered vehicle."* The expansive policing and investigation powers provided under Chapter 3 of the Customs Act are to be employed by the Customs Department to gather relevant material/evidence to establish on a balance of probabilities that the vehicle with the tempered chassis plate is in fact a smuggled vehicle. Such investigation would require, for example, that the Customs Department investigate a case where the allegation is that the seized vehicle with tampered chassis number has been cloned to project the identity of another vehicle duly imported and registered, and determine the whereabouts of the lawfully imported/registered vehicle to establish on a balance

Islamabad High Court

of probabilities that seized vehicle is in fact a smuggled and cloned vehicle.

x. The owner of a vehicle with a tampered chassis number would have a lawful excuse to own/possess such vehicle, even if it is determined as a matter of fact that the chassis plate of the vehicle is tampered, if he/she succeeds in establishing that such owner is a bona fide purchaser, having paid full market value for the vehicle, and with no notice or suspicion that the vehicle in question was smuggled and/or that taxes/duties in relation to such vehicle were not paid by the original importer/owner. Payment for full market value through verifiable banking channels would establish that the vehicle was not purchased at a discount, as a discounted value could logically raise suspicion with a prudent purchaser re the credentials of the vehicle. The defence of being a bona fide purchaser for full value without notice is available in adjudicatory proceedings under the Customs Act, as there is no provision within the Customs Act read with Articles 9, 10A, 23 and 24 of the Constitution that would deny the owner of a property, who is not found to be at fault or culpable, to be unable to raise such defence for protection of his/her property rights.

xi. The confiscation of a vehicle through proceedings in rem can only take place (resulting in vesting of the title of property owned by a private individual in the Federal Government) after it is established, on a balance of probabilities, that the vehicle was smuggled and the owner of such vehicle is liable to be divested

Islamabad High Court

of his title, as such owner has failed to discharge his/her onus to establish a lawful excuse to own/possess such vehicle. The divestment of private title and vesting of title in the government does not operate in the same manner as the concept of superior title operates in the case of theft where another individual is found to have a superior title to the stolen property, that predates the title of a subsequent bona fide purchaser. In case of civil forfeiture in relation to the offence of smuggling, a private individual can only be divested of his title to private property once it is established by the State in accordance with law that the property is the product of an illegal activity, and the owner/possessor of such property is culpable, either due to acts of commission or due to his/ her failure to establish lawful excuse to be in possession of such property. The state has no prior superior title to such property and the state's title to such property is a consequence of establishment of the fact that the property is the product of an illegal act i.e. smuggling.

xii. Till such time that the private individual is divested of his/her title to property and the vehicle in question vests in the Federal Government after establishment of the fact that the vehicle is smuggled by virtue of a dispositive judgment by adjudicatory authorities established under provisions of the Customs Act, which finding has attained finality, the Customs Department is vested with no authority to dispose of the vehicle, which constitutes case property, or put

Islamabad High Court

such case property to use, while the matter is sub-judice, in breach of the requirements of safe custody and safe disposal of property, as well as the principles of separation of powers that require judicial oversight over executive actions when it comes to determination of civil rights and liabilities in terms of Article 10A read with Article 175 of the Constitution.

xiii. Once the vehicle stands forfeited in terms of section 182 of the Customs Act, it can be disposed of or employed by the state for its use in accordance with law and the principles of transparency attracted to the disposal and/or use of public property, that do not allow the state to dispense largesse in an arbitrary manner or in a manner where public functionaries dealing with public property suffer from conflict of interest.

xiv. The State owes a duty of care to citizens and is under an obligation to put in place the requisite policy framework to prevent and deter smuggling, which is one of the primary objects of the Customs Act. Such policy framework must be in consonance with the State's obligation to create legal certainty with regard to the rights and obligations of citizens in order to guide their conduct. As held in ***Abdul Karim***, the State is under an obligation to ensure that the Customs Department and the MRAs, as arms of the State, coordinate mechanisms and exercise diligence. This can be done by requiring FSL reports at the time of Customs clearance of vehicles and registration/re-registration of vehicles to ensure that the presumption

Islamabad High Court

of correctness that attaches to actions of state officials holds, and administrative malfeasance does not result in enabling smuggling and/or registration of smuggled vehicles. The State cannot employ provisions of the Customs Act as a weapon to trap innocent owners of property, and commandeer or forfeit such assets for its own use without payment of compensation. The sanction of forfeiture of a vehicle on the basis that it is smuggled must always follow the establishment of fault element on part of the owner whose property is to be confiscated.

192. Let us now revert to where we started and answer the questions of law that arise in these references and were articulated in paragraphs 2 and 3 of this judgment.

Is an FSL report finding tampering dispositive of smuggling?

