JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Custom Reference No. 72 OF 2024

Asifa Furqan
Versus
Customs Appellate Tribunal, Islamabad and another.

Petitioner by : **Mr. Sikandar Qazi, Advocate.**

Respondents by : **Malik Nasir Abbas, Advocate for respondent No.1 & 2.**

Date of hearing : **27.04.2026**

MUHAMMAD AZAM KHAN, J. This reference emanates from the Judgment of the learned Customs Appellate Tribunal dated 27.05.2024, wherein the appeal filed by the applicant was dismissed, and the order-in-original dated 13.11.2023 passed by the Collector/Directorate Adjudication was upheld.

2. Learned counsel appearing on behalf of the applicant, in support of the petition, has at the outset assailed the impugned proceedings on jurisdictional grounds. He submits that the Executive Collector lacked lawful authority to adjudicate upon allegations involving fraud or evasion/non-payment of duties and taxes, and, therefore, the assumption of jurisdiction by the said officer was *coram non judice*. According to learned counsel, once the matter is viewed in its correct legal perspective, the allegations, if taken at their highest, disclose no more than a technical infraction of the Import Policy Order, the legal consequence whereof would be confined to permitting re-export of the vehicle in question rather than confiscatory or penal action. He has further contended that the issuance of two separate show cause notices followed by two Orders-in-Original in respect of the same subject matter was manifestly impermissible in law. He submits that such a course was adopted merely to overcome the statutory bar of limitation prescribed under section 179(3) of the Customs Act, 1969, after the initial adjudication proceedings had become time-barred. It is argued that the subsequent proceedings were thus without lawful foundation and

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liable to be struck down on that score alone. Addressing the merits, learned counsel submits that the controversy pertains to two vehicles allegedly imported in violation of the conditions stipulated in the Import Policy Order, 2020, and that the applicant was stated to be ineligible to receive such a gift under Clause 2 thereof. He contends, however, that even assuming a breach of the said provisions, Clause 6 of the Import Policy Order expressly envisages re-export as the appropriate remedy in respect of a vehicle imported contrary to the policy. According to him, the applicant confines her claim only to the release of the vehicle for purposes of re-export and seeks no broader relief. With regard to the factual matrix, learned counsel submits that the learned Tribunal has placed reliance upon an earlier judgment rendered in relation to the vehicle imported at Karachi, wherein it was observed that the applicant had denied importation of the second vehicle and, on that basis, directions had been issued for the release of the first vehicle. He argues that the very documents upon which such alleged denial was founded were forged documents, a circumstance which, according to him, stood noticed by the Federal Investigation Agency in its communication dated 25.07.2023. He submits that this material aspect of the matter was neither examined nor given due consideration by the learned Tribunal while passing the impugned order.

3. In reply, learned counsel appearing on behalf of the Customs Department has opposed the petition and supported the orders impugned. He submits that the contentions advanced by the applicant are misconceived both on facts and in law, and do not warrant interference in constitutional jurisdiction. Learned counsel states that the donor, namely Mr. Asif Rasheed, who is the real brother of the applicant and the person stated to have gifted the vehicle in question, personally appeared before the customs authorities at Karachi on 19.04.2023 and again on 20.04.2023. On both occasions, he is stated to have unequivocally asserted that he had not gifted any second vehicle to the applicant. According to learned counsel, these appearances before the customs authorities were voluntary and contemporaneous, and carry substantial evidentiary value in determining the true factual position. With reference to the affidavit relied upon

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by the applicant before this Court, learned counsel submits that the contents thereof are contrary to the donor's earlier statements made in person before the customs authorities and, therefore, cannot be accepted at face value. He argues that the affidavit is bereft of credibility and does not constitute a truthful disclosure of facts. In these circumstances, learned counsel maintains that no case has been made out for upsetting the impugned orders, which, according to him, are lawful, reasoned and based upon the material available on the record.

4. We have heard the arguments advanced by the learned counsel for the parties and have also perused the impugned judgment as well as the material available on record.

