Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Custom Reference No. 29 of 2025

The Collector of Customs
Vs.
Aurangzeb and others

APPLICANTS BY: Raja Zubair Hussain Jarral, Advocate in Custom Reference No.29 of 2025.
Ms. Shazia Bilal, Advocate in Custom Reference No.30 and 31 of 2025.
Barrister Ahsan Jamal Pirzada, Barrister Khizar Hayat Khan and Ch. Muhammad Anas, Advocates in Custom References No. 34 of 2025.
Mr. M.D Shahzad, Advocate in Custom Reference No.46, 51 and 73 of 2025.
Barrister Raja Abdul Qadeer and Mr. Muhammad Fiaz Kandowal, Advocates in Custom Reference No.52, 53, 54 and 55 of 2025.
Barrister Abdullah Manik and Barrister Muhammad Mumtaz Ali, Advocates in Custom Reference No. 74, 77, 80, 81, 90 and 97 of 2025.
Mr. Noman A. Farooqi, Advocate in Custom References No. 99, 100 & 101 of 2025 and 02 of 2026.

RESPONDENTS BY: M/s Fawad Haider and Ghufran Manzoor, Advocates for respondent No.1 in Custom Reference No. 46 of 2025
M/s Tauqeer Akram, Zargham Dil Khan and Raja Qaiser Pervez, Advocates for respondents in Custom Reference No. 29, 30, 31, 51, 73, 80 and 81 of 2025.
Mr. Fahad Khan, Advocate for the respondent in Custom Reference No. 54 of 2025
Mr. Manzoor Zaman, Advocate in Custom Reference No. 97/2025.
Mr. Zahoor Ahmed Mughal and Mr. Ibrar Hussain Kazmi Advocates for respondents in Custom Reference No. 53 and 77 of 2025.

DATE OF HEARING: 03.02.2026.
========== =======

Islamabad High Court

BABAR SATTAR, J.- Through this judgement we will decide the above titled reference as well as the references listed in Annex-A, as they involve common questions of law, which, as framed in the references before us are innumerable, but can be summarized as follows:

i. Whether a vehicle used wholly and exclusively for the purpose of removing smuggled goods could be released in view of SRO No.499 (I)/2009 dated 13.06.2009 **("SRO 499")**, further amended by SRO No.1619 (I)/2024 dated 03.10.2024 **("SRO 1619")**?

ii. Whether the Tribunal misconstrued the scope and applicability of SRO 499, and SRO 1619 by permitting release of the offending vehicle on payment of redemption fine despite the statutory bar on such release in cases involving exclusive use of vehicle for removing smuggled goods?

iii. Whether in light of section 187 of the Customs Act, 1969 **("Act")**, the burden of proving lawful authority to transport goods lay upon the person from whose possession the smuggled goods were recovered, and whether in the absence of such proof the offending vehicle was liable to outright confiscation?

2. In all of these references, the Collector has challenged the orders of the Customs Appellate Tribunal **("Tribunal")** ordering the release of vehicles with or without payment of redemption fine. As a large number of lawyers appeared in these references, which were heard together, we will summarise the arguments made on behalf of the learned counsels for the Customs Department and by the learned counsels for the respondents, instead of repeating the arguments of individual counsels in the interest of economy.

3. It was submitted by the learned counsels appearing on behalf of Collector Customs that the penalty of confiscation arises out of quasi-judicial proceedings initiated under provisions of the

Islamabad High Court

Customs Act, which are distinct from a criminal trial administered by the Special Judge under section 185 of the Act, and the imposition of the penalty of confiscation as a consequence of adjudicatory proceedings does not require a specific finding on *mens rea*, which finding is only required in a criminal trial. It was submitted that the penalty of confiscation of vehicles imposed in terms of section 157(2) read with clauses (89) and (90) of section 156(1) of the Act is a case of absolute statutory liability, and being a penalty in the nature of strict liability it requires no proof of *mens rea*. It was then submitted that while the imposition of penalty did not require the Customs Department to establish knowledge on part of the owner of goods or vehicle, it was for such owner to discharge the onus of proof and establish that he/she had lawful authority to possess the goods-in-question in terms of section 187 of the Customs Act. The argument that the person in possession of smuggled goods was unaware or did not have actual knowledge that such goods were smuggled could not function as an excuse as ignorance of law and/or facts is not a valid justification to escape liability where one is found in possession of proscribed goods. Similarly, the argument that the goods of foreign origin were available in the local market was also not a valid excuse or justification when it came to the possession and/or removal of smuggled goods. It was submitted that once the Federal Board of Revenue **("FBR")** had issued an SRO in exercise of authority under the first proviso to section 181 of the Act, no adjudicatory authority under provisions of the Act was vested with jurisdiction to release a conveyance used wholly or exclusively for transportation of smuggled goods, by imposing redemption fine in lieu of confiscation of such vehicle, as the words "liable to confiscation"

Islamabad High Court

used in sections 157 and 181 of the Act were mandatory in operation. It was submitted that the owner of a public transport vehicle or cargo carrier could not assume the role of a passive bystander, as such owner is under a statutory duty to account for the goods being transported in the vehicle, and feigning ignorance as to the nature of the goods does not constitute lawful excuse or lawful authority for purposes of discharging onus of proof under section 187 of the Act. It was submitted that the question of whether a vehicle was used wholly and exclusively for transportation of smuggled goods was a question of fact to be determined objectively without undertaking an enquiry into whether there existed corresponding guilty intent. It was emphasised that in the cases at hand the penalty was to be imposed on the basis of strict statutory liability where intent was irrelevant. The act of transporting proscribed goods was sufficient for attracting the penalty of confiscation of the vehicle being used wholly and exclusively for transportation of such goods, which confiscation was mandatory and the penalty could not be mitigated by ordering its release on payment of redemption fine in lieu of confiscation, as the FBR had exercised its authority under section 181 of the Act to oust the exercise of such discretion. In support of these arguments, the learned counsels for the Customs Department relied on ***Pakistan v. Hardcastle Woud (Pakistan) Ltd. (PLD 1967 SC 01)***, ***State v. Banda Gul (1993 SCMR 311)***, ***M/s Iram Ghee Mills (Pvt.) Ltd. V. Customs, Central Excise and Sales Tax (Appellate) Tribunal, Karachi (2004 PTD 559)***, ***Collector of Customs, Peshwar v. Wali Khan (2017 SCMR 585)***, ***Bashir Ahmed v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar (2025 SCMR***

Islamabad High Court

684) and ***Director, Intelligence & Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq etc. (Civil Petitions No.2853 & 2854 of 2025)***.

4. Learned counsels for the respondents raised questions about the maintainability of the references while contending that no questions of law arose therefrom. It was submitted that it had not been argued before the Tribunal that, in terms of section 157 read with section 181 of the Act and the notifications issued by the FBR, there existed an express prohibition against the release of the impugned vehicles. It was argued that the Tribunal's findings were in the nature of findings of fact that ought not to be disturbed by this Court in its reference jurisdiction, as it is settled law that the Tribunal is the last fact-finding forum within the adjudicatory hierarchy provided under provisions of the Act. It was submitted that the phrase *"liable to confiscation"* as used in section 157 of the Act, did not mean express prohibition and did not constitute a mandatory requirement to confiscate the vehicle-in-question. It was argued that the Tribunal had correctly held that the term 'liable to confiscation' did not mean mandatory confiscation. It was further submitted that where the alleged goods that were deemed to be smuggled were not subject to mandatory confiscation, the vehicle removing or transporting such goods could also not be subjected to mandatory confiscation, as such penalty would be hit by the doctrine of proportionality. It was submitted that in view of the law laid down by the Sindh High Court in ***M/s Kamran Industries v. Collector of Customs (Exports), Customs House, Karachi (PLD 1996 Karachi 68)***, the ultimate burden to discharge the legal onus of proof that a vehicle owner was liable for transporting proscribed goods lay with the Customs Department,

Islamabad High Court

and such onus had to be discharged on the basis of some material on the record and not on the basis of bald assertions.

5. It was contended on behalf of the vehicle owners that transporters could not be burdened with the liability of acting as customs clearing agents, and where appropriate documentation for purchase of goods was provided to a public transport carrier, and the transport carrier had discharged its duty to enquire about the goods, such public transport owner had lawful excuse to transport the goods, in terms of clauses (89) and (90) of section 156(1) of the Act, and the onus to prove wrongdoing shifted to the Customs Department. It was submitted that the penalty of confiscation acted as an infringement on the right to property guaranteed by Articles 23 and 24 of the Constitution, and such penalty, which fettered the fundamental right of a person to property, could only be imposed where *mens rea* had been established by the Customs Department. The penalty of confiscation could not be treated as strict statutory liability, as such reading would render the statutory provision ultra vires the Constitution, and such penalty without any finding of wrongdoing would be an unreasonable constraint on the fundamental rights of citizens, and would be disproportionate to the alleged wrong. It was submitted that SROs 499 and 1619, if applied in isolation, would fall foul of requirements of due process, fair trial and natural justice guaranteed by Article 10A of the Constitution. The requirements of Article 10A were therefore to be read into provisions of the Customs Act and no penalty of confiscation would be imposed in a mechanical and premeditated fashion. The offence of smuggling was defined in Section 2(s) of the Act and required proof of wrongdoing on part of the person accused of smuggling. And to the extent that a transport owner

Islamabad High Court

removing or transporting smuggled goods was seen as aiding and abetting a person involved in smuggling, the existence of *mens rea* on part of such person required to be established, failing which aiding and abetting would become a stricter offence than that of smuggling. Learned counsel for the respondents relied on the law laid down by the Supreme Court in ***Collector Customs, Model Customs Collectorate, Peshawar v. Muhammad Ismail (2023 SCMR 1319)*** to argue that the principle of natural justice was attracted where the same had not been excluded and consequently the vehicle owners had a right to be heard, without which no penalty of confiscation of the vehicle could be imposed. Likewise, a collective reading of sections 2(s), 156, 157 and 168 of the Act read with Article 10A of the Constitution suggested that confiscation of a vehicle could not be mechanical or premeditated and a vehicle was only liable to confiscation where wrongdoing had been established on part of the vehicle owner. It was submitted that the cases relied on by the Customs Department to argue that the penalty of confiscation of a vehicle was in the nature of strict statutory liability were distinguishable, as the cases related to mis-declaration of goods dealt with under section 32 of the Act and not in relation to the offence of smuggling in terms of clauses (9), (89) and (90) of Section 156(1) of the Act. It was submitted that the Supreme Court had held in ***Collector of Customs v. S. M. Yousuf (1973 SCMR 411)*** that private property was only liable to confiscation where the liability of the owner stood established. It was further submitted that the jurisprudence that had evolved in relation to the Control of Narcotic Substances Act, 1997, also suggested that it was only where drugs were found to have been hidden in secret cavities that the vehicles were confiscated and not

Islamabad High Court

otherwise. In a nutshell, the arguments of the learned counsel for the respondents emphasized that the offence of smuggling was penal in nature, and where confiscation was undertaken on account of possession or transportation of smuggled goods, the ingredients of the offence, including liability on the part of the offender, must first be established before any penalty can be imposed.

6. Let us first consider the cases cited by the learned counsels for the Customs Department for the proposition that offences defined in clauses (89) and (90) of section 156(1) of the Act were in the nature of strict liability offences and confiscation of vehicles found carrying smuggled goods were mandatory in terms of SRO 499 and SRO 1619.