193. No. Tampering triggers a rebuttable presumption under Section 187A. The initial burden to establish "lawful excuse" or "lawful justification" to own/possess the vehicle rests with the vehicle owner. Once the vehicle owner makes out a prima facie case to establish him/herself as the bonafide owner of the vehicle, the particulars of which are listed in the certificate of registration issued by the MRA, the onus of proof shifts to the State. The State must then rebut the presumption and discharge the legal burden to establish "smuggling" as defined in Section 2(s) on a balance of probabilities.

Can a vehicle with a tampered chassis be released, or must it always be confiscated?

194. It can be released to the owner if they establish a "lawful excuse," such as being a bona fide purchaser for full value

Islamabad High Court

without notice of illegality. Confiscation in favor of the State is only permissible upon the State establishing a fault element on the part of the owner, as required in terms of the offense as defined in the relevant clause of Section 156(1) of the Customs Act.

Can a penalty be imposed without a finding of wrongdoing against the owner?

195. No. A penalty under clauses (9), (89), and (90) of Section 156(1) of the Customs Act cannot be imposed without a finding of culpability or negligence on the part of the owner. It is "harsh" (as stated in Abdul Karim) and thus "grossly unjust" to confiscate the property of a wholly innocent person used without their consent or knowledge. The State must establish a fault element before a penal sanction can be lawfully applied.

Is the penalty imposed in rem on the property or in personam on the owner?

196. While the procedural form of civil forfeiture is an action in rem against the property, it functions as a penalty that adversely affects the owner's constitutionally guaranteed property rights. Therefore, for such penalty to pass constitutional muster, it must be preceded by an in personam finding of liability or wrongdoing against the owner. The fiction of the "guilty property" does not allow the State to bypass the requirement of establishing the owner's culpability before depriving him of his property rights by confiscating the same in favor of the State.

How are property rights and due process balanced against the State's interest in deterring smuggling?

197. The balance is achieved through the application of a three-pronged test and the principle of proportionality: Legality – the measure must be expressly provided for by law; Necessity – the measure must be directed toward a legitimate State

Islamabad High Court

objective and be necessary to achieve the object of the statute that imposes the restriction; Proportionality – the measure must be the least restrictive means to realize the State's objective. The State cannot trap innocent owners to deter smugglers. Instead, it must use regulatory frameworks that protect bona fide purchasers while targeting the actual perpetrators.

Does a confiscatory order qualify as the "least restrictive means" to realize a legitimate State objective?

198. Not necessarily. If a legitimate State objective (such as preventing the use of vehicles with unverified identities) can be achieved through less restrictive means—such as re-branding the vehicle with a new State-issued VIN or registering it under a unique series—then a blanket confiscation order fails the test of proportionality. Confiscation is only the "least restrictive means" when the State can prove the owner is not a bona fide purchaser and lacks a "lawful excuse" for possession of the vehicle with tampered particulars.

199. We can now apply the law as summarized above to the facts of the references before us.

Customs Reference No. 12/2022

200. This Court by short order dated 30.09.2025 allowed the reference and directed that the vehicle be released to the applicant forthwith. The vehicle was, however, not released. It had purportedly been sold to the Directorate of Archaeology and Museum, Peshawar, for Rs 100,000, but was being used by an Income Tax Commissioner in Sindh. In response to the civil miscellaneous application filed by the applicant, the Court issued notices to the relevant parties. It emerged in the proceedings that followed that the question of interpretation of Section 187A

Islamabad High Court

of the Customs Act, introduced to the Finance Act, 2025, may be relevant for such proceedings. The matter was therefore listed for hearing along with other pending references that involved the question of confiscation of vehicles in terms of Section 2(s) of the Customs Act for reasons recorded in order dated 22.10.2025.

201. On merits, this Court finds that the order of the Tribunal is not sustainable in the eyes of law for disregarding the principles of law that have been highlighted in this judgment. In terms of background, the vehicle in question was deemed to be smuggled, it was seized and was then ordered to be released pursuant to Order-in-Original No.7903/2013 upon payment of leviable duty and taxes along with redemption fine in terms of SRO 172(I)/2013 dated 05.03.2013. This order also noted that the vehicle would be liable to confiscation in the event that it was subsequently found to have a tampered chassis number.

202. Upon payment of duty in the amount of Rs.4,627,661, deposited with the Customs Department, the vehicle was regularized and the Customs Department issued a No Objection Certificate for registration of the vehicle on 07-05-2013. An order of the Customs Department regularizing a vehicle which is found to be smuggled, which notes that the release order would stand annulled if it is subsequently determined that the vehicle had a tempered chassis number, suffers from nonfeasance. Where the Customs Department, as an arm of the State, disposes off a vehicle upon payment of taxes and duties and or auctions it, such official act comes with a representation that the vehicle has a clean marketable title and the person purchasing such vehicle in auction proceedings, or otherwise assuming ownership of the vehicle on payment of taxes, duties and

Islamabad High Court

redemption fine cannot be subsequently burdened with a liability merely because the Customs Department did not ensure at the relevant time that the chassis number was authentic and not tampered.