5. The facts, as emerging from the record, are that the appellant is the donee of a vehicle imported under the Gift Scheme in terms of Appendix-E of the Import Policy Order, 2022. The subject vehicle was imported at Islamabad through Goods Declaration No. ICSI-VB-1966 dated 05.04.2023 after completion of the requisite customs formalities. Thereafter, on 14.04.2023, the customs authorities received intimation from the Collectorate of Customs Appraisement (East), Karachi, that another vehicle had earlier been imported under the Gift Scheme at Karachi in the name of the same donee. On the basis of the said information, release of the Islamabad-imported vehicle was withheld on the basis that the import contravened Appendix-E of the Import Policy Order, 2022, which restricts availing the Gift Scheme more than once. Subsequently, a show-cause notice dated 11.07.2023 was issued to the appellant says that you have contravened the provision of Section 16, 17, 32, 79 & 192 of the Customs Act, 1969 read with relevant provision of the Imports and Export Control Act, 1950, Import Policy Order, 2022, Sales Tax Act, 1990, Federal Excise Act, 2005 and Income Tax Ordinance, 2001, followed by an Order-in-Original dated 14.09.2023. Thereafter, a second show cause notice dated 23.10.2023 was issued on the same grounds and cause of action and provision, culminating in Order-in-Original dated 13.11.2023 whereby the vehicle was confiscated and a penalty of

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Rs.500,000/- was imposed. For reference, the operative part of the order-in-original is reproduced as under: -

> *"8. I, therefore, in exercise of powers under Section 179 of the Customs Act, 1969 read with Clause 9 of Section 156(1) ibid order out-right confiscation of impugned "Used Mercedes Benz G63 Model-2018, Chassis No. WDB4632762X310168" imported from United Kingdom vide BL No. SE321994 dated 17.01.2023, filed vide GD No. ICSI-VB-1966 dated 05.04.2023 for violation of Section 16, 32, 79, 192 and 209 of the Customs Act, 1969 read with Ministry of Commerce's O.M No. 1(14)2017-AC(TP) dated 02.09.2021 and Para-1(c) and Proviso to Para 2(1) of Appendix E to Import Policy Order, 2022. A personal penalty of Rs. 500,000/- (Rupee five lac) is imposed on respondent M/s Mehtab Enterprises, Customs Agent with the recommendation to licensing authority suspend his license."*

6. Being dissatisfied therewith, the applicant preferred an appeal under section 194-A of the Customs Act, 1969 before the Appellate Tribunal, which was dismissed vide order dated 27.05.2024, thereafter the present custom reference has been filed before this Court assailing the appellate order dated 27.05.2024. The questions of law framed for our considerations were recorded in order dated 23.07.2024, as follows: -

i. **Whether the impugned order is a judgment passed summarily in perfunctory manner and runs counter to the law laid forth in Section 194-B of the Customs Act, 1969 read with Section 24-A of the General Clauses Act, 1897?**
ii. **Whether the disowned document or import order could be fixated on the petitioner, despite clear denial of the importer/done?**

7. Before adverting further, it would be apposite to observe that jurisdiction under the Customs Act, 1969 is neither inherent nor assumed; it is purely statutory in character and must be traced to an express conferment under the Act. Section 179 of the Customs Act, 1969 constitutes the principal source of adjudicatory competence in matters relating to confiscation of goods, recovery of duties and taxes, imposition of penalty, and other contraventions under the

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Act or the rules framed thereunder. For reference, the Section 179 of the Act is reproduced as under: -

> *"179. Power of adjudication (1) Subject to sub-section (2), in cases involving confiscation of goods or recovery of duty and other taxes not levied, short levied or erroneously refunded, imposition of penalty or any other contravention under this Act or the rules made thereunder, the jurisdiction and powers of the officers of Customs in terms of amount of duties and other taxes involved, excluding the conveyance, shall be as follows, namely:-*
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> | | |
> |---|---|
> | *(i) Collector* | *no limit.* |
> | *(ii) Additional Collector* | *not exceeding three million rupees.* |
> | *(iii) Deputy Collector* | *not exceeding one million rupees.* |
> | *(iv) Assistant Collector* | *not exceeding five hundred thousand rupees.* |
> | *(v) Superintendent* | *not exceeding fifty thousand rupees.* |
> | *(vi) Principal* | *not exceeding fifty thousand rupees.* |
>
> *[Provided that in cases of goods to be exported, the above officers of Customs shall have their jurisdiction and powers in terms of FOB value and twice their respective monetary limit.]*
>
> *(2) Notwithstanding the provisions of sub-section (1), the Board may, by notification in the official Gazette, fix or vary the jurisdiction and powers of any Officer of Customs or a class of officers, and may also assign or transfer [,by an order,] any case to any [Officer] of Customs, irrespective of the territorial jurisdiction."*

8. The plain reading of section 179 of the Customs Act, 1969 makes it evident that officers of Customs may lawfully assume adjudicatory jurisdiction only in relation to matters falling within the categories expressly enumerated therein. These may, broadly stated, be classified as (i) cases involving confiscation of goods or recovery of duty and other taxes not levied, short levied, or erroneously refunded; (ii) cases relating to the imposition of penalty under the Act or the rules framed thereunder; and (iii) cases concerning any other contravention arising under the Customs Act, 1969 or the rules made thereunder.