7. The Customs Department relied on the law laid down by the Supreme Court in ***Pakistan v. Hardcastle Waud (Pakistan) Ltd. and others (PLD 1967 SC 1)***. The facts of the case were that the respondent had imported lubricating oil from Japan. It however transpired that out of 21 cases indented for the respondent, only 12 cases contained lubricating oil and the remaining 9 cases had fountain pens packed in them. Similarly, in a second consignment, 33 cases were found to have lubricating oil while 9 cases were filled with press buttons and 20 cases contained silk fabric. The Supreme Court rendered a 2-1 majority judgement. On merits, there was no difference of opinion between the Members of the Bench as the majority judgement and the minority judgement both concluded that the respondents were liable for fraud. The majority judgement noted that the Collector *"need not have stated in so many words that the false statements were made in the relevant documents, consciously and deliberately, by the respondents. It is sufficient if the Collector recorded findings of fact, from which such an*

Islamabad High Court

inference necessarily followed." In ***Hardcastle*** the Supreme Court was dealing with section 167(37-B) of the Sea Customs Act, 1878, which is akin to clause (45) of section 156(1) of the Act. The Supreme Court rejected the contention that *mens rea* was required to be proved before imposing penalty in terms of clause 37-B of section 167 of the Sea Customs Act, 1878. The Supreme Court while construing the language of the said provision noted that, *"the only condition of the attachment of this liability is that it should have been found as a fact that the goods not declared to the Customs authorities were concealed or mixed with goods so declared. There are no words in this item which could justify placing it on a par with section 39 of the Act which requires that an oral or written statement in a document should be 'untrue' and not merely false. It is also significant that apart from the penalty of confiscation, a personal penalty, imposable under item 37-B, cannot exceed Rs.1,000. This contrasts with the penalty imposable under item 9-B, which can be three times the value of goods, if that be in excess of Rs.1,000. This fact also supports the inference derivable from the language of item 37-B, that the legislature intended this to be a case of absolute liability, for which no mental ingredients need be proved."* In holding so, the Supreme Court took into account the statutory text used to define the offence, as well as the proportionality of the punishment imposed. In his minority opinion, Justice Hamood-ur-Rehman noted that, *"even in the case of a statutory offence the presumption is that mens rea is an essential ingredient unless the statute creating the offence, by expressed terms or by necessary implication, rules it out. The mere omission of the 'word knowingly' or 'intentionally' is not sufficient to rebut this presumption, for all that such words do is to say*

Islamabad High Court

expressly what is normally implied. Thus, where the words used in the statute are not clear or unambiguous, an examination of the general scheme and object of the statute becomes necessary to determine whether the general rule of liability has been departed from." He went on to note that, *"I am, therefore, unable to agree that this item creates an offence of absolute liability so as to make an importer vicariously liable even for something done by another without his knowledge or consent."* On merits, however, Justice Hamood-ur-Rehman noted that, *"even applying the principle enunciated … I find that there is enough material on the record to justify the conclusion that the element of mens rea was also present."* The Supreme Court in ***Hardcastle***, therefore, did not undermine the general rule that *mens rea* ought to be established before finding a defendant guilty of an offence and imposing penalty on him/her, and strict liability is an exception to this rule. Similarly, it laid down no general principle that all offences defined under the Customs Act are strict liability offences that require no proof of *mens rea*.

8. The next case cited before us by the applicants is ***Messrs Iram Ghee Mills (Pvt.) Ltd. v. Customs, Central Excise and Sales Tax (Appellate) Tribunal, Karachi*** ***(2004 PTD 559)*** where the Sindh High Court, while relying on ***Hardcastle***, found that the liabilities provided in clause (14) of Section 156(1) of the Act were independent of the fiscal measures provided under Section 32 of the Act, and that the offence under clause (9) of Section 156(1) of the Act was a strict liability offence that did not require proof of *mens rea.* We note that the references before us relate to the offences defined under Clauses (89) and (90) of Section 156(1) of the Act in relation to which no opinion was

Islamabad High Court

rendered by the Sindh High Court in ***Iram Ghee Mills***. As a general matter of law, the Sindh High Court noted that, *"sub-section (1) of section 32 defines the offence of mis-declaration/misstatement in connection with the matter of customs and an offence is always quasi-criminal/criminal in nature. For establishing an offence which is quasi-criminal/criminal in nature, the presence of guilty intent/mens rea is required to be established until and unless there is a case of absolute statutory liability where no mens rea is required to be proved."* We are in agreement with these observations. We have, however, with respect, been unable to bring ourselves to agree with certain other observations in the Sindh High Court's judgement where it drew a distinction between the need to establish *mens rea* for purpose of conviction by a Special Judge, and the absence of such need where a penalty was imposed as a consequence of adjudicatory proceedings. As was explained by this Court in ***Lal Mat Khan & another v. Customs Appellate Tribunal (Customs Reference No. 12 of 2022)*** decided by judgment dated 17.03.2026, while construing the intent of the legislature, that a Court must look to the text used to define the offence. The scheme of offences defined under section 156(1) of the Act is such that the definition of an offence (and therefore the constituent elements constituting an offence) remains the same, whether the penalty that flows as a consequence of establishment of liability is a product of adjudicatory proceedings or the outcome of prosecution before a Special Judge. The question of the penalty being in the nature of confiscation of property/financial penalty, or in the nature of jail term, is not relevant for purposes of determining whether the constituent elements of the offence include establishment of intent and/or

Islamabad High Court

recklessness, as the case may be. This is because the question of penalty only arises after the constituent elements of an offense are made out and liability for such offence is thus established. The Sindh High Court in ***Iram Ghee Mills*** also noted that clause (9) of section 156(1) was an offence of *"absolute statutory liability as held by the Hon'ble Supreme Court in the case of* ***Hardcastle****".* We must also note that in ***Hardcastle*** the question of interpretation of clause (9) of Section 156(1) of the Act, or a *pari materia* clause under the Sea Customs Act, was not before the Supreme Court.

9. The Customs Department then cited the ***State v. Banda Gul and 2 others*** ***(1993 SCMR 311)***, where the Supreme Court set aside the judgement of the High Court and remanded the matters back to the trial Court for a decision afresh. In the said matter, the driver of the truck had disappeared when the truck was seized and the High Court had set aside the penalty on the basis that there was no evidence to attribute knowledge of smuggling of the goods on the accused. The Supreme Court noted that the observations of the High Court had been made *"in oblivion of the provisions of section 156(90) and 187 of the Customs Act, under which burden of proof lay on the accused. It was, therefore, for the latter to have proved that they were unaware that prohibited goods were being smuggled."* This case does not help the Customs case as the Supreme Court clearly acknowledged that an offence under clause (90) of section 156(1) of the Act provided for a defence to the accused. The matter was decided by the Supreme Court on the basis that the accused had failed to discharge his burden of proof.

10. The next case cited before us was ***Collector of Customs v. Wali Khan*** ***(2017 SCMR 585)***. This case also turned on the question of burden of proof, with the Supreme Court observing that

Islamabad High Court

the initial burden rested upon the person accused of an offence under clauses (89) and (90) of section 156(1) of the Customs Act. With regard to the scope of authority under section 181 of the Customs Act, the Supreme Court noted that, *"section 181 of the Customs Act allows an officer passing an order for confiscation of goods to give the owner of the goods an option to pay a fine in lieu of such confiscation. However, according to the first proviso to section 181, the Board may by an order specify the goods or class of goods where such option shall not be given."* The Supreme Court went on to hold that where the FBR had issued an SRO providing that no option to pay fine in lieu of confiscation was to be given in respect of certain goods, the imposition of redemption fine was in violation of section 181 of the Customs Act, read with the relevant SRO.

11. The next case cited before us was ***Bashir Ahmed v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar*** ***(2025 SCMR 684)*** wherein the Supreme Court enumerated the scope of authority vested in the FBR under section 181 of the Act. In this case the vehicle seized was a Hino LPG Gas Bowser, which was designed for exclusive transportation of LPG gas. It was seized as it was found transporting foreign origin betel nuts. The Supreme Court agreed with the finding of the Collector that the vehicle was being used exclusively to carry smuggled goods covered under section 2(s) of the Act. In relation to section 181 of the Act, the Supreme Court noted that, *"when the Board has exercised its power and has issued an order, then the Tribunal is bereft of jurisdiction to order the release of such goods or class of goods by giving an option under section 181 of the Act."* In ***Bashir Ahmed***, the Supreme

Islamabad High Court

Court reiterated the law previously laid down in ***Wali Khan*** that once an accused was found liable for an offence under section 156(1) of the Act, and the FBR had exercised authority in terms of section 181 of the Customs Act stating that no option was to be given to the accused to pay a fine in lieu of confiscation of the goods in question, the adjudicatory authorities were vested with no discretion to afford the accused the option to pay a fine.

12. The next case cited before us was ***Director, Intelligence and Investigation (Customs) v. Mohammad Ishaq (Civil Petition No. 2853 of 2025)*** decided by judgment dated 29.10.2025. The question before the Supreme Court was whether a lawfully registered conveyance exclusively found carrying smuggled goods could be released on payment of redemption fine under section 181 of the Act, read with SROs 499 and 1619. While relying on the law laid down in ***Bashir Ahmed***, the Supreme Court noted that, *"upon the promulgation of SRO, 2009 [SRO 499], the Board acting under the first proviso to section 181 of the Act divested itself of the authority to grant an option of fine in lieu of confiscation in respect of conveyances employed for the transportation of smuggled or non-custom-paid goods. The said SRO, 2009 unequivocally withdrew the discretion of the adjudicating officer by declaring that no such option shall be extended in cases of (a) smuggled goods falling under clause (s) of section 2 of the Act, and (b) lawfully registered conveyances found used wholly or exclusively for the carriage of offending goods in false cavities. It then cited SRO 1619 and went on to hold that in view of such SRO, the adjudicating fora, including the Board itself, have had no lawful competence to order release of any conveyance used for the transportation of smuggled goods against payment of*

Islamabad High Court

fine, and confiscation in such circumstances is mandatory in law. The judgment of this Court in Bashir Ahmad (supra) thus affirms and reinforces the binding operation of SRO, 2009 in all pending as well as future proceedings." The Supreme Court also noted that, *"treating the words 'liable to confiscation' occurring in section 157(2) as a matter of discretion, was misconceived and contrary to the clear mandate of the Act as reinforced by the binding precedent of this Court in Bashir Ahmed."*

13. In relation to the law laid down by the Supreme Court in ***Bashir Ahmed*** and ***Mohammad Ishaq***, let us note that it was never argued before the Supreme Court that clause (b) of SRO 499 and clause (ba) of SRO 1619 (through which vehicles found "carrying smuggled goods" were held liable to mandatory confiscation) were in conflict with clauses (89) and (90) of section 156(1) read with section 157(2) of the Act. The Supreme Court therefore had no occasion to render a finding on the issue of scope of seizure prescribed in section 157(2) of the Customs Act being limited to vehicles and conveyances used to "remove" proscribed goods, as opposed to vehicles "carrying" proscribed goods, as prescribed by SROs 499 and 1619. The second important point to note is that neither ***Bashir Ahmed*** nor ***Mohammad Ishaq*** held that the offences in clauses (89) and (90) of section 156(1) of the Act were strict liability offences or that there was no need for the Customs Department to establish intent or recklessness as a constituent element of the said offences prior to imposition of penalty. The ratio of ***Bashir Ahmed*** and ***Muhammed Ishaq***, in our respectful opinion, therefore, is that where an offence is made out in terms of clauses (89) and (90) of section 156(1) of the Act, the adjudicatory authorities are devoid of any discretion to offer

Islamabad High Court

the accused the right to pay a redemption fine as penalty in lieu of the penalty of confiscation of goods/vehicles prescribed by SROs 499 and 1619.

14. We will now consider the questions raised before us with regard to SROs 499 and 1619 creating a penalty of confiscation for vehicles found "carrying" smuggled goods, being contrary to and in excess of the extent of confiscation provided for in section 157(2) of the Act. And whether establishment of intent and/or recklessness is a mandatory requirement under clauses (89) and (90) of section 156(1) of the Act before finding an accused guilty of the offences defined under such provisions, with such finding of wrongdoing being a prerequisite for the imposition of penalty for such offences.