203. The vehicle was registered on 21.05.2014, with the MRA having satisfied itself that the Customs Department had issued an NOC for such purpose. The vehicle was then intercepted on 08.12.2020 by the Directorate General Intelligence and Investigation on suspicion of it being a smuggled vehicle, notwithstanding that it was duly registered with the MRA. The demand to produce import/amnesty documents on 08.12.2020 for a vehicle that was released by the Customs Department on 30.03.2013 and registered on 21.05.2014, fell afoul the law laid down by the Supreme Court in ***Abdul Kareem***. This the Tribunal did not take into account. It further did not take into account the infirmities from the date of its detention and seizure, including, *inter alia*, that the vehicle was not kept in safe custody and remained in use of public officials. According to the record, the vehicle was purportedly referred for examination to the FSL on 23.11.2020, which was prior to the date of its interception i.e. 08.12.2020. The owner of the vehicle was never associated with the examination of the vehicle. Once the applicant was able to establish himself as a bona fide owner of the vehicle by providing the relevant registration record as well as details of the regularization of the vehicle and payment of taxes and duties pursuant to Customs Department's Order-in-Original No.7903/2013, the onus of proof shifted to the Customs Department to establish that the vehicle in question was not that that was regularized through the aforementioned order in an

Islamabad High Court

amnesty scheme in 2013. Customs Department failed to discharge such onus and produce evidence to establish that the vehicle was smuggled or was not the one in relation to which taxes, duties and redemption fine had been paid in the year 2013.

204. It was for these reasons that the Court found that the vehicle was not liable to be confiscated and the applicant, as a bona fide owner, had discharged his onus of establishing that he was the subsequent purchaser of a vehicle that had been regularized by the Customs Department in an amnesty scheme in the year 2013. Being the owner of a duly registered vehicle, purchased for value without notice of any infirmity with regard to the title of the vehicle, his vehicle was not liable to be confiscated.

Custom Reference No. 77/2023

205. During the proceedings of this matter, the Court had invited experts from various forensic science laboratories, the Customs Department and the MRAs, to understand the phenomenon of tempering of chassis numbers. As part of the proceedings, the FBR also provided assistance, including by filing the relevant CGOs pursuant to which confiscated vehicles continue to be sold and used by public officials, as well as a report dated 10.05.2025, providing details of the number and value of confiscated vehicles being used by public officials. These matters have already been dealt with earlier in this judgment.

206. On merits, this Court notes that the vehicle was detained on 12.07.2021, its seizure was ordered on 09-08-2021 and a show-cause notice was issued to the applicant on 26-08-2021, with the Order-in-Original confiscating the vehicle being passed

Islamabad High Court

on 19.10.2021. We have noted that there was a significant gap between the time of detention of the vehicle and its confiscation. There is nothing on record to establish that the vehicle was kept in safe custody in a manner that tampering of the chassis number after its detention could be ruled out. While setting aside the order of confiscation, the Tribunal took into account the fact that the Order-in-Original was issued beyond a period of thirty days from the issuance of the Show Cause Notice and was barred by limitation in terms of Section 179(3) of the Customs Act. And consequently, no penal action could flow from such Order-in-Original. The Tribunal noted that a second forensic examination was ordered by the Collector of Customs, but was not undertaken. The owner of the vehicle produced the relevant import documents, which had been verified by the Customs Appraisement Department (East), Karachi, by letter dated 29.07.2022. The owner thus established through the production of vehicle registration and import documents that he was a bona fide owner. The Customs Department, on the other hand, failed to produce any proof of smuggling and did not establish through record that the vehicle in question was not the vehicle, the particulars of which were mentioned in the import documents and registration documents. Given that the basic order of the Tribunal rests on the findings that the Order-in-Original was barred by limitation, the said finding is sufficient to **dismiss** the reference while upholding the order of the Tribunal. To the extent that the vehicle is still in the custody of the Customs Department, it will be handed over to the owner forthwith.

Islamabad High Court

Custom Reference No. 100/2023.