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9. What is of particular significance is that the scheme embodied in sub-section (1) of section 179 is expressly made subject to modification by the Federal Board of Revenue under sub-section (2) thereof. It was pursuant to this enabling authority that the Federal Board of Revenue issued SRO 797(I)/2021 dated 21.06.2021 (in supersession of SRO 886(I)/2012), whereby the jurisdictional competence of officers serving in the Collectorate of Adjudication was specifically delineated. By virtue of the said notification, certain jurisdictional parameters otherwise flowing from sub-section (1) of section 179 stood varied and regulated in the manner prescribed therein. The relevant provisions of SRO 797(I)/2021 read as follows:—

"GOVERNMENT OF PAKISTAN
(REVENUE DIVISION)
FEDERAL BOARD OF REVENUE
****
NOTIFICATION
Islamabad, the 21st June, 2021
(CUSTOMS)

S.R.O. 797(I)/2021.— In exercise of the powers conferred by section 3 of the Customs Act, 1969 (IV of 1969), read with section 179 thereof and in supersession of its Notification No. S.R.O. 886(I)/2012, dated the 18th July, 2012, the Federal Board of Revenue is pleased to direct that, subject to paragraph 3, the Collector, Collectorate of Customs (Adjudication), specified in column (2) of the Table below shall adjudicate the cases relating to areas falling in the jurisdiction of the Collectorates and Directorates mentioned in column (3) of that Table, namely:—

Sr. No.	Name of Collector Adjudication	Collectorate or Directorate
6.	Collector, Collectorate of Customs (Adjudication), Islamabad	(i) Collectorate of Customs, Islamabad. (ii) ….. (iii) …. (iv) …. (v) …… (vi) ….. (vii) …..

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		(viii) …..

2…..

3. The cases of following categories shall not be adjudicated by the adjudicating officers of Collectorate of Customs (Adjudication), namely:—

(a) cases involving rejection of refund or rebate;

(b) cases involving technical violation of manifest clearance;

(c) cases involving violations of baggage rules;

(d) cases involving technical violations of import or export restrictions without the involvement of any evasion of duty or taxes;

(e) cases involving determination of value under section 25A of the said Act;

(f) cases specifically remanded by superior Courts to the officers of the concerned Collectorates by name or by designation; and

(g) cases involving routine condonations or extensions of time limit or procedural omissions."

10. A careful reading of S.R.O. 797(I)/2021 reveals that the notification establishes a two-tier jurisdictional framework. In the first instance, paragraph 1 confers general adjudicatory jurisdiction upon the Collectors of Customs (Adjudication) in respect of cases arising from the Collectorates and Directorates assigned to them in the Schedule. Thus, as a matter of principle, cases emanating from the territorial or functional formations specified against Collector, Collectorate of Customs (Adjudication), Islamabad, fall to be adjudicated by that forum. However, paragraph 3 of the notification introduces express exceptions to this general allocation of power. It enumerates certain classes of matters which "*shall not be adjudicated*" by the adjudicating officers of the Collectorate of Customs (Adjudication). The language employed is mandatory and exclusionary in character. Consequently, where a case squarely

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falls within any of the categories set out in paragraph 3, the Collectorate of Adjudication is divested of competence, and such matter necessarily remains within the jurisdiction of the officer otherwise competent under the parent statutory scheme contained in section 179(1) of the Customs Act, 1969. Amongst these exclusions, paragraph 3(d) assumes central importance in the present controversy. It excludes from the jurisdiction of the Collectorate of Adjudication "*cases involving technical violations of import or export restrictions without the involvement of any evasion of duty or taxes*." The structure of this clause is significant. It is not enough that a matter concerns import or export restrictions; the violation must also be merely technical in nature, and, additionally, there must be no involvement whatsoever of evasion of duty or taxes. Both conditions must co-exist before the exclusion is attracted. The phrase "technical violations" ordinarily denotes infractions of a procedural, formal or regulatory nature, such as non-compliance with documentation requirements, breach of licensing formalities, lapse of timelines, or other contraventions not tainted by revenue loss, deceit, suppression or fraudulent intent. Such matters, being comparatively minor and regulatory in character, were consciously excluded from the Collectorate of Adjudication and left to the ordinary executive machinery. Equally materials are the words "without the involvement of any evasion of duty or taxes." This qualifying expression narrows the scope of the carve-out. It makes plain that the exclusion under paragraph 3(d) is available only where the case is entirely free from allegations or issues of revenue evasion. The moment a matter discloses substantive allegations that duties or taxes were sought to be evaded, short-paid, unlawfully avoided, or that misdeclaration was employed for such purpose, the statutory condition for exclusion ceases to exist. Put differently, paragraph 3(d) creates a negative test. If there is no allegation of evasion, and the breach is purely technical, the matter stands excluded from adjudication by the Collectorate of Adjudication. Conversely, where allegations of evasion of duty or taxes are present, or where provisions such as sections 32, 32A or 79 of the Customs Act, 1969 are invoked in substance and not merely by recital, the case travels outside

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the paragraph 3(d) exception. In such circumstances, the notification restores the matter to the general rule contained in paragraph 1, namely that adjudication lies before the Collector (Adjudication).