Scope of the confiscatory provision in Section 157(2)

15. Let us reproduce the statutory provisions, in relevant part, for convenience:

> ***Section 2(s).-*** *"smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or evading payment of customs-duties or taxes leviable thereon,-*
>
> *(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or*
>
> *(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred and fifty thousand rupees in value; or*
>
> *(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly;*

Islamabad High Court

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

TABLE

	Offences	*Penalties*	*Section of this Act to which offence has reference.*
	(1)	*(2)*	*(3)*
8(i)	*If any goods be smuggled into or out of Pakistan,*	*Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to a penalty not exceeding ten times the value of the goods; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years and to fine not exceeding ten times the value of such goods, and, if the Special Judge in his discretion so orders, also to whipping:* *Provided that, in the case of such goods as may be notified by the Federal Government in the official Gazette, the sentence of imprisonment shall not be less than five years and the person convicted shall also be awarded sentence of whipping, and the whole or any part of his property shall also be liable to confiscation in accordance with the provisions of the Prevention of Smuggling Act, 1977.*	*General*
	If the smuggled	*such goods shall be liable to confiscation*	

Islamabad High Court

(ii)	*goods are narcotics drugs, psychotropic substances or controlled substances,-* *(a) if the quantity of the narcotic drug, psychotropic substance of controlled substance is one hundred grams or less;* *(b) if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one hundred grams but does not exceed one kilogram;* *(c) if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds the limit specified in clause (b);*	*and any person concerned in the offence shall be liable to –* *imprisonment which may extend to two years, or with fine, or with both;* *imprisonment which may extend to seven years and shall also be liable to fine;* *death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees;* *Provided that, if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life.*	
9	*(i) If any goods, not being goods referred to in clause 8, are imported into or exported from Pakistan evading payment of leviable customs-duties or in violation of any prohibition or restriction on the importation or exportation of such goods imposed by or under this Act or any other law; or*	*Such goods shall be liable to confiscation; and any person concerned in the offence shall also be liable to a penalty not exceeding two times the value of the goods.*	*15 & 16*

Islamabad High Court

	(ii) If any attempt be made so to import or export any such goods; or *(iii) If any such goods be found in any package produced before any officer of customs as containing no such goods; or* *(iv) If any such goods be found either before or after landing or shipment to have been concealed in any manner on board any conveyance within the limits of any seaport, airport, railway station or other place where conveyances are ordinarily loaded or unloaded; or* *(v) If any such goods, the exportation of which is prohibited or restricted as aforesaid be brought within a customs area or to a wharf, with the intention of loading them on a conveyance for exportation in violation of such prohibition or restriction,*		
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, or in any manner dealing with smuggled goods or*	*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*	*General*

Islamabad High Court

	any goods in respect to which there may be reasonable suspicion that they are smuggled goods;	*imprisonment for a term not exceeding six years and to a fine not exceeding ten times the value of such goods and if the Special Judge in his decision so orders also to whipping.*	
(ii)	*If the smuggled goods are narcotics drugs, psychotropic substances or controlled substances,-*	*Such goods shall be liable to confiscation and any person concerned in the offence shall be liable to*	
	(a) if the quantity of the narcotic drug, psychotropic substance of controlled substance is one hundred grams or less;	*imprisonment which may extend to two years, or with fine, or with both;*	
	(b) if any quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one hundred grams but does not exceed one kilogram;	*imprisonment which may extend to seven years and shall also be liable to fine;*	
	(c) if the quantity of the narcotic drug psychotropic substance or controlled substance exceeds the limits specified in clause (b),	*death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees;* *Provided that, if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life.*	
	Provided that if the smuggled goods be gold bullion or silver bullion the onus of proving the plea, that such bullion was obtained by		

Islamabad High Court

	processing or other means employed in Pakistan and not by smuggling shall be upon the person taking that plea,		
90	*If any person, without lawful excuse the proof of which shall be on such person, acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods, not being goods referred to in clause 89, which have been unlawfully removed from a warehouse, or which are chargeable with a duty which has not been paid, or with respect to the importation or exportation of which there is a reasonable suspicion that any prohibition or restriction for the time being in force under or by virtue of this Act has been contravened, or if any person is in relation to any such goods in any way, without lawful excuse, the proof of which shall be on such person, concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon, or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods,*	*such goods shall be liable to confiscation, and any person concerned shall also be liable to a penalty not exceeding ten times the value of the goods.*	*General*

Islamabad High Court

> ***157. Extent of confiscation.-*** *(1) Confiscation of any goods under this Act includes any package in which they are found, and all other contents thereof.*
>
> *(2) Every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation*.
>
> *Provided that, where a conveyance liable to confiscation has been seized by an officer of customs, the appropriate officer may, in such circumstances as may be prescribed by rules, order its release, pending the adjudication of the case involving its confiscation if the owner of the conveyance furnishes him with a sufficient guarantee from a scheduled bank for the due production of the conveyance at any time and place it is required by the appropriate officer to be produced.*
>
> *(3) Confiscation of any vessel under this Act includes her tackle, apparel and furniture.*

16. Let us first consider the scope of Section 157(2) and whether the Legislature's use of only the term "removal" in the said section, while excluding the other verbs used in clauses (89) and (90) of Section 156(1) (i.e. carrying, depositing, harbouring, keeping, concealing etc.) from the provision specifying the scope of confiscation, was intentional and requires restrictive interpretation of the word "remove".

The cardinal principle: penal and fiscal statutes must be strictly construed

17. The principles of statutory interpretation are fairly settled. A Court must give meaning and effect to the words used by the legislature in a statute in order to garner legislative intent (see for example ***Federation of Pakistan vs. Durrani Ceramics*** **(2014 PTD 2016),** ***Jamat-I-Islami vs. Federation of Pakistan*** **(PLD 2000 SC 111) and** ***Standard Printing Press vs. Sind Employee's Social Security Institution*** **(1988 SCMR 91)**. A Court cannot read into the statue in view of the established doctrine of *casus omissus* (see for example ***Gul Taiz Khan***

Islamabad High Court

Marwat vs. Registrar, Peshawar High Court **(PLD 2021 SC 391**). A Court is also not to give meaning to the language of a provision in such manner that it renders the provision redundant.

18. A settled principle of statutory interpretation is that provisions of penal statutes are to be construed strictly and in case multiple interpretations are possible, the construction most beneficial to an accused is to be preferred. It was held by the Supreme Court in ***Muhammad Ali vs. The State Bank of Pakistan (1973 SCMR 140)*** that, *"we are dealing here with a penal statute, the provisions of which must be interpreted strictly, and in case of any ambiguity or doubt arising from the construction, the benefit must go to the accused person"*. This principle was reiterated in ***The Collector of Customs vs. Messrs. Abdul Majid Khan (1977 SCMR 371)*** and more recently in ***Tahir Naqash vs. The State (PLD 2022 SC 385)*** wherein it was re-emphasized that, *"the rule of interpretation has been evolved according to which a penal statute should be strictly construed in favour of the accused."* (Also see ***State Bank Of Pakistan Vs Securities and Exchange Commission Of Pakistan (PLD 2018 Supreme Court 52), Zahid Rehman vs The State (PLD 2015 SC 77), Chairman Board of Intermediate and Secondary Education, Bahawalpur vs. Rizwan Rasheed (2005 SCMR 728), Province of Punjab vs. Muhammad Rafiq (PLD 2018 SC 178), Brig. (Retd.) F.B. ALI vs The State (PLD 1975 SC 506)***).

19. In ***Telenor Pakistan (Pvt.) Ltd. v. Appellate Tribunal Inland Revenue (I.T.R. No.63 of 2015)*** the settled principles guiding the interpretation of a fiscal statute were summarized, in view of the law laid down by the Supreme Court in ***Federation of***

Islamabad High Court

Pakistan through Secretary Ministry of Finance and others v. Haji Muhammad Sadiq and others ***(PLD 2007 SC 133),*** ***Aslam Industries Ltd., Khanpur v. Pakistan Edible Corporation of Pakistan and others*** ***(1993 SCMR 683)*** ***Collector of Customs (Appraisement), Karachi and others v. Messrs Abdul Majeed Khan and others*** ***(1977 SCMR 371)*** and ***Messrs Hirjina & Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax Central Karachi*** ***(1971 SCMR 128)***, as follows:

> "*If a provision of a taxing statute can have two reasonable explanations, then one which is favorable to the taxpayer has to be accepted and any ambiguity is required to be resolved in favour of the tax payer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. The statute has to be read as a whole and the intention of the legislature has to be discovered by paying attention to what has been said. It is settled law that while interpreting fiscal statutes the Court looks at what is clearly said. There is no room for any intendment, there is no equity about a tax, nothing is to be read in or implied and one must only look fairly at the language used.*"

The principle of *Expressio Unius Est Exclusio Alterius*

20. The maxim *expressio unius est exclusio alterius* (the express mention of one thing excludes others) is a well-established canon of statutory interpretation. This principle is attracted where the Legislature uses a series of words or terms in one provision but omits certain words or terms from another or related provision within the same statute.

21. In our present context, the Legislature has used seven distinct verbs in Clause (89) of Section 156(1) to describe the

Islamabad High Court

various ways a person can be concerned with smuggled goods i.e. carrying, removing, depositing, harbouring, keeping, concealing, and dealing. But in Section 157(2), which authorizes the confiscation of vehicles, the Legislature used only one of these verbs —"remove"— while choosing not to include the others. Such choice of text cannot be deemed accidental. If the Legislature had intended that any vehicle used for 'carrying' or 'transporting' proscribed goods should be confiscated, it could easily have said so. It did not. The principle of *expressio unius* therefore dictates that the power to confiscate vehicles under Section 157(2) must be read as being limited to vehicles used for "removal" of proscribed goods, without expanding the scope of the penal provision by reading into it, for purposes of confiscation, vehicles carrying or transporting smuggled goods.

Harmonious Construction: Giving meaning to all words

22. The principle of *noscitur a sociis* signifies that a word is known by the company it keeps. The Legislature often uses synonymous words in a statutory provision to cover a broad range of acts. It does so in Clause (89) of Section 156(1) for example, where "removing" appears alongside "carrying, depositing, harbouring, keeping or concealing." In the context of smuggling or indulging in the import of prohibited goods, the words cover a range of actions that form part of such felonious trade. But each of these words has a distinct meaning. Having used such words together as part of Clauses (89) and (90) of Section 156(1), the use of the words "removal" alone in Section 157(2) of the Act is not without significance.

23. As noted above, a fundamental rule of statutory interpretation is that the Court must give meaning to every word

Islamabad High Court

used by the Legislature and must not render any part of the statutory text redundant. Sections 2(s), 156 and 157 of the Customs Act, which are penal provisions within a fiscal statute, are to be construed according to the fair commonsense meaning of the language used. It would not be without doing serious violence to the English language for one to conclude that the Legislature employed the word "remove" when it meant "carry" or "transport". When we deliver a package to a courier company or book freight on a truck, we don't say "can you please have this removed to such and such location?" We use the words 'carry' or 'transport' or 'send' to describe the act of conveyance of goods from one place to another, in accordance with the ordinary meaning of such words.

24. If "removal" in Section 157(2) were interpreted to mean "carrying", the Legislature's use of a different word in the provision would be rendered meaningless. Similarly, if "removal" were interpreted to encompass all the verbs in Clause (89) of Section 156(1) of the Customs Act, the Legislature's specific enumeration of seven distinct acts would be rendered superfluous. The distinction between "carrying" and "removing" is not merely semantic but reflects a substantive textual and legal difference. "Carrying" typically refers to the physical act of transporting goods from one place to another. It is a neutral term that describes the means by which goods move. A vehicle used for carrying goods is simply the instrument of transportation. "Removal", on the other hand, carries a more specific connotation. Thus, while "carrying" focuses on the physical act of transportation, the word "removal" has been repeatedly used within the Act to refer to the action of taking goods out of custody or control within a customs area or warehouse etc.

Islamabad High Court

The Legislative intent reflecting a rational policy choice

25. The Legislature's decision to limit confiscation to vehicles used for "removal" of proscribed goods rather than those carrying or transporting such goods appears to be a rational policy choice. It reflects the adoption of the principle of proportionality while applying a penal sanction. Confiscation of a vehicle is a severe penalty. The principle of proportionality requires that the punishment fit the gravity of the offence. The Legislature may have determined that confiscation is an appropriate penalty only where the vehicle is used for the proximate act of removing goods from a border/border post or a warehouse as part of the final act that consummates the offence of smuggling, rather than for mere transportation of goods where such act is removed from the offense of smuggling and the transporter may have no means to determine, even while exercising diligence, that the goods in question are smuggled or otherwise proscribed. Further, the object of the Act is to prevent, deter and punish smuggling or import/export of proscribed goods. By limiting confiscation to vehicles used for "removal" of smuggled or prohibited or non-duty paid goods, the Legislature may have intended to penalize those most directly involved with and thus aiding and abetting the smuggling operation.

26. The words used in Clause (89) of Section 156(1) of the Act can be arranged along a spectrum of culpability. "Removing" suggests a proximate act to taking goods from the border/entry point into the country and/or a greater degree of participation in an act of taking goods from lawful control, while "carrying" may involve a lesser degree of participation in taking goods from the entry point into the country or from lawful control. It appears that

Islamabad High Court

the Legislature intended to expand the scope of the confiscatory penalty for the more culpable form of participation in smuggling or import/export of otherwise proscribed goods. This hierarchical approach to penalties is evident in the structure of Section 156 of the Act as a general matter, which prescribes different penalties for different offences, while reserving harsher punishments for the more odious acts.