207. The vehicle in question was cleared under an amnesty scheme pursuant to SRO 172(I)/2013 dated 15.03.2013, and the vehicle owner provided proof that duties and taxes in the amount of Rs.2,163,424 had been deposited with the Customs Department on 29.03.2013. The vehicle, a 2007 Model Toyota Parado, was registered in Quetta. It was seized on 24.6.2020 on the basis that the chassis number was cut and welded. The Order-in-Original dated 29.07.2020, directed that the vehicle be released to the owner on the basis that the Customs Department had failed to establish that the vehicle in question was not the one that was cleared under the amnesty scheme 2013. The Tribunal set aside such order and directed that the vehicle be confiscated on the basis that the cut and welded chassis plate created doubt regarding the genuineness of the vehicle, and that the vehicles cleared in the amnesty scheme did not protect vehicles with cut and welded chassis numbers. The vehicle owner filed a petition before the Islamabad High Court to seek the release of the vehicle pending adjudication of the matter. Writ petition No. 2817 of 2020 was allowed by judgment dated 17.11.2020, directing the Customs Department to grant temporary custody to the vehicle owner. The Customs Department challenged this judgment before the Supreme Court, which refused leave by order dated 28.09.2020. Notwithstanding these judicial orders, the Customs Department refused to hand over possession of the vehicle to the vehicle owner. We have already noted earlier in this judgment that the State cannot seek to auction or regularize vehicles in an amnesty scheme while accepting duties and taxes and payment of consideration on the

Islamabad High Court

one hand, and make such transaction conditional on a determination to be made at a subsequent time as to whether or not the chassis number of the vehicle is tampered. When a vehicle is cleared in an amnesty scheme or sold by the State in an auction, implicit in such process is the representation by the State that the vehicle comes with a clean and marketable title. This fundamental principle of fairness and state responsibility was not taken into account by the Tribunal. By virtue of producing the relevant amnesty documents along with record payment of duties and taxes and registration documents establishing that the applicant was bona fide owner of the vehicle, the applicant discharged prima facie onus of proof in terms of section 156(1) read with section 187 of the Customs Act. The onus then shifted to the Customs Department, which was required to establish through record that the vehicle in question was not the vehicle that was released under the amnesty scheme as claimed by the applicant and was in fact smuggled a vehicle, in terms of section 2(s) of the Customs Act. This the Customs Department failed to do as had been correctly held by the Collector in Order-in-Original dated 29.07.2020. We, therefore, find that the Tribunal erred in holding that the vehicle was liable to be confiscated without the Customs Department discharging its legal onus to establish that the vehicle was smuggled. The order is thus not sustainable in the eyes of law and is **set aside.** The Order-in-Original dated 27.09.2020, is **upheld** and the Customs Department is directed to hand over possession of the vehicle to the applicant forthwith to the extent that the vehicle is still in possession of the Customs Department.

Islamabad High Court

Customs Reference No. 214/2023

208. The vehicle in question was ordered to be confiscated by Order-in-Original dated 24.11.2020. The Tribunal set aside such order on the basis that the forensic examination was undertaken and the FSL report produced without associating the owner of the vehicle. It further noted that the vehicle was lawfully registered and that the Customs Department had failed to produce any evidence of smuggling in relation to such vehicle.

209. We have taken note of the Order-in-Original, which reflects the contentions of the vehicle owner, who asserted that he purchased the vehicle from Raja Riaz Hussain on 05.12.2017 for an amount of Rs.900,000. The seller then disappeared and the vehicle owner filed an FIR 297/19 dated 03.04.2019, after having found that the vehicle had a tempered chassis number. As the last possessor of the vehicle, he was granted superdari of such vehicle after the original seller was declared a proclaimed offender. We find that the impugned order passed by the Tribunal is not sustainable in the eyes of law. The Tribunal did not take into account the fact that the question of tampering of the chassis number of the vehicle was not contested by the vehicle owner. On the contrary, it was the vehicle owner that had sought registration of an FIR against the individual who sold the vehicle to him on the basis that the vehicle was found to be tampered. In this factual background, the non-association of the vehicle owner while producing an FSL report was of no consequence, as the FSL report merely established the fact of tampering of the chassis number, which was not contested by the owner. It was then for the vehicle owner to establish that he was a bona fide purchaser of the vehicle for full value without

Islamabad High Court

notice of any infirmity in the title of the vehicle. We are not convinced, on the basis of record, that the vehicle owner established the same. It is the vehicle owner's assertion that the vehicle was purchased for a price of Rs.900,000, which does not appear to be the full market value of such vehicle. The record further establishes that while the vehicle was purchased from Raja Riaz Hussain in 2017, its FSL was ordered by the vehicle owner himself in 2019. There is no explanation for what inspired the vehicle owner to solicit an FSL report two years after the purchase of the vehicle. The Tribunal ought to have determined, on the basis of record, whether the vehicle owner established as a prima facie matter that he was a bona fide purchaser for value without notice and had no basis to reasonably suspect that the vehicle may be tampered. This the Tribunal did not do. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal to consider the principles of law enumerated in this judgment and apply them to the facts of the case after affording the vehicle owner and the Customs Department an opportunity to be heard.