11. This interpretation is consistent with both text and purpose. Notifications allocating jurisdiction must be construed harmoniously so as to give effect to every provision. If paragraph 3(d) were interpreted to include even cases involving allegations of fraud or evasion, the qualifying words "without the involvement of any evasion of duty or taxes" would be rendered otiose. Courts are not to adopt a construction which deprives statutory language of meaning. Every word employed by the rule-making authority is presumed deliberate and must be given operative effect.

12. The evident legislative rationale is also clear. Cases involving fraud, evasion, complex revenue consequences, or penal exposure are of a graver character than mere technical regulatory lapses. Such matters require specialised adjudication through the Collectorate of Customs (Adjudication), which is institutionally designed to undertake formal quasi-judicial determination. By contrast, routine technical violations may appropriately remain with the executive Collector under the ordinary jurisdictional scheme. Therefore, where the Department itself alleges contraventions grounded in sections 32, 32A, 79 or analogous provisions involving misdeclaration, concealment, non-payment or evasion of duty and taxes, it cannot simultaneously contend that the matter is a simple technical violation falling under paragraph 3(d). The Department must elect its legal characterisation. If it pleads evasion, jurisdiction lies with the Collector (Adjudication); if it pleads only a technical breach without revenue implication, then paragraph 3(d) may be engaged. Both positions cannot coexist in the same proceeding.

13. By consciously placing the matter before the Executive Collector, as opposed to the specifically notified Collector of Customs (Adjudication), the Department must be taken to have made a deliberate jurisdictional election that the case fell within the ambit of paragraph 3(d) of S.R.O. 797(I)/2021, namely, a

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technical violation of import restrictions unaccompanied by any element of evasion of duty or taxes. The selection of forum was not an administrative triviality; it was a legal determination as to the true nature and character of the proceedings. This conclusion finds further reinforcement from the operative portion of the impugned Order-in-Original itself, wherein confiscation has been founded essentially upon alleged breach of paragraph 1(c) and the proviso to paragraph 2(1) of Appendix-E to the Import Policy Order. These are policy-based restrictions governing eligibility and entitlement under the Gift Scheme. Their invocation, without any substantive finding of revenue loss, fraudulent suppression, or evasion of fiscal liability, accords with the Department's own treatment of the matter as a regulatory or technical contravention rather than a revenue fraud case. Having thus invoked the jurisdiction of the Executive Collector on the premise that the case was one contemplated by paragraph 3(d), the Department cannot now be permitted to approbate and reprobate in the same breath. It is a settled principle of public law that a statutory authority, having adopted a particular legal position as the basis for assumption of jurisdiction, cannot subsequently resile therefrom merely because the earlier course proves inconvenient or vulnerable to challenge. The State is expected to act with consistency, candour and legal certainty. Forum allocation under S.R.O. 797(I)/2021 is determined at the threshold, that is to say, at the point when proceedings are initiated and jurisdiction is first assumed. Jurisdiction is anterior to merits. It must exist at the commencement of proceedings and cannot be retrospectively created, enlarged or validated by subsequent reasoning, by embellishment in the final order, or by altered arguments advanced during appellate proceedings. If competence was lacking at inception, the defect goes to the root and is incurable.

14. Equally, jurisdiction cannot be allowed to oscillate according to administrative convenience. The Department cannot choose the Executive Collector when expedient, yet seek refuge in allegations of evasion when jurisdiction is questioned. Such shifting stands would undermine the statutory discipline carefully structured by section 179 of the Customs Act, 1969 and

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S.R.O. 797(I)/2021. Jurisdictional notifications are enacted precisely to avoid uncertainty, arbitrariness and forum shopping within the executive hierarchy. The Department's positive and conscious choice of forum, therefore, constitutes a clear admission against interest that no case of evasion of duty or taxes was either available on the record or intended to be pursued in law. Had allegations of evasion genuinely arisen, the matter would necessarily have been instituted before the Collector (Adjudication) in accordance with the governing notification. The contrary course adopted by the Department speaks for itself and materially weakens any subsequent attempt to re-characterize the proceedings as involving fraud or revenue evasion.