27. Examples from other jurisdictions also suggest that the word "removal" is accorded a distinct legal meaning. The term "removal" in customs legislation across common law jurisdictions has historically carried a specific technical meaning: the act of taking goods out of customs control or custody, particularly at the point of entry or exit. For example, in ***United States v. Harold (588 F.2d 1136 (5th Cir. 1979))***, the US Court of Appeals held that, "*removal of goods from Customs custody or control is the movement of property in Customs custody or control with felonious intent. Any appreciable change of the location of the property with felonious intent, whether there is actual removal of it from the owner's premises or not, constitutes the removal element of the offense*."

The Legislative scheme: border-related versus inland enforcement

28. The scheme of the Act suggests that the Legislature drew a distinction between conveyances used in the actual act of smuggling across the border and the proximate act of removing such goods from the border or a customs post/warehouse on the one hand, and those used for inland transportation of smuggled/proscribed goods on the other. If the Legislature intended to confiscate any vehicle that carried, at any time,

Islamabad High Court

smuggled or proscribed goods within the country, it would have used broader language such as "used for the carrying, transporting, or conveying" of such goods. It did not.

29. The definition of "smuggling" in Section 2(s) focuses on the act of bringing goods into or taking them out of Pakistan "*by any route other than a route declared under section 9 or section 10"* or *"bringing into Pakistan or taking out of Pakistan…by any such route, any goods which are dutiable or prohibited goods and evading payment of duties or taxes or contravening any prohibition or restriction…"* As is evident, what is proscribed is the cross-border act of bringing goods illegally into Pakistan or taking them out. The inland possession of smuggled goods does not constitute "smuggling", but constitutes a separate offence of, *inter alia*, "possession" under clause (89) of Section 156(1) of the Act.

30. Section 157(2) provides for confiscation of *"every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act".* The phrase "used in the removal" is in the past tense and suggests a completed act of removal that is directly connected to the commission of the offence of smuggling or the offence of importing or exporting prohibited or non-duty paid goods. The ordinary textual reading of Section 157(2) is that it refers to a conveyance that is instrumental in the act of removing goods (i) brought in from an undeclared route on the border, or (ii) from customs control at a declared route or a warehouse, which goods are smuggled/prohibited or in relation to which duties and taxes have not been paid, thus making the conveyance being proximately connected to the act of smuggling or importing/exporting prohibited or non-paid goods.

Islamabad High Court

31. If "removal" in Section 157(2) is expansively read to include inland carriage, a transporter who innocently carries goods (without the knowledge that they are smuggled or proscribed) would end up having his vehicle confiscated, which is the same penalty that applies to a smuggler or an aider/abettor using his/her vehicle to bring such goods across the border or removing them from the border. Such outcome would violate the principle of proportionality and disregard the hierarchy of culpability that flows out of the scheme of Section 156 of the Act. A vehicle proximately involved in the removal of goods liable for confiscation is the instrument of the principal offence and may justly be forfeited. A vehicle used for inland carriage of goods liable to confiscation is several steps removed from the act of smuggling or import/export of prohibited and/or non-duty paid goods liable to confiscation, and ought not be subject to the harsh penalty of confiscation prescribed for the act of smuggling, or any penalty at all, to the extent that the owner can establish lack of knowledge regarding their proscribed character and/or another legitimate excuse for carriage of such goods.

Implications for the Interpretation of S.R.O. 499(I)/2009

32. The interpretation of "remove" in Section 157(2) has direct implications for the application of S.R.O. 499 and S.R.O. 1619. Those SROs mandate confiscation of "*lawfully registered conveyance including packages and containers... found carrying smuggled goods*". The scope of confiscation, extending to conveyances, is prescribed by Section 157(2) of the Act, which speaks only of vehicles used "for the removal" of goods liable to confiscation. By extending the sanction of confiscation of vehicles, used for "carrying smuggled goods", the SROs exceed the scope of

Islamabad High Court

confiscation authorized by the parent statute. It should require no elaboration that SROs issued under Section 181 cannot override or modify the parent law and must operate within the four corners of the Act and in consonance with the objects of the Act.

33. Thus, while S.R.O. 499 and 1619 may validly remove the option to pay a fine in lieu of confiscation for certain classes of goods, they cannot expand the category of conveyances subject to confiscation beyond what Section 157(2) authorizes. If a vehicle is purportedly used for inland transportation or carrying of goods liable to confiscation, but not for "removal" of smuggled or proscribed goods as explained above, such vehicle is not liable for confiscation in terms of Section 157(2) the Act. It does not fall within the province of the FBR to create a penal sanction by executive diktat when the law doesn't provide for it.

34. The Legislature deliberately chose not to include "carrying", "depositing", "harbouring", "keeping", "concealing" or "transporting" in Section 157(2) of the Act, while prescribing confiscation for vehicles "removing" goods liable to confiscation. Applying the principle of *expressio unius est exclusio alterius*, this omission is intentional and must be given effect. The power to confiscate vehicles under Section 157(2) is limited to vehicles used for the removal of smuggled or otherwise prescribed goods, not those merely transporting or carrying such goods, where the act of transporting or carrying is not proximate to the act of smuggling or carrying proscribed goods across the border, and does not qualify as partaking in "removal" of such goods.

35. This restrictive interpretation is reinforced by the principles of strict construction applicable to penal and fiscal statutes, the requirement of proportionality applicable to the punishment of

Islamabad High Court

confiscation, and the need to give meaning to every word used by the Legislature in defining the scope of the offences in clauses (89) and (90) of Section 156(1) read with Section 157(2), which defines the scope of confiscation applicable to conveyances in relation to such offences. While S.R.O. 499 and 1619 effectively remove the discretion to levy a fine in lieu of confiscation, they cannot expand the statutory basis for confiscation itself, which remains confined to vehicles used for "removal" of smuggled/proscribed goods in terms of Section 157(2) of the Act.

Offences in Clause (89) and (90) of Section 156(1) and the requirement of mens rea

36. Two central questions that arise in relation to the interpretation of the SROs 499 and 1619 are: (i) whether the offence of possessing, carrying, or dealing with smuggled goods, or prohibited, or non-duty paid goods, as the case may be, under Clauses (89) and (90) of Section 156(1) of the Act is an offence of strict liability; and (ii) whether the extent of confiscation prescribed in terms of Section 157(2) of the Act constitutes an element of the offences prescribed under Section 156(1) of the Act. The Customs Department appears to have understood the said SROs as having mandated confiscation of vehicles found carrying or transporting smuggled goods within Pakistan, irrespective of the vehicle owner's knowledge or culpability re the proscribed nature of such goods. This Court must first determine whether such an interpretation aligns with the foundational principles of penal liability as settled in our jurisprudence, within the context of the scheme prescribed by the Legislature in terms of Sections 2(s), 156, 157, 181 and 187 of the Act.

37. The principle of individual responsibility is the cornerstone of our penal system. Deterrence, as an object of penal law, relies on

individual autonomy. Sanctions and penalties are a legitimate means to establish deterrence when they serve to reduce or prevent harm knowingly brought about or risked by an individual. That makes, as a general rule, culpability a precondition for imposition of penalty. As was held in ***Haji Abdul Razzak v. Pakistan*** **(PLD 1974 SC 5)**: *"there must be some culpability or negligence in the person sought to be made liable"*. In view of the principles of reasonability and proportionality, in terms of applying sanctions, it appears grossly unjust to confiscate property of a wholly innocent person used without their consent, connivance, or knowledge. Any penal scheme established by law ordinarily requires the attribution of wrongdoing (which can take the form of an act or omission) to an individual before a penalty can be imposed on them, with strict liability offenses being a narrow exception.

38. Professor Andrew Ashworth in *Principles of Criminal Law (3rd Edition, Oxford University Press, 1999)* contends that the principle of legality can be divided into three distinct principles: the principle of retroactivity; the principle of maximum certainty; and the principle of strict construction of penal statutes. The principle of fair warning is treated as a subset of the principle of certainty in a sense that a rational, autonomous individual with a moral compass ought to have no undue difficulty in ascertaining the law when forewarned. Professor Ashworth argues that, *"an individual should only be held criminally liable for consequences that were knowingly brought about or knowingly risked … the essence of the principle of autonomy is that the incidence and degree of criminal liability should respect the choices made by the individual. The principle of mens rea expresses this by stating that defendants should only be*

held criminally liable for events or consequences which they intended or knowingly risked."

39. That a person should be presumed innocent until proven guilty as a principle of procedural fairness is as old as the hills. It is well understood that placing a presumption of guilt upon an accused would amount to an oppressive burden on individual citizens and would vest immense power in the hands of state officials, which would be liable to abuse. It is thus that even where the onus of proof is placed on the shoulders of a defendant, it is treated as a preliminary burden that stands discharged where the defendant can make out a *prima facie* case in his defence, and the burden then shifts back to the prosecution. Likewise, as an interpretive tool, the principle of strict construction requires that any doubt in the meaning of a statutory provision be resolved in favour of the defendant. This principle guides the interpretive exercise undertaken by the Courts such that any doubt about the legislative purpose is to be resolved in favour of the defendant.

40. The principles governing the requirement of wrongdoing and culpability have been enumerated in detail by this Court in ***Lal Mat Khan*** where the Court undertook a holistic appraisal of the Customs Act in light of constitutional guarantees, particularly Articles 9, 10A, 23, and 24 of the Constitution. In ***Lal Mat Khan*** this Court re-emphasized the following fundamental principles, which are pivotal to the matter at hand:

> (a) **Principle of Individual Autonomy:** The Court invoked HLA Hart's philosophy, noting that penal systems are founded on individual responsibility. *"A person must not be punished if no wrongdoing can be attributed to him/her"*. To argue otherwise would be to claim that our Constitution

permits punishment without culpability (see paras 59 and 60).

(b) **Culpability as a Prerequisite:** In ***Haji Abdul Razzak v. Pakistan (PLD 1974 SC 5)***, the Supreme Court held that the *"accepted principle for the imposition of a penalty is that there must be some culpability or negligence in the person sought to be made liable." It was further observed that "no innocent person should be unjustly punished or deprived of his property"* A finding of fault, or at least a failure to establish a lawful excuse, is thus a necessary precondition to a penal sanction, including confiscation of property.

(c) **Confiscation as a Penalty:** The Court held that confiscation of property, even though *in rem* proceedings under the Act, constitutes a penalty. It cannot be disguised as a mere administrative action against the property itself without impacting the owner's constitutional right to property. The Court noted that *"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"* (see para. 191).

The principle against strict liability

41. Strict liability is a term used to identify offences for which a person may be held liable without proof of intention, knowledge, recklessness or negligence. The rationale for strict liability, as explained in academic literature, is that it is aimed at social protection in cases where it is not feasible to establish intent (in minor regulatory offences for example) or where the harm inflicted is so significant that punishment must follow (in cases such as manslaughter for example). Other than administrative policy, another argument made in favour of strict liability is that in cases of trivial offences (for example speeding etc.) conducting a

complete trial to establish intent is not worth the public expenditure involved in prosecution and paying for Court time.

42. The law across common law jurisdictions maintains a strong presumption that *mens rea* (a guilty mind) is required for every offence unless the legislature explicitly states otherwise. In ***Morissette v. United States* (342 U.S. 246)**, the US Supreme Court held that the *"mere omission from a statute of any mention of intent"* should not be construed as eliminating the intent requirement. Strict liability is generally reserved for "public welfare offenses" with light penalties, not those involving property forfeiture.

43. In ***Brend v. Wood*** **((1946) 175 L.T. 306)**, Lord Goddard C.J. observed that, "*it is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind*." In ***Lim Chin Aik v. The Queen*** **([1963] A.C. 160)**, the Privy Council declared that, "*proof of the existence of a guilty intent is an essential ingredient of a crime at common law is not at all in doubt.*"

44. ***Sweet v. Parsley*** **([1970] AC 132)** is a seminal English case where considerations in determining whether an offense can be construed as one of strict liability were detailed. It will be useful for our purposes to reproduce the judgment at some length. The relevant facts were that Stephanie Sweet, the sub-tenant of a farmhouse, let out several rooms to tenants. While she wasn't personally living there, she visited occasionally to collect letters and rent. Drugs, including cannabis resin, were found in the

farmhouse and Ms. Sweet was charged with being concerned in the management of premises used for the purpose of smoking cannabis resin, contrary to section 5(b) of the Dangerous Drugs Act, 1965. The appellant conceded that the premises had been so used, and the prosecution acknowledged that she did not know this. She was convicted of the offence, which conviction was set aside by the House of Lords. Lord Reid noted that:

> *"Sometimes the words of the section which create a particular offence make it clear that mens rea is required in one form or another. Such cases are quite frequent. But in a very large number of cases there is no clear indication either way. In such cases there has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. That means that whenever a section is silent as to mens rea there is a presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require mens rea… mens rea is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary…"*

45. Lord Pearce articulated the exception to the rule, while qualifying it, by noting that, *"those who undertake various industrial and other activities, especially where these affect the life and health of the citizen, may find themselves liable to statutory punishment regardless of knowledge or intent, both in respect of their own acts or neglect and those of their servants. But one must remember that normally mens rea is still an ingredient of any offence…It is one thing to make a man absolutely responsible for all his own acts and even vicariously liable for his servants if he engages in a certain type of activity. But it is quite another matter to make him liable for persons over whom he has no control."*

46. The opinion of Lord Diplock is also helpful in explaining the rationale for strict liability: *"Where penal provisions are of general*

application to the conduct of ordinary citizens in the course of their everyday life the presumption is that the standard of care required of them in informing themselves of facts which would make their conduct unlawful, is that of the familiar common law duty of care. But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals in which citizens have a choice as to whether they participate or not, the court may feel driven to infer an intention of Parliament to impose by penal sanctions a higher duty of care on those who choose to participate and to place upon them an obligation to take whatever measures may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care. But such an inference is not lightly to be drawn, nor is there any room for it unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation."