Custom Reference No. 05/2024

210. The applicant has been unable to convince us that the impugned order of the Tribunal upholding the Order-in-Original that the vehicle is liable to be confiscated suffers from legal infirmity and is liable to be set aside. The Order-in-Original was passed on the basis that the FSL report dated 17.08.2023 established that the chassis number of the vehicle was manually punched and the vehicle had been registered by using the import documents of another vehicle. The applicant contested that the FSL report had been produced without associating the vehicle owner. The Tribunal ordered a second examination on the

Islamabad High Court

request of the applicant, while associating the applicant with the process. This report dated 08.12.2023, confirmed that the original chassis number had been erased and could not be deciphered due to deep grinding.

211. During the proceedings before this Court, the Customs Department established through record that the import documents being relied on by the owner of the seized vehicle related to a black Toyota Land Cruiser Model 2017. The engine and chassis number, as reflected in the import documents, matched the particulars of a vehicle registered in the province of Sindh, with registration number BT-0999, and was presently owned by Pir Syed Saleh Shah Jilani. The whereabouts of this vehicle had been tracked, which was present in Karachi, and pictorial evidence confirming its chassis number was collected. The import documents of such vehicle, as verified by the MRA, were the same documents that had been used to register the seized vehicle in the province of Punjab, which was given registration number AAH-49. In view of the record produced by the Customs Department, which established that the import documents being claimed by the owner of the seized vehicle related to another vehicle duly imported and registered in the province of Sindh, the Customs Department successfully established that the import documents being claimed by the applicant belonged to another vehicle. We had undertaken this exercise and allowed the Customs Department to produce relevant record of the duly imported and registered vehicle, to satisfy ourselves that the factual determination rendered by the Tribunal while upholding the confiscation of the vehicle was not perverse. Having satisfied ourselves thus, we find no reason to

Islamabad High Court

interfere with the order of the Tribunal. The reference is decided in favor of the Customs Department.

Custom Reference No. 31/2024.

212. We have no reason to disagree with the order of the Tribunal, which set aside the Order-in-Original directing that the vehicle be confiscated. On merits, the Tribunal took into account the contention of the owner (who had produced import documents and proof of payment of customs duties, and the registration documents of the vehicle) that the vehicle was stolen, which was reported in FIR No.363/2019 dated 17.08.2019. It was recovered from Peshawar and custody was granted to the vehicle owner. The Tribunal took note of the fact that there was no rival claimant of the vehicle. The order of confiscation relied on a replaceable VIN plate located on the door jamb and a tampered chassis plate. The Tribunal noted that the vehicle owner was never confronted with the matter of the VIN number on the door jamb, and that confiscation was ordered on a basis beyond that stated in the show cause notice. The Tribunal concluded, as a matter of fact, that in terms of its physical attributes the vehicle was a 2015 model, and not a 2014 model, as asserted in the Order-in-Original. It also held that the FSL report did not automatically establish the fact of smuggling. The vehicle owner had discharged, prima facie, onus of proof by producing registration documents along with import and auction documents for the vehicle, while the Customs Department had failed to discharge its onus to establish that the vehicle was smuggled in terms of Section 2(s) of the Customs Act. The Tribunal also held that the Order-in-Original was passed after 50 days of issuance of the show cause notice and was therefore

Islamabad High Court

barred by limitation, in terms of Section 179.3 of the Customs Act. And as held by the Supreme Court in ***Collector of Sales Tax, Gujranwala vs. Super Asia Mohammad Din and Sons*** **(2017 SCMR 1427)**, no penal consequences could flow from such order. We accordingly find no reason to interfere with such order and direct that the custody of the vehicle be handed over to the applicant forthwith to the extent that it is still in possession of the Customs Department.

Custom Reference No.42/2024

213. The Customs Department has impugned the order of the Tribunal, which set-aside the Order-in-Original dated 10.11.2023, pursuant to which the vehicle was confiscated. The Tribunal took into account the fact that the show cause notice merely stated that the vehicle owner had failed to produce import/auction or amnesty documents, and the record of the vehicle was not found in PRAL database. The charge that the chassis number was tampered was not put to the applicant, but the confiscation of the vehicle was ordered on the basis that the chassis plate had been cut and welded. The Tribunal, on merits, concluded that the vehicle was the subject of a major accident. The accident was also reported in a police report. The vehicle owner also produced import documents reflecting the chassis number of the vehicle. The Tribunal did not agree with the conclusion drawn by the Customs Department that as the alteration in the chassis number plate had not been reported to the MRA in terms of Section 33 of the Motor Vehicles Ordinance, the owner's explanation that the vehicle was damaged in an accident was liable to be rejected. We have already held that the consequence of noncompliance with Section 33 of the Motor