15. The objection as to jurisdiction is, in our view, no longer res integra. The matter stands authoritatively considered in *Wali Shah v. Collector of Customs* (2016 PTD 470), wherein Peshawar High Court, after undertaking an elaborate examination of sections 3, 4, 5, 6 and 179 of the Customs Act, 1969 read with S.R.O. 886(I)/2012, held that adjudication undertaken by an officer not vested with lawful jurisdiction is coram non judice and of no legal effect. The Court further reaffirmed the settled principle that where the foundation is void in law, the entire superstructure erected thereon necessarily collapses. In the said judgment, it is further held that: -

> *"The bare reading of SRO 886, inter alia, would reveal that the territorial jurisdiction of the five Collectors of Customs (Adjudication) has been clearly defined. However, the jurisdiction of the said Officers of Customs has been expressly excluded to entertain certain subject matters, stipulated in para-3 thereof, which includes issues relating to technical violation of Import Policy.*
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> *It would be also very pertinent to note that, SRO 886 did not vary the pecuniary limits of the Collector of Customs (Adjudication) and it remained, as expressed in subsection (1) of section 179 of the Act. The Revenue was unable to provide any other order of FBR, varying the pecuniary limits expressed in subsection (1) of section 179 of the Act.*
>
> *Thus, it would be safe to state that, SRO 886 of 2012 determined the territorial jurisdiction of Collector of Customs (Adjudication) and excluded from their jurisdiction cases, expressly mentioned therein, including cases relating to technical violation of Import Policy. The pecuniary limit, expressly provided under sub-section (1) of section 179*

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> *of the Act, was not disturbed and it remained applicable to all Officers of Customs, irrespective of whether they were in the Adjudication Collectorate or other Collectorates, such as Preventive or Intelligence."*

16. Once the very initiation as well as culmination of proceedings stand vitiated by denial of due process and want of lawful authority, the superstructure erected thereupon cannot be permitted to survive in the eyes of law. It is a settled canon of jurisprudence that where the foundation of an action is void, every consequential, incidental or derivative proceeding founded upon such defective basis must also fail. A proceeding born in illegality cannot mature into legality merely by passage through successive forums. The august Supreme Court of Pakistan has repeatedly affirmed that where an order suffers from inherent lack of jurisdiction, or is rendered in breach of the principles of natural justice, the same is void ab initio and all subsequent steps taken pursuant thereto are rendered non est. In *Maulan Atta-Ur-Rehman v. Al-Hajj Sardar Umer Farooq* (PLD 2008 SC 663), the Hon'ble Supreme Court reiterated the established rule that when the basic order is without lawful authority, the entire edifice built thereon collapses automatically. The Hon'ble Supreme Court observed that: -

> *"The petitioner was declared as returned candidate in the unofficial result announced by Election Commission, which is established from the applications filed by respondents Nos. 2 and 3 before the Returning Officer and the order of re-checking/recount passed thereon. On perusal of record, we find that Forms XIV prepared by the respective Presiding Officers on the basis of the counting of votes are in order and no one has raised any objection qua them. Further, Form XVI (consolidation statement of the count of the result) based on Forms XIV prepared by Presiding Officers was duly signed by the Returning Officer on 20-2-2008. Clearly, after having signed the above form, the learned Returning Officer had become functus officio and the withholding of consolidated statement of result by him was not justified on any ground, to say the least that the respondent had filed applications for recount. The proceedings carried out subsequently were coram non judice and void ab initio. In support of the above proposition, reference is made to Ghani-ur-Rehman v. Pir Haider Ali Shah (1997 CLC 1092) wherein it was held that the order of recount of votes of entire constituency passed by the Election Commission after Gazette notification of the successful*

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candidate was void ab initio, without lawful authority and of no legal effect and, therefore, the same was set aside. In Ch. Perwaiz Akhtar v. District Returning Officer (PLD 2006 Lahore 29) it was held that Returning Officer, after consolidating the result for its onward transmission becomes functus officio. In Emmanuel Masih v. The Punjab Local Councils Election Authority and others (1985 SCMR 729) it was held that Election Authority is given extensive power to ensure impartiality, honesty and fairness while the elections were being conducted, but it becomes functus officio after the elections are over and the validity of the elections can be challenged by aggrieved person only through election petition. In the same string are the cases reported as Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), Punjab Workers' Welfare Board Government of Punjab and Human Resources Department, Lahore v. Mehr Din (2007 SCMR 13), Muhammad Tariq Khan v Khawaja Muhammad Jawad Asami (2007 SCMR 818) and All Pakistan Newspapers Society v. Federation of Pakistan and others (PLD 2004 SC 600). The learned High Court has not appreciated the law laid down in the above reported cases. It is well settled that when the basic order is without lawful authority and void ab initio, then the entire superstructure raised thereon falls to the ground automatically as held in Yousaf Ali v. Muhammad Aslam Zia (PLD 1958 SC 104). Reference by the learned counsel for the respondent No.3 to the case of Mehdi Abbas (supra) is of no avail, in that, it was not a case of recount, but Form XVII was revised by the Returning Officer on the direction of the Election Commission due to some error in the count."