47. In ***Gammon v. Attorney General for Hong Kong*** ***[1985 AC1]*** the Privy Council, while holding the statutory provision in question before it attracted strict liability, summarized the relevant principles and formulations of law as follow:

(1) *there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offense;*

(2) *the presumption is particularly strong where the offense is truly criminal in character;*

(3) *the presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute;*

(4) *the only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern. Public safety is such an issue.*

(5) *even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act*.

Professor Ashworth argues in *Principles of Criminal Law* (pp.175) that, *"strict liability should not be imposed where there is nothing more a defendant could reasonably be expected to do in order to avoid the harm."*

48. The Indian Supreme Court in ***State of Maharashtra v. Mayer Hans George*** **(AIR 1965 SC 722)** noted that while certain regulatory statutes may attract strict liability, the presumption of *mens rea* remains unless the "object of the statute" would be defeated without it. This case involved a German national smuggling gold into India. The Indian Supreme Court noted that ignorance of law was no excuse, and further that the need to establish *mens rea* would defeat the objects of the statute enacted to curb financial crimes. In ***Nathulal v. State of M.P.*** **(AIR 1966 SC 43)**, the Indian Supreme Court held that for a statutory offence, the requirement of *mens rea* is to be read into the statute unless it is expressly excluded. While interpreting provisions of the Essential Commodities Act, 1955, the court held that the object of the statute was public welfare and regulation of trade, not to punish innocent individuals burdened by negligence. And that

imposition of severe penalties without establishing intent would contravene justice and fairness.

49. Clause (89) of Section 156(1) seeks to penalize a person who is "*in possession of, or is in any way concerned in carrying... smuggled goods... without lawful excuse, the proof of which shall be on such person*." The inclusion of the phrase "without lawful excuse" relates to the mental element. While Section 156, read with Section 187 of the Act, places the initial burden of proof on the accused, this does not transform the offence into a strict liability one. The scheme of discharge of onus of proof merely reflects that the facts relating to any "lawful excuse" (such as a *bona fide* purchase or lack of knowledge etc.) would ordinarily be within the peculiar knowledge of the possessor. In ***Lal Mat Khan***, the Court emphasized the shifting nature of the burden of proof, borrowing from ***Kamran Industries v. Collector of Customs*** **(PTCL 1996 CL 15)** and ***Abdul Razzaq v. Directorate General of Intelligence*** **(2016 PTD 1861)**. The accused's initial burden is an "evidential and tactical burden" to establish a *prima facie* case of lawful excuse. The legal burden to prove that the goods are smuggled and that the person concerned has no lawful excuse remains ultimately with the prosecution/Customs Department. The Customs Department cannot rely on the mere existence of smuggled goods in a conveyance undertaking an inland journey to automatically impose the penalty of confiscation on the vehicle, without establishing some nexus of culpability or knowledge (actual or constructive) on the part of the owner of the conveyance.

50. In a just penal system, punishment cannot lie wherever it falls. A system that punishes the unlucky as opposed to the guilty

would lose its moral authority and fail to act as a mechanism for social control and public welfare. The ordinary presumption that a person cannot be held liable for an offense without a finding of wrongdoing on his/her part can only be rebutted by express words used by the legislature or by necessary implication, in order to protect the innocent from punishment, ensure that the state proves moral blameworthiness, and uphold the rule of law. In ***Lal Mat Khan*** it was noted that *"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"* (see para. 191).

51. In our present context, the definition of offences under sub-clauses (8), (9), (89), (90) of Section 156(1), read with section 2(s) of the Act, do not support the proposition that the said offences were designed by the legislature as attracting strict liability. The object of the Customs Act is to prevent smuggling and the import/export of prohibited goods, and the import of goods without payment of duties and taxes. Section 2(s) includes within the definition of smuggling *"an attempt, abetment or connivance"* to bring in or take out from Pakistan smuggled goods. Clause (8) of section 156(1) defines the act of smuggling goods into or out of Pakistan as an offence. Clause (9) of section 156 (1) deals with the offence of importing into or exporting from Pakistan goods by evading payment of duties or importing or exporting prohibited goods. Clause (89) of section 156(1) defines the acquisition, possession, carrying, removing, depositing, harbouring, keeping or concealing smuggled goods without lawful as an offence. It includes within such offence, the act of dealing with smuggled goods, *"where there may be reasonable suspicion that they are*

smuggled goods". Clause (90) of section 156(1) defines the act of acquisition, possession, carrying, removing, depositing, harbouring, keeping or concealing proscribed goods other than smuggled goods as an offence. Clauses (89) and (90) also explicitly provide for lawful excuse on part of the accused as a defence.

52. The text of clauses (89) and (90) of section 156(1) therefore clearly establishes that the legislature intended *mens rea* to be established in relation to both offences. The Legislature provided, in relation to the offence defined under clause (89), that *mens rea* in dealing with smuggled goods may include recklessness for purposes of establishing liability, to the extent that an ordinary prudent person would nurture reasonable suspicion that the goods may be smuggled. In other words, for purposes of clause (89) of section 156(1) reckless disregard of the possibility that the goods in question may be smuggled would suffice for establishment of liability. It is well understood that in offences related to possession, knowledge becomes the key element in the crime. Thus, where a reasonable person ought to be aware that there is a risk that the goods in question may be smuggled but the person goes ahead and takes the risks of dealing in such goods, such wilful blindness constitutes the failure to discharge the duty to inquire and would satisfy the requirement of wrongdoing. In such circumstances, the adjudicatory authority can infer 'knowledge' from exhibition of wilful blindness to the suspicion that ought to inform a prudent person.

53. In ***West Minister City Council v. Croyalgrange Ltd. [1986] 83 Cr. App. R155*** the House of Lords held that, *"it is always open to a tribunal of fact, when knowledge on part of a defendant is required to be proved, to base a finding of knowledge*

on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected that truth but did not want to have his suspicion confirmed." The same principle would also apply when it comes to the establishment of recklessness in relation to reasonable suspicion for purposes of clause (89) of section 156(1) of the Act. Therefore, to read Clauses (89) and (90) of Section 156(1) as offences of strict liability, where the mere *actus reus* of transporting smuggled goods automatically results in the mandatory confiscation of the vehicle without any requirement to prove the owner's knowledge, connivance, or recklessness toward his duty of care, would fly in the face of this well-settled jurisprudential foundation. Such interpretation would render the phrase "without lawful excuse" otiose and would violate the constitutional guarantees of due process, liberty and property rights under Articles 9, 10A, 23 and 24 of the Constitution. The offences defined by clauses (89) and (90) of Section 156(1) of the Act are not strict liability offences and require the establishment of wrongdoing on part of a defendant, which can stand established where a defendant fails to establish a lawful excuse for possession of smuggled or prohibited or non-duty paid goods.

The scope of Section 181: defining punishment, not the offense

54. A critical legal error that appears to have marred the approach of the Customs Department to implementing provisions of the Act is its sense that legal instruments issued in exercise of delegated authority under section 181 of the Act can override or supplant the definition of offences and their constituent elements as prescribed under section 156 of the Act. Clauses (89) and (90) of Section 156(1) specifically include the phrase "without lawful excuse, the proof of which shall be on such person". This explicitly

builds a fault-based defence into the definition of the offence. Section 181 vests the FBR with the power to determine where a "fine in lieu of confiscation" is prohibited. The adjudicatory scheme prescribes a common-sensical sequence.

55. The first order of business for an adjudicator is to determine whether the constituent elements of the offence under the relevant clause of Section 156(1) are made out. Only after an offence is made out can one move on, as step two, to the second column of the table under Section 156(1) of the Act, to consider the question of punishment. And it is in considering the nature of punishment to be meted out that Section 181 of the Act becomes relevant, as it confers authority on the FBR to oust any discretion vested in the adjudicatory authorities to impose redemption fine in lieu of the harsher punishment of confiscation, in the event that such punishment is prescribed by Section 156(1) of the Act. To state the obvious, FBR cannot use its power under Section 181 to strip away the "lawful excuse" requirement of Section 156 or to prescribe the punishment of confiscation of goods (including vehicles) where the same is not provided by the Act. SROs are subordinate legislation and cannot modify the parent Act. If the owner has a "lawful excuse" to be in possession of goods that are purportedly smuggled or prohibited or non-duty paid, no offence has been committed, and consequently the question of punishment or applicability of SROs issued under Section 181 does not come into play. Likewise, if the vehicle is not being used to "remove" smuggled or proscribed goods, as explained earlier in this judgment, and the vehicle owner/operator is not found independently liable for an offence under Clause (89) or (90) of

Section 156(1) of the Act, such vehicle cannot be confiscated in terms of Section 157(2) of the Act.

56. Having established that the offences under Clauses (89) and (90) of Section 156(1) of the Act require a mental element or culpability, we now turn to the scope of the impugned SROs. These notifications were issued under Section 181 of the Act. Let us delineate the nature and limits of this delegated power. The Supreme Court in ***Haji Tooti v. The Federal Board of Revenue*** **(2023 SCMR 1980)** analysed the interplay between Section 181 and Section 223 of the Customs Act. It noted that the power exercised by a customs officer under the main part of Section 181 (to give an option to pay fine in lieu of confiscation) is "quasi-judicial in nature". The Court distinguished the power under Section 181 from the administrative power under Section 223. It held that the provisos to Section 181, which authorize the FBR to specify goods or classes of goods where no option is to be given to pay redemption fine, or to fix the amount of fine, constitute delegated legislative power. While the Supreme Court accepted that the FBR can, through an SRO under Section 181, remove the discretion of the adjudicating officer to levy a fine and thereby mandate confiscation, it must be borne in mind that this power relates to the nature and quantum of punishment and becomes relevant *after* the constituent elements of the offence have been made out. In other words, the SROs only delineate the *punishment* or *penalty* for an already established offence.

57. This distinction is crucial for our purposes. Section 181 operates at the sentencing stage of the adjudicatory process. It determines the *consequence* of a finding of guilt. It does not empower the FBR to alter or dispense with the need to prove the

constituent elements of the offence itself, which are defined in Section 156. The definition of what constitutes an offence (the *actus reus* and *mens rea*) is a matter of substantive law, firmly rooted in the text of provisions of the Act. These provisions cannot be amended or altered by the issuance of an SRO under the limited power delegated by the Legislature to the FBR to determine the scope or nature of punishment to follow. Therefore, the reading of SRO 499 and SRO 1619 as transforming the offence of carrying smuggled goods into a "strict liability offence" is flawed. The SROs, by their own terms, apply to "lawfully registered conveyance... found carrying smuggled goods." This presupposes that it has been determined that the goods in question are smuggled and that the person concerned was dealing with them "without lawful excuse" as required by Clauses (89) and (90) of Section 156(1). The SROs then apply in such scenario. The adjudicating officer cannot exercise discretion to substitute the punishment of confiscation with that of payment of redemption fine in lieu thereof.

The principle of proportionality and its applicability to the penalty

58. Let us now examine the constitutionality and reasonableness of the mandatory confiscation prescribed by the SROs, particularly in light of the principle of proportionality. Even if the State has proven the elements of the offence, the penalty imposed must not be disproportionate to the gravity of the offence and the culpability of the offender.