Islamabad High Court

Vehicles Ordinance is prescribed within the said law and can lead to suspension or cancellation of the vehicle's registration, if the facts and circumstances so warrant. But non-reporting of any alteration made to a vehicle cannot be made the basis to disregard a case made out by a vehicle owner, wherein the overall facts and circumstances of the case the owner succeeds in establishing that he/she is a *bonafide* owner of the vehicle, but the Customs Department fails to discharge its onus to establish that the vehicle was smuggled and/or the vehicle owner was liable for wrongdoing. In the instant case, the Customs Department brought on record no material or evidence establishing that the vehicle was smuggled, or that the vehicle had sought to clone the identity of another vehicle, the import documents of which had been used to register the vehicle in question. The Customs Department undertook no investigation to determine whether the vehicle suffered an accident, what was the nature of the accident, and whether any cutting and welding of the chassis plate could be a natural consequence of the bodywork required post-accident. We therefore find no reason to disagree with the factual determinations made by the Tribunal in holding that the respondent had established himself as a *bona fide* vehicle owner, but the Customs Department had failed to discharge its onus to establish the fact of smuggling. The Customs Department is directed to hand over custody of the vehicle to the applicant forthwith, to the extent that it is still in possession of the Customs Department.

Custom Reference No.61/2024

214. We are not convinced that the impugned order passed by the Tribunal suffers from legal infirmities and requires our

Islamabad High Court

interference. The vehicle in question, a 2003 model Toyota Prado, was registered after verification of import documents by the Customs authorities and physical inspection of the vehicle as evident from the MRA report dated 02.02.2024. The vehicle was seized on the basis that the driver had failed to produce import documents, and that while the vehicle's import data was available in the PRAL database, the chassis number looked suspicious. In response to the Show-Cause Notice, the owner produced the relevant documents establishing the import of the vehicle from Japan and its registration in the year 2013, after the import documents having been verified by the Collectorate of Appraisement, Customs House, Karachi by letter dated 03.10.2013. On the basis of an FSL report that the chassis number was grinded and tampered, the Customs Department came to the conclusion that the import documents of some other legally imported vehicle had been used for registration of the vehicle in question. The Tribunal rendered a split decision. The Member judicial concluded that the owner was an innocent subsequent purchaser, who had paid full value for the vehicle, and had had the vehicle registered in his name after completion of all legal formalities, thus establishing himself as a bona fide owner. The Customs Authorities, on the other hand, had produced no record to establish that the chassis number in question, as reflected in the import documents, belonged to another vehicle. And no other imported vehicle with the said particulars was traced to establish that the seized vehicle was illegally cloned and therefore smuggled. The Member Technical disagreed with the opinion of Member Judicial. The referee Member agreed with Member Judicial and held that the owner had produced import documents as well as registration

Islamabad High Court

documents, after which the onus of proof shifted to the Customs Department, which failed to discharge the same by establishing the allegation of smuggling.

215. The Tribunal held that the concept of a bona fide purchaser was not alien to the provisions of the Customs Act and even in view of the FSL report and the chassis numbers that were deciphered, it could not be definitively held that the original chassis number had been tampered due to the resemblance of the numbers as deciphered with the original chassis number. We find no reason to disagree with the factual determinations of the Tribunal and the manner in which principles of law were applied to the case at hand. We, therefore, direct that the custody of the vehicle be handed over to the applicant forthwith, to the extent that it is still in possession of the Customs Department.

Custom Reference No.74/2024

216. We find that the order of the Tribunal upholding the Order-in-Original dated 02.01.2024, pursuant to which the vehicle in question was confiscated, is not sustainable in the eyes of law. The vehicle, a 2007 model Toyota Axio, was registered for the first time in the Province of Khyber Pakhtunkhwa on 20.11.2007. It was seized on 28.09.2023. At such time, the Customs Department was vested with no authority to demand that the vehicle owner produces import documents in relation to the vehicle in view of the law laid down by the Supreme Court in ***Abdul Karim*** given that five-year limitation period prescribed under Section 211 of the Customs Act had longer expired. The Tribunal also did not take into account that the Order-in-Original was devoid of reasoning and articulated no basis for how the vehicle was found to be smuggled and liable for confiscation. The

Islamabad High Court

Tribunal wrongly held that the concept of a *bona fide* purchaser was not applicable under provisions of the Customs Act, which aspect has been explained in detail in this judgment. By producing the registration documents, the vehicle owner has discharged the *prima facie* onus to establish that he was a *bona fide* owner of the vehicle. On the query of the Customs Department, the Excise and Taxation Department in Jaffarabad Sindh had refused to verify the import documents on the basis that the record of the office was burnt during riots after the assassination of Mohtarma Benazir Bhutto. Merely on the basis that over 17 years old import record maintained by a government department could not be verified by it, for no fault of the vehicle owner, the Tribunal came to the flawed conclusion that the vehicle owner had failed to discharge his onus under Section 187 of the Customs Act. As explained in detail in this judgment, by production of the relevant registration documents, the vehicle owner discharged his onus of proof as a prima facie matter. It was the Customs Department that was then required to rebut the presumption of correctness that attached to the registration documents, by establishing through record that the vehicle was indeed smuggled and that the vehicle owner was liable for wrongdoing. The Customs Department failed in discharging its legal onus and the vehicle is therefore not liable to be confiscated.