17. The same salutary principle has received further recognition from the august Supreme Court of Pakistan in *Muhammad Hanif Abbasi v. Jahangir Khan Tareen* (PLD 2018 SC 114), wherein the Hon'ble Apex Court reaffirmed that no lawful superstructure can be erected upon a foundation which is void ab initio. The Hon'ble Apex Court further observed as under: -

"6. Coming to the question about the vires of Sections 15-A and 15-B of the Ordinance, 1969 as introduced by the Finance Act, 1995 and the argument of the learned counsel for the respondent that being violative of the provisions of Article 70(2) of the Constitution the said sections are void ab initio and non-est, it may be held that the respondent has never challenged the said provisions through any independent proceedings at any stage. No challenge was made when the SECP issued the letter to the respondent, instead he promptly made the payment as demanded by the SECP. Even in the first concise statement filed by the respondent in these proceedings there was no challenge to the sections. It was only in

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the second concise statement that the vires of the law were challenged and at the time of oral submissions, the same was reiterated. We are conscious of the principle that there is no estoppel against law and that the point of law can be allowed to be raised at any stage of the proceeding and no valid structure can be built upon a foundation of the law which is void ab initio. No rights and liabilities can be created on the basis of such law."

18. Likewise, in case *Izhar Alam Farooqi V. Sh. Abdul Sattar Lasi (2008 SCMR 240),* Hon'ble Supreme Court held as under: -

"There can be no exception to the principle that an order passed or an act done by a Court or a tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the Court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings because the jurisdictional defect is not removed by mere conclusion of trial or inquiry and objection to the jurisdiction can be raised at any subsequent stage. This Court in Rashid Ahmed v. State PLD 1972 SC 271 held as under:-

> *"If a mandatory condition for the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any orders passed in continuation of these proceedings in appeal or revision equally suffer from illegality and are without jurisdiction."*

19. Another significant aspect requiring consideration is the manner in which the learned Customs Appellate Tribunal disposed of the appeal. A careful reading of the impugned judgment reveals that the Tribunal did not undertake an independent adjudication of the issues raised before it, nor did it record its own reasons upon the factual or legal controversies involved. Instead, it substantially relied upon and reproduced findings from a judgment rendered by the Karachi Bench, and thereafter proceeded to conclude the matter in a brief concluding paragraph. A more detailed examination of paragraph 12 of the impugned judgment discloses that the Tribunal reproduced, almost verbatim, a substantial portion of the decision of the Karachi Bench rendered in Customs Appeal No. K-1147/2023 dated 30.08.2023. This reproduction was not accompanied by any independent analysis as to whether the factual matrix of the present case was

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identical or even comparable to that considered by the other Bench. Nor does the judgment reflect any evaluative exercise undertaken by the Tribunal in relation to the evidence or arguments specific to the present appeal. The judgment thereafter concludes, in a cursory manner, that no irregularity or infirmity is found in the impugned adjudication order and that the same is well-reasoned, resulting in dismissal of the appeal. This conclusion is recorded without any independent reasoning and without addressing the specific legal and factual grounds urged by the appellant. Section 194 of the Customs Act, 1969 vests the Customs Appellate Tribunal with appellate jurisdiction coupled with the duty to act as a final fact-finding forum within the statutory hierarchy. The Tribunal is under a legal obligation to independently evaluate the record, examine the grounds of appeal, and render its own findings both on facts and law. This function is quasi-judicial in character and requires application of mind to the issues in controversy, not mere affirmation of findings recorded elsewhere. Mechanical reliance upon an earlier judgment of another Bench, without independent scrutiny of the record before the Tribunal, amounts in substance to abdication of jurisdiction. It is well-settled that a judicial or quasi-judicial authority must decide matters on the basis of the record before it and the arguments addressed in that particular case. Borrowing conclusions from an unrelated or parallel matter, without demonstrating factual identity or legal applicability, falls short of the standard of reasoned adjudication required under law. The principle governing the requirement of independent judicial application of mind by appellate forums has been reaffirmed in *Commissioner Inland Revenue v. Muhammad Zubair Alamgir* (2025 PTD 569), wherein the learned Court set aside an order of the Appellate Tribunal on the ground that it had been passed in a mechanical manner without due consideration of the facts, issues, and applicable law. The Court held that mere reliance upon an earlier decision, without undertaking an independent appraisal of the record or demonstrating factual and legal parity, amounts to an abdication of jurisdiction and renders the decision devoid of lawful reasoning. For facility of reference, the operative part of the judgment is reproduced as under: -