59. The principle of proportionality is a well-recognized facet of substantive due process and is embedded in the constitutional guarantees of Pakistan. The Supreme Court in ***Pakistan Electronic Media Regulatory Authority (PEMRA) v. ARY Communications*** **(PLD 2023 SC 431)** held that reasonable

restrictions on fundamental rights *"must also proportionate in that the legitimate objective cannot reasonably be achieved through a means less restrictive of the right protected by the Constitution."* The concept of proportionality is embedded in the penal systems of other common law jurisdictions as well. In the United Kingdom, the Court of Appeal in ***R v. Bagnall*** **[2012] EWCA Crim 677**, while considering the fairness of a confiscation order, emphasized that the process must not lead to a result that is "disproportionate" and must respect an individual's rights under Article 6 of the European Convention on Human Rights. The Court emphasized the need to ensure that the severity of the order matched the gravity of the offence, particularly where the consequences for the defendant were severe.

60. In the United States, the Eighth Amendment's prohibition against "cruel and unusual punishments" has been interpreted to forbid punishments that are grossly disproportionate to the offence. The U.S. Supreme Court, in ***Solem v. Helm*** **(463 U.S. 277, 1983)**, established a three-part test for proportionality, requiring courts to consider (i) the gravity of the offence and the harshness of the penalty, (ii) the sentences imposed on other criminals in the same jurisdiction, and (iii) the sentences imposed for the same crime in other jurisdictions. The Indian Supreme Court in ***State of Punjab v. Baldev Singh*** **((1999) 6 SCC 172**) observed that a mandatory sentence must not be "arbitrary or oppressive" as that would violate Article 21 of the Indian Constitution and the right to life and liberty.

61. Proportionality is the standard that examines the relationship between a legitimate State objective and the means chosen to achieve it. The Supreme Court in ***PEMRA v. ARY***

Communications held that a restriction that fetters a fundamental right must be the "least restrictive means" to realize a legitimate objective. If the only possible reading of the SROs was that they mandate confiscation of the vehicle of an owner who is not culpable, but whose vehicle is incidentally found carrying smuggled, prohibited or non-duty paid goods, such punishment would fail the proportionality test.

62. Let us consider a scenario where a rental company or the *bona fide* owner of a truck rents it out to a third party. The third party, without the owner's knowledge or consent, loads it with smuggled goods. Under the interpretation advanced by the Customs Department, the truck is liable for mandatory confiscation. The owner, who is not culpable, would lose his asset. This would be manifestly unjust outcome. The principal offender (i.e. the person who smuggles goods or imports prohibited goods into the country) is the primary target of the Act. However, under the SROs, the punishment for an innocent vehicle owner (i.e. a bus owner carrying passengers possessing smuggled goods, or a transport vehicle owner providing carriage services) without knowledge or reasonable suspicion re the proscribed nature of goods being transported could face punishment that is identical to or greater than that faced by the principal offender. Such outcome violates the foundational principle that punishment should fit the crime and the degree of culpability. As noted earlier in this judgment, Clauses (89) and (90) of Section 156(1) allow for a "lawful excuse". If the owner of a vehicle can prove that he is a *bona fide* purchaser for value without notice of the smuggled or proscribed nature of the goods he is transporting, or that he had no knowledge or any reasonable basis for suspicion that the goods

were smuggled, this would constitute a "lawful excuse". To then mandate the confiscation of his/her property would render this statutory defence a nullity, violating both the letter and spirit of the Act.

63. There would be no limit to the absurd results that would flow from a contrary interpretation of the SROs read with Sections 156 and 157 of the Act. Could the Legislature have intended that a bus, train or airplane carrying or transporting smuggled or proscribed goods, while providing freight or transport services, be confiscated? Could the Legislature have designed Clause (89) and (90) of Section 156(1) as strict liability offences to confiscate rental vehicles being used to transport proscribed goods, with the vehicle owner or rental company possessing no means to control the actions of the renter? Could the Legislature have intended to impose the penalty of confiscation on a vehicle owner who, with no amount of diligence or exercise of duty of care, can prevent the commissioning of the proscribed act? Could the Legislature have intended to transform all courier and transport service providers into customs agents required to ensure that they never come in actual or constructive possession of goods that can be subsequently found to be smuggled or proscribed? What if you bought apples at a local fruit stall that were later found to be of Iranian origin and non-duty paid? Should your vehicle be confiscated for carrying smuggled/proscribed goods to your home?

64. The SROs, while valid as an exercise of the FBR's power under Section 181 to remove discretion in the imposition of a penalty, cannot be applied in a manner that ignores the principle of proportionality and the constitutional protections afforded to citizens. To apply them in a way that mandates confiscation

without any consideration of the owner's knowledge, consent, or *bona fides* would render the punishment arbitrary, excessive, and a breach of Article 10A (right to a fair trial and due process) read with Articles 9, 23 and 24 of the Constitution. While the FBR is vested with power under Section 181 to issue notifications like SRO 499 and SRO 1619, such notifications must be interpreted and applied in harmony with the provisions of the Act and the Constitution. The process of adjudication under the Act must first determine whether the essential elements of the offence under Clause (89) and (90) of Section 156(1) have been met, including the failure of the accused to establish a "lawful excuse" for being in possession of smuggled or prohibited or non-duty paid goods. Once that determination is made and culpability for an offence is established, the SROs then operate to regulate the discretion available with adjudicatory authority in imposing the penalty.

65. For the reasons stated above we find as follows (and answer the questions framed for our consideration accordingly):

(i) Mens rea is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary, in order to give effect to the will of the Legislature as reflected from the words used in the text, when read in the context of the objects of the statute. It cannot be presumed that the Legislature intended to make an innocent individual liable for actions of persons over whom he/she has no control.

(ii) The objects of the Act do not include protection of public health, safety and morals or such other subject matter of social concern where it can be assumed that the Legislature intended imposition of strict liability to deter proscribed conduct. Neither will non-imposition of strict liability for offences in Clauses (89) and (90) of Section 156(1) defeat the objects of the Act, nor will its imposition augment the duty of care to be

exercised by an ordinary prudent person, which exercise will deter or curtail the incidence of such offences. The offences in Clauses (89) and (90) of Section 156(1) of the Act are not strict liability offences and need establishment of mens rea as a precondition to hold a person liable for such offences.

(iii) The imposition of the penalty of confiscation of a conveyance in terms of Section 157(2) of the Act in relation to the offences in Clauses (89) and (90) of Section 156(1) of the Act requires prior establishment of the constituent elements of the offences, including the failure of the person concerned to prove a lawful excuse to be in possession of the smuggled/proscribed goods. And where a vehicle owner or operator is not directly charged with an offence under Clauses (89) and (90) of Section 156(1) of the Act, his/her conveyance cannot be confiscated in terms of Section 157(2) of the Act, unless it is being employed, with his knowledge or wilful blindness to the suspicion, in "removal" of smuggled or proscribed goods in an act proximate to the act of smuggling or importing/exporting proscribed goods, and not just for inland carrying or transport of such goods.

(iv) S.R.O. 499(I)/2009 and S.R.O. 1619(I)/2024, issued under Section 181 of the Customs Act, 1969, operate at the stage of sentencing. They do not, and cannot, alter or dispense with the requirement to prove the substantive elements of the offences prescribed in terms of Clauses (89) and (90) of Section 156(1) of the Act.

(v) Where the Legislature has employed a broad set of verbs in a Clauses (89) and (90) of Section 156(1) of the Act but selects only a single, more restrictive verb for the confiscatory provision in Section 157(2), the principle of *expressio unius est exclusio alterius* dictates that the penalty is limited strictly to the act described. S.R.O. 499(I)/2009, S.R.O. 1619(I)/2024 or any other sub-statutory instrument issued in

exercise of authority under Section 181 of the Act, must operate within the four corners of the provisions of the Act and cannot expand, override or supplant such provisions. To the extent that the said SROs seek to expand the scope of confiscation of vehicles and conveyance beyond those employed to "remove" proscribed goods, as provided in Section 157(2) of the Act, to those involved in "carrying" or transporting proscribed goods, the SROs are ultra vires the Act, and are to be read down to that extent.

(vi) In applying these SROs, the Customs authorities, the Appellate Tribunal, and this Court must apply the principle of proportionality. Confiscation shall not be ordered where the owner of the conveyance found removing proscribed goods establishes lawful excuse for such removal, on a balance of probabilities, including, *inter alia*, that he/she was a bona fide owner with no knowledge or suspicion regarding the smuggled or proscribed nature of the goods, or that the conveyance was used for removal of proscribed goods without his/her consent or connivance and despite his/her exercise of reasonable diligence.

(vii) Once the offence in terms of Clauses (89) or (90) of Section 156(1) of the Act is made out as an evidentiary matter, and it has been determined on the basis of evidence/material on record that the conveyance was being used to "remove" proscribed goods in terms of Section 157(2) of the Act, no adjudicatory authority is vested with discretion to impose redemption fine in lieu of confiscation of the vehicle in view of S.R.O. 499(I)/2009 and S.R.O. 1619(I)/2024. Once culpability of the defendant/s stands established, the adjudicatory authorities are left with no discretion for purposes of awarding penalty, and the confiscation of goods and/or vehicle, as the case may be, is mandatory.

(viii) In proceedings under Clauses (89) and (90) of Section 156(1), while the accused bears an initial evidential burden to establish a lawful excuse, the legal burden to prove the absence of such excuse and the smuggled or proscribed nature of the goods rests throughout on the Customs Department.

(ix) Pending final adjudication, the Collector shall ordinarily exercise the discretion under the proviso to Section 157(2) of the Act to release a seized vehicle to its owner upon furnishing a sufficient financial guarantee, and any refusal to do so must be supported by recorded reasons.

66. Let us now consider the facts and circumstances of individual cases and apply the principles enumerated above to the references being adjudicated through this judgement.

Custom Reference No.29 of 2025 (Collector v. Aurangzeb)

67. By Order-in-Original dated 02.12.2024, two Datsun Pickups seized from Rawalpindi along with foreign origin goods were ordered to be confiscated in adjudicatory proceedings where no one appeared in response to the show-cause notice. The Customs Department valued the goods (betel nuts, cloth and tyres) at Rs.3 Million and the value of the vehicles at Rs.2.6 Million. The Tribunal by order dated 19.03.2025, held that the vehicles had no previous record of being involved with smuggling and ordered their release on payment of 40% redemption fine while holding that they fell under clause 2(f) of SRO 499.

68. The Tribunal has rendered no finding of fact as to whether the vehicles-in-question were involved in "removal" of goods within the meaning of Section 157(2) of the Act, and whether there existed *mens rea* on part of the vehicle owner in terms of Clauses (89) or (90) of Section 156(1) of the Act. It also imposed

Islamabad High Court

redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order of the Tribunal and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicles shall be released to the owner of the vehicles in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicles.

Custom Reference No.30 of 2025 (Collector v. Sajid Anwar)

69. By Order-in-Original dated 17.12.2024, a Toyota Altis transporting Chinese origin fabric and Korean origin cigarettes was confiscated in proceedings where no one appeared before the Collector. The Collector noted that the vehicle was being used wholly and exclusively for transportation of smuggled goods. The Tribunal while noting that there was no proof of smuggling on part of the vehicle owner directed that the vehicle be released on payment of redemption fine.

70. While the Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, there is no discussion whether the owner of the purportedly smuggled goods was different from the owner of the vehicle. It was for the Tribunal to determine whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section

Islamabad High Court

157(2) of the Act. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.31 of 2025 (Collector v. Jannat Gul)

71. By Order-in-Original dated 06.11.2024, a Toyota Altis, loaded with foreign origin cigarettes was ordered to be confiscated. The Tribunal by order dated 18.03.2025 directed that the vehicle be released on payment of 20% redemption fine.

72. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. There is no finding in the Tribunal's order whether the owner of the purportedly smuggled goods was different from the owner of the vehicle. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles

Islamabad High Court

enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.34 of 2025 (Collector v. Tanveer Sheikh)

73. By Order-in-Original dated 20.01.2025, an Isuzu Truck, loaded with foreign origin almonds, which was seized at M2 Toll Plaza, was ordered to be confiscated. The Collector noted that the defendant had expressed his willingness to pay leviable customs duties and taxes, which amounted to admission that the goods were smuggled. The Order-in-Original did not note whether the owner of the goods and the owner of the vehicle were the same. The Tribunal by order dated 18.03.2025, noted that as no import documents had been produced and the appellants were willing to pay taxes and duties, the goods be released on payment of 20% redemption fine. It further noted that there was no proof of smuggling on part of the vehicle owner, which was a commercial transport vehicle and could not be confiscated in a mechanical passion. It was ordered that the vehicle be released on payment of 40% redemption fine.

74. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established on part of the vehicle owner. We note that the Order-in-Original includes no reasoning as to how the vehicle owner was found liable for an offence under Clauses (89) or (90) of Section 156(1), read with section 2(s) of the Act, or how the vehicle was found liable for "removal" of smuggled or proscribed goods. We, therefore, **uphold** the order of the Tribunal to the extent that it

Islamabad High Court

has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. As the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.46/2025 (Collector vs. Mehmood Khan)

75. By Order-in-Original dated 16.01.2025, a Corolla car seized near M1 with foreign origin cigarettes, was ordered to be confiscated along with the goods. The goods were valued by the Customs Department at Rs.4.4 Million and the vehicle was valued at Rs.2.2 Million. The Tribunal by order dated 15.04.2025, documenting reasons similar to that in Custom Reference No.77 of 2025, held that the Customs Department had failed to establish a connection between the owner of the goods and the owner of the vehicle, which was a hired transport vehicle. It further noted that the vehicle was seized in August of 2024 prior to issuance of SRO 1619 and ordered that the vehicle be released on payment of 40% redemption fine.

76. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offense in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. There is no finding in the Tribunal's order whether the owner of the purportedly smuggled goods was different from the owner of the vehicle.

Islamabad High Court

Where the vehicle-in-question is a private vehicle, such determination is relevant for purposes of determining the culpability of the vehicle owner, and whether the vehicle owner discharged his/her duty of care and exercised necessary diligence that the goods were not smuggled, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. SRO 1619 shall apply prospectively, to the extent that it is attracted in view of the facts of the case as determined by the Tribunal. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.51/2025 (Collector v. Habib ur Rehman)

77. By Order-in-Original dated 06.03.2025, a Daewoo Bus seized near the motorway toll plaza along with goods of foreign origin, was ordered to be confiscated. The goods in question were valued at Rs.1.367 Million and the vehicle was valued at Rs.6.5 Million. The Collector held that there were seven claimants of the goods and consequently they fell below the threshold for purposes of defining them as smuggled goods in terms of section 2(s) of the Customs Act, and ordered the release of goods on payment of 30% redemption fine. The vehicle, on the other hand, was directed to be released on payment of 40% redemption fine. The Customs

Islamabad High Court

Department appealed this order and by Order-in-Appeal dated 29.04.2025, the Collector (Appeals) ordered outright confiscation of the vehicle. The Tribunal by order dated 19.05.2025, while recording reasons similar to those recorded in the order impugned in Custom Reference No. 77 of 2025, ordered that the Daewoo Bus being a public transport vehicle be released on payment of 40% redemption fine.

78. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. We note that the Order-in-Original includes no reasoning as to how the defendant was found liable for an offence under Clause (89) of Section 156(1), read with section 2(s) of the Act, or how the vehicle was found liable for removal of smuggled or proscribed goods. The facts of the case establish the absurdity of the confiscation order. The vehicle – a public transport bus – was neither involved in "removal" of proscribed goods in terms of Section 157(2) of the Act, nor could have been found to have been used "wholly and exclusively" for removing smuggled goods in terms of SRO 499. The purportedly proscribed goods were ordered to be released, but the vehicle, the value of which was more than three times the value of the seized goods, was ordered to be confiscated in clear breach of the principle of proportionality and fairness. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of

Islamabad High Court

vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.52/2025 (Collector v. Muhammad Ismail)

79. By Order-in-Original dated 28.02.2025, a Daewoo Bus seized near Sangjani Toll Plaza with foreign origin goods, was ordered to be released on payment of 40% redemption fine. The Collector noted that five passengers had claimed the goods in question and were willing to pay duties and taxes and the goods were therefore ordered to be released on payment of 30% redemption fine for falling below the value threshold prescribed in section 2(s) of the Customs Act. The Tribunal by order dated 08.05.2025, held that the vehicle was being used to transport goods as carriage and had correctly been released on payment of 40% redemption fine.

80. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. The vehicle – a public transport bus – was neither involved in "removal" of proscribed goods in terms of Section 157(2) of the Act having been seized at Sangjani, nor could have be found to have been used "wholly and exclusively" for removing smuggled goods in terms of SRO 499. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not

Islamabad High Court

arise. The vehicle shall accordingly be released to the owner unconditionally.

Customs Reference No.53 of 2025 (Collector v. Haya Khan)

81. By Order-in-Original dated 11.03.2025, a Hino truck seized near Fateh Jang with miscellaneous foreign origin goods was ordered to be confiscated. Before the Tribunal, an appeal was filed in relation to confiscation of the vehicle alone. The Tribunal by order dated 08.05.2025, after holding that the vehicle was a public transport vehicle in relation to whose owner no *mens rea* had been established by the Customs Department, and further the goods were not being transported in any false cavities, ordered that the vehicle be released on payment of 40% redemption fine.

82. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. It is implicit in the impugned order that the vehicle – a public transport vehicle – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.54/2025 (Collector v. Raaz Muhammad)

83. By Order-in-Original dated 13.03.2025, a Mazda truck seized near Peshawar-Islamabad Motorway with foreign origin goods (cigarettes and filter paper) was ordered to be confiscated

Islamabad High Court

along with the goods. The Customs Department valued the goods at Rs.2.47 Million and the vehicle at Rs.2.4 Million. The Tribunal by order dated 08.05.2025, while recording reasons similar to that in the order impugned in Custom Reference No.77 of 2025, ordered that the truck be released on payment of 40% redemption fine, as it was a public vehicle for hire and the driver was found to have no connection with the owner of the goods.

84. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. It is implicit in the impugned order that the owner of the vehicle was not liable for an offence in terms of Clauses (89) and (90) of Section 156(1) of the Act, and the vehicle – a public transport vehicle – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.55 of 2025 (Collector v. Rasool Khan)

85. By Order-in-Original dated 11.03.2025, a Hino truck seized from Islamabad Toll Plaza with miscellaneous foreign origin goods, was ordered to be confiscated. The value of the goods was estimated at Rs.12 Million and the value of the vehicle was estimated at Rs.2.2 Million. The Tribunal by order dated 03.05.2025, while recording reasons similar to that in Reference

Islamabad High Court

No. 77 of 2025, directed that the vehicle, being a public transport vehicle, whose owner was not the importer of the goods in question, be released on payment of 40% redemption fine.

86. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. It is implicit in the impugned order that the owner of the vehicle was not liable for an offence in terms of Clauses (89) and (90) of Section 156(1) of the Act, and the vehicle – a public transport vehicle – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.73/2025 (Addl. Collector v. Atif Nazeer)

87. By Order-in-Original dated 30.12.2024, two Shehzors loaded with green cardamom and curtain fabric, purported to be of foreign origin, were confiscated from a godown. The Collector noted that the owner was willing to pay taxes and duties, which confirmed the smuggled nature of the goods, and directed that the vehicles along with the goods be confiscated. The goods were valued by the Customs Department at Rs.5.3 Million and the vehicles were valued at Rs.3 Million. The Tribunal by order dated 29.04.2025, without recording any detailed reasoning, ordered that the goods and vehicles be released on payment of 20% and 40%

Islamabad High Court

redemption fine, respectively, as that had been requested by the appellant.

88. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. There is no finding in the Tribunal's order whether the owner of the purportedly smuggled goods was different from the owner of the vehicle. Where the vehicle-in-question is a private vehicle, such determination is relevant for purposes of determining the culpability of the vehicle owner, and whether the vehicle owner discharged his/her duty of care and exercised necessary diligence that the goods were not smuggled, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicles shall be released to the owner of the vehicles in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicles.

Islamabad High Court

Custom Reference No.74 of 2025 (Collector v. Ahmed Zaid)

89. By Order-in-Original dated 21.04.2025, a Titan Mazda truck, seized at M2 Toll Plaza, Islamabad along with foreign origin tyres, was ordered to be confiscated, after no one appeared before the Collector to claim ownership of the goods. The Customs Department valued the foreign origin tyres at Rs.3.6 Million and the vehicle at Rs.1.3 Million. The Tribunal by order dated 25.06.2025, while recording reasons similar to those in Custom Reference No. 77 of 2025, while taking into account the ground in the appeal that the vehicle owner had no connection with the owner of the goods, directed that the vehicle be released on payment of 40% redemption fine.

90. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offense in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. In the event that the goods are found to be proscribed, and the vehicle is found to be involved in "removal" of goods in an act proximate to the act of smuggling or importing proscribed goods, the Tribunal must additionally determine the culpability of the vehicle owner, and whether he discharged his duty of care and exercised necessary diligence to confirm the goods were not smuggled/proscribed, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We,

Islamabad High Court

therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No. 77 of 2025 (Collector v. Bashir Ahmed)

91. By Order-in-Original dated 20.05.2025, a Hino truck, which was seized on 25.03.2025, was ordered to be confiscated along with apples alleged to be of Irani origin. The vehicle was seized at Chungi No.26, Islamabad. The Collector held that the vehicle owner could not provide authentic import documents and the vehicle was being used wholly and exclusively in the transportation of offending goods. The Tribunal by order dated 11.07.2025, held that the words liable to confiscation used in section 157(2) of the Customs Act could not be equated with shall be confiscated, as liability for confiscation had to be established in the first instance before confiscation could be ordered. The Tribunal found that the Hino truck was a public transport vehicle and no evidence had been adduced by the Customs Department to establish that it was attempting to remove smuggled goods. And that such vehicle had no previous history of use for purposes of removing smuggled goods. The vehicle was ordered to be released on payment of 40% redemption fine.

92. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. It is implicit in the impugned order that the owner of

Islamabad High Court

the vehicle was not liable for an offence in terms of Clauses (89) and (90) of Section 156(1) of the Act, and the vehicle – a public transport vehicle – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No. 80 of 2025 (Collector v. Muhammad Asif)

93. By Order-in-Original dated 12.03.2025, the Collector ordered confiscation of a Mazda truck that was transporting foreign origin hairspray, which was deemed to be smuggled. In such proceedings, no one appeared on behalf of the vehicle owner. The Collector recorded no explicit findings as to how the goods loaded on the truck were found to be smuggled. The Tribunal by order dated 02.07.2025, noted that the seized goods were not notified as prohibited goods and were available in the open market. Without recording any finding of wrongdoing or smuggling on part of the appellants, the Tribunal noted that the appellant was willing to pay taxes and duties in relation to the goods and directed that the goods be released on payment of 20% redemption fine and the vehicle be released on payment of 40% redemption fine.

94. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the

Islamabad High Court

Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. In the event that the goods are found to be proscribed, and the vehicle is found to be involved in "removal" of goods in an act proximate to the act of smuggling or importing proscribed goods, the Tribunal must additionally determine the culpability of the vehicle owner, and whether he discharged his duty of care and exercised necessary diligence to confirm the goods were not smuggled/proscribed, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.81 of 2025 (Collector v. Abid Waqas)

95. By Order-in-Original dated 06.05.2025, the Collector ordered confiscation of goods along with the Daewoo Bus on which they were loaded on the basis that the goods were smuggled and the Daewoo Bus was being used wholly and exclusively for transportation of such smuggled goods. The Tribunal by order dated 11.07.2025, held that the Daewoo Bus had been confiscated

Islamabad High Court

at Chungi No.26, Islamabad and that the Customs Department had failed to discharge his burden to proof that it was involved with smuggling. The reasoning of the order was identical to that impugned in Custom Reference No.77 of 2025. We have also noted that the Collector in his order took no note of the ticketed passengers on the bus at the time that it was seized while holding that it was being used wholly and exclusively for transportation of smuggled goods.

96. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. The vehicle – a public transport bus – was neither involved in "removal" of proscribed goods in terms of Section 157(2) of the Act having been seized at Chungi No. 26 in Islamabad, nor could have be found to have been used "wholly and exclusively" for removing smuggled goods in terms of SRO 499. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.90 of 2025 (Collector v. Hazrat Habib)

97. By Order-in-Original dated 21.04.2025, the Collector ordered the confiscation of a Toyota Hiace. It was noted that the driver of the vehicle ran away and the owner did not appear during the adjudicatory proceedings. And as there was no proof of lawful import of the goods being transported, they were seized for

Islamabad High Court

purportedly being smuggled goods along with the vehicle. The Tribunal by order dated 04.09.2025, amended the Collector's order, with reasoning similar to that furnished in the order impugned in Custom Reference No.77 of 2025. It noted that the Order-in-Original and the Order-in-Appeals did not take note of the fact that the Customs department failed to provide any proof of smuggling. The van, which had been seized at Sangjani Toll Plaza along with foreign origin cigarettes, had not been previously used for smuggling. And being a duly registered public transport vehicle, it was liable to be released on payment of 40% redemption fine.