217. During the hearing, we were informed by the Customs Department that during the pendency of the matter, while it was subjudice before the Tribunal, the vehicle was auctioned. We were given no satisfactory explanation for why the vehicle was required to be auctioned in exercise of discretionary authority

Islamabad High Court

under Section 169(4) of the Customs Act. As a matter of law, we have held in this judgment that a seized or confiscated vehicle cannot be disposed of till such time that the order of confiscation attains finality with the matter having been decided through dispositive judgments by the relevant adjudicatory authorities established under provisions of the Customs Act. We, therefore, direct that the entire auction amount received by the Customs Department in the auction proceedings, without any deductions, be handed over to the applicant forthwith and in no event beyond a period of 14 days. We further find that the manner in which authority has been exercised in this case under Section 169(4) of the Customs Act was arbitrary and not a fair, just and reasonable exercise of public authority. To the extent that such pre-mature auction has inflicted any financial loss on the applicant, he would be within his right to initiate appropriate civil proceedings for recovery of damages from the State, if so minded.

Customs Reference No. 07/2025

218. We find no reason to interfere with the order of the Tribunal that set aside the Order-in-Original dated 29.03.2024, pursuant to which the vehicle was ordered to be confiscated. The vehicle, a 2015 model Toyota Aqua, was purchased through an amnesty scheme auction. The vehicle owner produced the relevant auction documents along with registration documents to discharge prima facie proof of ownership. He also produced record of FIR No. 331/2018 dated 27.07.2018, whereby he had reported that the vehicle had been stolen. The vehicle was subsequently recovered and custody was handed over to the vehicle owner by judicial order dated 20.11.2018. Notwithstanding the fact that the chassis number was found

Islamabad High Court

tampered, the Additional Sessions Judge granting custody satisfied himself that the owner had the original car key and had been able to identify the vehicle by its peculiar features, including dents etc. The Tribunal found that the vehicle owner had discharged his onus of proof and that it could not be ruled out that the chassis number had been tampered by the car lifter, especially as the owner had established his prior possession and there was no other claimant of the vehicle. It further held that the Customs Department had failed to discharge the onus of establishing that the vehicle in question was not the vehicle the particulars of which had been provided by the vehicle owner, and established through record that the vehicle was smuggled. We find no infirmity with the manner in which the law has been applied to the facts of the case and find that the Tribunal correctly concluded that the vehicle was not liable to be confiscated. We therefore direct that the custody of the vehicle be handed over to the applicant forthwith, to the extent that it is still in possession of the Customs Department.

219. Let a copy of this judgment be sent to the Registrar of the Tribunal under the seal of this Court.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in open Court on **17.03.2026.**

JUDGE **JUDGE**

Approved for reporting.

A. Rahman Abbasi

Islamabad High Court

Additional Note – Justice Sardar Ejaz Ishaq Khan

I had the pleasure of reading the judgment authored by my learned brother. I derive even greater pleasure in agreeing with its lucid analysis and conclusions. His herculean effort in synthesizing diverse and conflicting precedent over the rather diffuse topic of tampered vehicles merits recognition with a deliberate and sustained implementation by all State authorities.

2 The impetus for this additional note came from my learned brother's dive into the conceptual foundations for the protection of property rights, which brought up quotations from the political philosophy of John Locke and jurisprudential commentaries by later Western academics. I thought I would add this additional note to highlight that the doctrinal bedrock for the sanctity of private property rights against confiscatory legislative or executive measures is not beholden to the political philosophers of the Enlightenment era, but goes much prior in time to the prescriptions of monotheistic religions, the most explicit being those in the Quran. That the 'social contract' between the citizen and the State must be premised on justice is such a fundamental Quranic injunction that any legislative or executive measure that enables confiscatory application would fall foul of, or to put in legal parlance, would be 'ultra vires', the Divine command in the Quran in the same vein as a statute contravening the fundamental rights would be ultra vires the Constitution. The Quran commands in Surah Al-Baqarah as follows:

> "*And do not devour one another's possessions wrongfully, and neither employ legal artifices with a*

Islamabad High Court

view to devouring sinfully, and knowingly, anything that by right belongs to others." (2:188)[1]

3 Our jurisprudence is rife with judgments by our Superior Courts drawing enlightenment and guidance from Islamic injunctions to render their judgments or to strike down confiscatory legislation or executive measures in numerous spheres, including land reforms[2], matrimony[3], inheritance[4], and gifts[5]. Articles 2A and 227 of the Constitution provide the basis for such integration. A full bench of the Supreme Court has held that, faced with competing interpretations of law, the one closer to Islamic injunctions should be followed[6].