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"5. Learned counsel submits that Tribunal fail to consider the applicability and scope various provisions of Income Tax Ordinance, 2001 in the context of the gains bagged through sale of properties. Learned counsel referred to paragraph 9 of the order to emphasize that Tribunal, in fact, abdicated its jurisdiction and allowed appeal simplicitor while referring to its earlier order without extending reasons to establish alleged similarity of facts / causes. For facility, operative part of paragraph 9 of the order is reproduced hereunder,

> *"We have heard the rival arguments and perused the case record and are of the considered opinion that the ATIR has already decided the same issue of two member of AOP through a very well-reasoned and speaking order, therefore, we do not find any plausible reason to differ with the earlier decision in ITA No.374/LB/2012 dated 04.06.2012 therefore, we dismiss the departmental appeal, being devoid of merit."*

6. Order is devoid of plausible reasoning and patently ambiguous. No explanation is found to understand the meaning or rational of the expression "two members of AOP". Evidently, effect of various provisions of law, in the context of allegations was not dilated upon, let alone considered. Tribunal was required to consider the scope of various sections of the Ordinance. Fair and proper adjudication of matter in issue is missing, hence, we are constrained to allow this reference application, set aside the order of the Tribunal and remand the matter for decision afresh on the Appeal of the taxpayer."

20. The ratio of Muhammad Zubair Alamgir is directly applicable to the present case. The learned Customs Appellate Tribunal, instead of independently evaluating the grounds of appeal raised by the appellant, merely reproduced substantial portions of an earlier decision of another Bench and, on that basis alone, affirmed the findings of the adjudicating authority. No effort was made to demonstrate that the factual matrix was identical, nor was there any analytical engagement with the statutory provisions invoked or the legal objections raised before it.

21. At this stage, where it stands demonstrated that the entire superstructure of the case rests upon proceedings that are themselves coram non judice, it becomes necessary to examine the matter in its correct legal perspective, particularly the Department's reliance upon the so-called "technical violation of Import Policy Order". Sections 32 and 32-A of the Customs Act, 1969 constitute

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the substantive penal provisions dealing with false statements and fiscal fraud. Section 32 is attracted only where a declaration or statement is made "knowing or having reason to believe" that it is false in a material particular. Section 32-A, on the other hand, is engaged in cases involving forged, fabricated, altered, tampered or counterfeit documents, or other acts of deliberate fiscal deception designed to evade duty or obstruct lawful assessment. The statutory scheme thus clearly predicates liability on the existence of intentional falsity, fabrication, or fraudulent evasion of revenue. Tested against these legal thresholds, the Department's own record does not disclose the foundational ingredients of either provision. The donor's passport (No. GBR 564296670) is undisputedly genuine. The Pakistan Origin Card is authentic. The donor, Mr. Asif Rashid, is an identifiable natural person who physically appeared before the customs authorities on 19.04.2023 and 20.04.2023 and made statements on record. The Bill of Lading is an authentic shipping document. The Goods Declaration reflects accurate particulars of the vehicle, including chassis number, engine capacity, model year, and origin. The vehicle itself is a real, identifiable Mercedes Benz G63, physically imported into Pakistan. The gravamen of the Department's allegation is not fabrication or falsification of documents, but rather that the same set of genuine donor documents was utilised in two separate Goods Declarations. Even if accepted at face value, such assertion describes duplication of use of authentic documents, not their falsification, alteration, or forgery. Genuine documents do not metamorphose into "forged" or "fake" instruments merely by reason of alleged multiple use in administrative transactions. The statutory language of sections 32 and 32-A admits of no such expansion by implication. Equally significant is the absence of any established element of revenue evasion. The record reflects that duties and taxes in respect of the vehicle were duly discharged through banking channels via foreign exchange remittance in terms of the applicable policy framework under Appendix-E. Where duty has been lawfully paid at the import stage, the essential mischief targeted by section 32, namely, evasion or short-levy of revenue, is, on its own terms, not attracted.