98. The Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the Act, (ii) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled or proscribed goods, if they were so found, and (iii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. In the event that the goods are found to be proscribed, and the vehicle is found to be involved in "removal" of goods in an act proximate to the act of smuggling or importing proscribed goods, the Tribunal must additionally determine the culpability of the vehicle owner, and whether he discharged his duty of care and exercised necessary diligence to confirm the goods were not smuggled/proscribed, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can

Islamabad High Court

be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.97 of 2025 (Collector v. Yasir Zaman)

99. By Order-in-Original dated 09.07.2025, a Faw Pickup was confiscated after being seized at IJP road, for being loaded with foreign origin betel nuts. No one appeared to provide a defence against the show cause notice and the Collector simply concluded that the charges stood established. The Order-in-Appeal dated 09.07.2025, also contains no reasoning and relied on SRO 499 and SRO 1619 to conclude that the confiscation of the vehicle was mandatory. The Tribunal by order dated 06.10.2025, found that the vehicle was a public transport vehicle and the goods had been booked for purposes of carriage. It noted that the Customs Department had failed to establish *mens rea* and the penal action of confiscation could not have been taken without establishment of *mens rea*. It also took note of the fact that the vehicle and goods had not been seized in a border area but in Islamabad. Treating these at mitigating factors, the Tribunal directed that the vehicle be released on payment of 40% redemption fine.

100. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. The vehicle – a public transport carrier – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act having been seized at the IJP Road in Islamabad. We, therefore, **uphold** the order of the Tribunal to the extent that

Islamabad High Court

it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.99 of 2025 (Collector v. Naqeeb Ullah)

101. By Order-in-Original dated 21.05.2025, the Collector ordered the confiscation of a Shahzor, which was seized at M2 Toll Plaza along with purportedly Chinese origin knitted fabric. Nobody appeared during the adjudicatory proceedings and the Collector concluded without recording reasons that the goods were of foreign origin and were therefore smuggled and that the vehicle was being used wholly and exclusively for their transportation. The Tribunal by order dated 04.11.2025, amended such order on the basis that polyester knitted fabric was freely importable and was not a prohibited item. That there were five claimants of the goods, purported to be smuggled, and in view of the valuation of such goods the threshold for purposes of smuggled goods prescribed in section 2(s) of the Customs Act was not triggered. The goods were directed to be released on 20% redemption fine and the vehicle was directed to be released on payment of 40% redemption fine.

102. The Tribunal has rendered a finding of fact that neither the goods were smuggled or proscribed, nor was the vehicle involved in smuggling, as the required *mens rea* was not established. The Tribunal is the last fact-finding forum within the adjudicatory hierarchy established under provisions of the Act, and we have no reason to interfere with such findings in our reference jurisdiction.

Islamabad High Court

We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that the goods and vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of goods/vehicle or imposition of redemption fine does not arise. The goods and the vehicle shall accordingly be released to the owners unconditionally.

Custom Reference No.100/2025 (Collector v. Zaboor Ahmed)

103. By Order-in-Original dated 17.03.2025, a Mazda Truck seized near Chungi No.26, Islamabad with fresh apples was ordered to be confiscated. It provided no reasoning for how it was determined that the apples were of foreign origin and therefore smuggled. The Order-in-Appeal dated 09.07.2025, upheld the Order-in-Original without providing reasons as to how the allegation of smuggling stood established in the matter or how it was concluded that the apples were of Irani origin. The Tribunal by order dated 24.10.2025, while adopting reasons similar to that given in the order impugned in Custom Reference No.77 of 2025, held that there was no proof of smuggling and ordered that the vehicle be released subject to payment of redemption fine.

104. The Tribunal has rendered a finding of fact that the vehicle was not involved in smuggling, as the required *mens rea* was not established. The vehicle – a public transport carrier – was not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act having been seized near Chungi No.26 in Islamabad. We, therefore, **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however,

Islamabad High Court

set aside the Tribunal's order to the extent that it has imposed redemption fine in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

Custom Reference No.101 of 2025 (Collector v. Zabit Khan)

105. By Order-in-Original dated 07.08.2025, a Suzuki Pickup seized at Fateh Jang/GT Road on 15.04.2025, loaded with Chinese origin tyres, was ordered to be confiscated. The Collector noted that the defendants, who were owners of the tyres, had expressed their willingness to pay taxes and duties. Given the value of the seized goods, they fell beyond the ambit of section 2(s) of the Act and the goods were therefore ordered to be released upon payment of taxes and duties along with fine. The vehicle was however ordered to be confiscated, for being used wholly and exclusively for purposes of transporting smuggled goods. The Tribunal by order dated 18.11.2025, upheld the Order-in-Appeal dated 17.09.2025, and directed that the vehicle be released on payment of 40% redemption fine. Consequently, the allegedly smuggled goods stood released in the adjudicatory proceedings before the Collector and the Collector (Appeals), but the vehicle was ordered to be confiscated. The Tribunal then ordered the release of the vehicle on payment of redemption fine.

106. The Tribunal has not determined whether (i) the owner of the goods and/or the vehicle had a lawful excuse to be in possession of smuggled goods, and (ii) the vehicle was used in the "removal" of goods in terms of Section 157(2) of the Act. The Tribunal ought to have additionally determined the culpability of

Islamabad High Court

the vehicle owner, and whether he discharged his duty of care and exercised necessary diligence to confirm the goods were not smuggled/proscribed, in the event that an ordinary prudent person would entertain reasonable suspicion that the goods were proscribed. The Tribunal also imposed redemption fine in lieu of confiscation, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment. Meanwhile, the vehicle shall be released to the owner of the vehicle in terms of the first proviso to Section 157(2) of the Act, subject to furnishing of a guarantee to the satisfaction of the Collector the amount of which shall not exceed the value of the vehicle.

Custom Reference No.02 of 2026 (Collector v. Liaqat Khan)

107. By Order-in-Original dated 27.08.2025, a Suzuki Pickup was seized from GT Road near Taxila for transporting foreign origin tyres. No one appeared during the adjudicated proceedings before the Collector, who recorded no reasoning as to how it was established that the goods were being smuggled. The Order-in-Appeal dated 16.10.2025, which upheld the Order-in-Original, similarly included no reasoning and finding with regard to smuggling and or wrongdoing on part of the goods and vehicle owner. The Tribunal by order dated 11.02.2025 noted that the vehicle was not seized from a border area and could not be treated as a vehicle being used to remove goods from a border area. The Customs Department valued the goods seized (tyres and tubes) at Rs.534,659/- and valued the vehicle transporting them at Rs.1.3 million. The Tribunal ordered that the goods be released on

Islamabad High Court

payment of 20% redemption fine and the vehicle be released on payment of 40% redemption fine.

108. The Tribunal has rendered a finding of fact that the seized vehicle was not involved in smuggling, as the required *mens rea* was not established. The vehicle was also not involved in "removal" of proscribed goods in terms of Section 157(2) of the Act. We **uphold** the order of the Tribunal to the extent that it has directed that vehicle be released. We, however, **set aside** the Tribunal's order to the extent that it has imposed redemption fine for release of the vehicle in lieu of confiscation. Once the Tribunal has determined that the underlying offence is not made out, the question of imposition of penalty in the form of confiscation of vehicle or imposition of redemption fine does not arise. The vehicle shall accordingly be released to the owner unconditionally.

109. In relation to the goods, the Tribunal has not determined whether (i) the seized goods were smuggled or proscribed and the owner of the goods was liable for an offence in terms of Clauses (89) and (90) of the Act, and (ii) the owner of the goods had a lawful excuse to be in possession of smuggled or proscribed goods. The Tribunal also imposed redemption fine in lieu of confiscation while ordering release of the goods, when no such discretion was vested in it in terms of SROs 499 and 1619. We, therefore, **set aside** the impugned order to the extent of release of the goods and **remand** the matter back to the Tribunal so that the required factual determinations can be rendered in accordance with the principles enumerated in this judgment.

110. As has been held and emphasized in some detail by this Court in ***Lal Mat Khan***, where penal action has the effect of fettering fundamental rights guaranteed by the Constitution,

Islamabad High Court

including the right to possession and use of property, the State must adopt the means least restrictive for upholding the legitimate state object underlying a statute, where it has the effect of hampering such rights. This principle is fully applicable during the adjudicatory process under provisions of the Act as well. In none of the twenty references that form the subject-matter before us have Collectors exercised their authority in terms of the first proviso to Section 157(2) of the Act, to release vehicles, subject to furnishing of financial guarantees, including where the vehicles-in-question were public transport carriers. In the event that the adjudicatory authorities come to the conclusion that the seized vehicle is not liable to confiscation, its seizure meanwhile denies its rightful owner the right to possession and use, which in turn also fetters the right guaranteed under Article 18 of the Constitution, to the extent that the vehicle is employed by the owner as part of his business. Such refusal to exercise the discretion vested in terms of the first proviso to Section 157(2) of the Act, becomes confiscatory where the no wrongdoing is found and the vehicle is ultimately ordered to be released. It is therefore imperative that the Collector ordinarily exercise such discretion to order the release of vehicles as a matter of course, subject to furnishing of guarantees. And the Collector must record reasons, where there exist grounds counselling against the exercise of such discretion, which grounds are then justiciable before the next appellate authority.

111. We would also note, with respect, that in the process of adjudicating these references we have found the reasoning and attention to factual details of not just the Collector Adjudication but also the Tribunal to be lackadaisical. The consequences that flow from the adjudicatory orders are consequential for the interests of

Islamabad High Court

citizens involved in the adjudicatory proceedings, as well as the interests of the state. There ought to be no need to emphasize that adjudicatory authorities are under an obligation to pass orders that are just, fair and reasonable, and are backed by proper reasoning, in terms of Section 24A of the General Clauses Act, 1897. Stereotypical, mechanical and cyclostyled orders or the cut-and-paste variety, without regard to the facts of individual cases, stand in clear breach of such duty.

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

(SAMAN RAFAT IMTIAZ)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in open Court on **27.04.2026.**

JUDGE **JUDGE**

Approved for reporting.

M.A. Raza

Islamabad High Court

Annexure-A

Sr. No.	Case Number	Title
01	Customs Reference No.30/2025	The Collector of Customs Vs. Sajid Anwar and another
02.	Customs Reference No.31/2025	The Collector of Customs Vs. Jannat Gul and another
03.	Customs Reference No.34/2025	The Collector of Customs Vs. Tanveer Sheikh, etc.
04.	Customs Reference No.46/2025	Collectorate of Customs Enforcement through Addl. Collector Customs Vs. Mehmood Khan and others
05.	Customs Reference No.51/2025	Collectorate of Customs Enforcement through Addl. Collector Customs Vs. Habib ur Rehman and another
06.	Customs Reference No.52/2025	Collectorate of Customs Enforcement Vs. Muhammad Ismail and others
07.	Customs Reference No.53/2025	Collector of Customs Enforcement Vs. Haya Khan and others
08.	Customs Reference No.54/2025	Collector of Customs Enforcement Vs. Raaz Mohamamd and others
09.	Customs Reference No.55/2025	Collector of Customs Enforcement Vs. Rasool Khan and others
10.	Customs Reference No.73/2025	The Additional Collector of Customs Vs. Atif Nazir and another
11.	Customs Reference No.74/2025	The Collector of Customs (Enforcement) Vs. Ahmed Zaid and others
12.	Customs Reference No.77/2025	The Collector of Customs (Enforcement) Vs. Bashir Ahmed and others
13.	Customs Reference No.80/2025	The Collector of Customs (Enforcement) Vs. Mohammad Asif and others
14.	Customs Reference No.81/2025	The Collector of Customs (Enforcement) Vs. Abid Waqas and others
15.	Customs Reference No.90/2025	The Collector of Customs (Enforcement) Vs. Hazrat Habib and others
16.	Customs Reference No.97/2025	The Collector of Customs (Enforcement) Vs. Yasir Zaman and another
17.	Customs Reference No.99/2025	Collector of Customs (Enforcement) Vs. Naqeeb Ullah and another
18.	Customs Reference No.100/2025	Collector of Customs (Enforcement) Vs. Zahoor Ahmed and others
19.	Customs Reference No.101/2025	Collector of Customs (Enforcement) Vs. Zabit Khan and others
20.	Customs Reference No.02/2026	Collector of Customs Vs. Liaqat Khan and others

Islamabad High Court