4 The instant judgment will be an addition to that list in subjecting the reading and application of section 187-A of the Customs Act to the qualifications and conditions enumerated in the main judgment. Bypassing those qualifications and conditions will render section 187-A a 'sinful legal artifice' on the touchstone of the Quranic verse cited above, for it will deprive innocent citizens of their vehicles by exercising civil forfeiture without fault-based culpability judged after due process, based on best evidence of preserved integrity through proper custody and transmission.

5 The discussion in the main judgment over the primacy of the private property rights and the imperative towards the use of the least restrictive measures proportionate to the objective sought to be achieved, and the principle of fault-based forfeiture,

---

[1] Translation: Muhammad Asad
[2] Qazalbash Waqf vs Chief Land Commissioner, PLD 1990 SC 99
[3] Ambreen Akram vs Asadullah Khan, 2026 SCMR 1
[4] Abrar Hussain vs Mst. Shahida and others, PLD 2026 SC 42
[5] Tanvir Sarfraz Khan vs Federation of Pakistan 2025 SCMR 98
[6] Hamza Rasheed Khan vs Election Appellate Tribunal, PLD 2024 SC 1028

Islamabad High Court

are all findings that fall squarely within the ambit of Islamic injunctions.

6 Therefore, the question of law relating to the scope and validity of section 187-A of the Customs Act is answered that instances of application of section 187-A *sans* the conditions and qualifications recorded in the main judgment would suffer from operational invalidity by contravening Articles 2A and 227 of the Constitution (in addition to other Articles of the Constitution noted in the main judgment).

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Islamabad High Court

Annexure-A

Sr. No.	Number	Titled
01	Custom Reference No.77 of 2023	The Deputy Collector of Customs (Preventive), Islamabad vs. Muhammad Arsalan Azeem & another
02	Custom Reference No.100 of 2023	Shah Wali vs. Customs Appellate Tribunal, Islamabad & others
03	Custom Reference No.214 of 2023	The Collector of Customs, Islamabad vs. Mansoor Hassan & another
04	Custom Reference No.05 of 2024	Noman Qasim vs. Customs Appellate Tribunal, Islamabad & others
05	Custom Reference No.31 of 2024	Directorate of Intelligence & Investigation, Islamabad vs. Muhammad Kashif Qureshi & another
06	Custom Reference No.42 of 2024	Collector of Customs, Islamabad vs. Muhammad Arsalan & others
07	Custom Reference No.61 of 2024	Collector of Customs, Islamabad & another vs. Danish Ghafoor & another
08	Custom Reference No.74 of 2024	Salah-ud-Din Ayubi vs. DG Customs Intelligence and Investigation, Islamabad & others
09	Custom Reference No.07 of 2025	Director General, Directorate of Intelligence and Investigation-Customs, Islamabad & another vs. Syed Areeb Ahmed & another

Islamabad High Court

Table of Contents

Sr. No.	Heading	Page Number
1	**Introductory Details & Parties**	1
2	**Primary Questions of Law & Core Issues**	2
3	**Custom Reference No. 12 of 2022** (Laal Mat Khan vs. Tribunal)	6
4	**Custom Reference No. 77 of 2023** (Customs vs. Arsalan Azeem)	8
5	**Custom Reference No. 100 of 2023** (Shah Wali vs. Tribunal)	9
6	**Custom Reference No. 214 of 2023** (Customs vs. Mansoor Hassan)	11
7	**Custom Reference No. 05 of 2024** (Noman Qasim vs. Tribunal)	12
8	**Custom Reference No. 31 of 2024** (Customs vs. Kashif Qureshi)	14
9	**Custom Reference No. 42 of 2024** (Customs vs. Muhammad Arsalan)	15
10	**Custom Reference No. 61 of 2024** (Customs vs. Danish Ghafoor)	16
11	**Custom Reference No. 74 of 2024** (Salah-ud-Din vs. Customs)	18
12	**Custom Reference No. 07 of 2025** (Customs vs. Syed Areeb Ahmed)	19
13	**Scope of Reference Jurisdiction**	20
14	**The Scope of Section 187A of the Customs Act**	27
15	**Civil Forfeiture and Constitutional Right to Property**	35
16	**The Shifting Burden of Proof**	60
17	**Motor Vehicles Ordinance and Warranties by the State**	73
18	**The Show-Cause Notice and Due Process Requirements**	80
19	**Seizure Cannot be Made on the Basis of Suspicion**	83
20	**Relevance of the Chain of Custody**	85
21	**The Standard of Proof and the Onus of Proof**	92
22	**Disposal and Use of Case Property Pending Adjudication**	100
23	**Legal Analysis Summary & Findings**	124
24	**Direct Answers to Questions of Law**	133
25	**Application of Law to Individual References**	135
26	**Additional Note of Mr. Justice Sardar Ejaz Ishaq Khan**	153
27	**Annexure-A: List of Consolidated References**	156

Islamabad High Court