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22. The Order-in-Original, upon close examination, does not record any independent finding identifying which document was false, what statement was fraudulent, what tax was evaded, or what specific act of connivance satisfies the statutory thresholds of sections 32 or 32-A. Instead, it merely reiterates the allegation of "connivance" in general terms without correlating it to the essential legal ingredients of the invoked provisions. It is well-settled that mere reproduction of allegations or statutory provisions cannot substitute for reasoned findings grounded in evidence. In this backdrop, the controversy properly resolves itself into a question of alleged technical non-compliance with Appendix-E of the Import Policy Order, 2022, rather than any case of fraud or fiscal evasion. This position is further reinforced by the Department's own selection of forum under S.R.O. 797(I)/2021, which, as already noted, corresponds to paragraph 3(d) dealing with technical violations of import restrictions without involvement of evasion of duty or taxes. It is therefore necessary to turn to paragraph 6 of Appendix-E to the Import Policy Order, 2022, which governs the consequences of contravention and the availability of re-export. The provision reads as follows: -

> *"6. Permission to re-export the vehicles brought in contravention of this Order.— Where a vehicle is brought into Pakistan by a Pakistani national in contravention of this Order, he may be permitted to re-export such vehicle:*
>
> *Provided that where the importer brings stolen vehicle, chassis tampered vehicles or having fake and forged documents, he shall in addition to the confiscation of the vehicle, be liable to such other penalty as may be imposed under any other law for the time being in force. Re-export facility shall also not be available for such vehicles:*
>
> *Provided further that in case Pakistani national after importing a vehicle, is unable to release his vehicle due to high tariff or other reasons, re-export of such vehicle shall be allowed by the Federal Board of Revenue, if there were no contravention of the Import Policy Order during import stage."*

23. A plain reading of the provision makes it evident that the legislative and policy intent is to permit re-export as the default remedial mechanism in cases of

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import contravention. The opening clause is couched in permissive terms and expressly contemplates re-export even where a contravention has occurred. The denial of such facility is confined strictly to the circumstances enumerated in the first proviso. The first proviso carves out three narrowly defined exceptions: (i) stolen vehicles; (ii) chassis-tampered vehicles; and (iii) vehicles imported on fake and forged documents. These exceptions are penal in nature and, by settled principle of interpretation, must be construed strictly. Their application cannot be extended by analogy or inference. None of these disqualifying conditions is satisfied in the present case. There is no allegation, much less any finding, that the vehicle is stolen. The chassis number remains intact and unchallenged. As already demonstrated, the documents relied upon by the Department are genuine instruments issued by competent authorities. Consequently, the threshold requirement of "fake and forged documents", in its legal sense, is not met. The expression "fake and forged" is a composite and technical formulation. It denotes documents that are fabricated or falsified in substance or origin. It does not extend to situations where genuine documents are allegedly misused or relied upon in multiple transactions. To construe otherwise would impermissibly expand the scope of a penal exclusion and defeat the settled principle that such provisions must be narrowly interpreted. The second proviso further clarifies that re-export remains available even where import has occurred under non-contravening circumstances but clearance is impeded for other reasons. This reinforces the central legislative intent that re-export is a facilitative remedy rather than an exceptional indulgence.

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24. In view of the foregoing, the case falls squarely within the main body of paragraph 6 of Appendix-E, which entitles the importer to re-export in cases of contravention not falling within the exceptions. The first proviso is inapplicable, and consequently the denial of re-export by the authorities is without lawful foundation. As a necessary corollary, once re-export is permissible under the governing policy, the appellant becomes entitled to restitution of duties and taxes paid at the time of importation. The Customs regime, as a matter of principle, does not envisage retention of revenue where the import transaction is

reversed through lawful re-export. To hold otherwise would result in unjust enrichment of the State and would be inconsistent with the statutory and policy architecture governing the Gift Scheme. We are, therefore, satisfied that the present case does not involve fraud, falsification, or fiscal evasion under sections 32 or 32-A of the Customs Act, 1969, and is instead confined to a technical policy infraction squarely covered by paragraph 6 of Appendix-E, entitling the appellant to re-export and consequential reliefs in accordance with law.

25. In view of the foregoing discussion, we find that the entire proceedings culminating in the Order-in-Original dated 13.11.2023, as well as the appellate judgment dated 27.05.2024, are vitiated at their very inception for want of lawful jurisdiction, the foundational assumption of authority by the Executive Collector being contrary to the statutory scheme of section 179 of the Customs Act, 1969 read with S.R.O. 797(I)/2021. Once the initiation itself is found to be coram non judice, every consequential step, finding, and order built thereupon necessarily falls to the ground, as no valid superstructure can be sustained upon a void foundation. The learned Customs Appellate Tribunal, having failed to correct this jurisdictional infirmity and having disposed of the matter without independent judicial appraisal of the record, further compounded the illegality. Accordingly, both the impugned orders are set aside, being without lawful authority and of no legal effect, and it is declared that the proceedings were incompetent *ab initio* and *non est* in the eyes of the law.

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(INAAM AMEEN MINHAS)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of May, 2026.

JUDGE **JUDGE**

Sajid

APPROVED FOR REPORTING

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