JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Customs Reference No.44 of 2015

ABDUL QADIR

VERSUS

THE ADDITIONAL COLLECTOR CUSTOMS (ADJUDICATION)
and others

Applicant by	**:**	**Mr. Farhat Nawaz Lodhi, Advocate.**
Respondents by	**:**	**M.D. Shahzad, Advocate.**
Date of hearing	**:**	**15.06.2023.**

SAMAN RAFAT IMTIAZ, J.

1. The present Custom Reference Application has been filed by the Applicant [Abdul Qadir] against the Judgment dated 06-07-2015 ("**Impugned Judgement**") passed by the Respondent No. 4 [The Customs Appellate Tribunal, Islamabad ("**Tribunal"**)] dismissing the Appeal No.77/IB/2013 filed by the Applicant against the Order-in-Original No.17/2013 dated 31-07-2013 passed for the confiscation of the Subject Vehicle (described herein below).

2. The brief facts as per the Memo of Application are that the Applicant purchased a Mitsubishi Pajero bearing Registration No. JK-382 Islamabad ("**Subject Vehicle**") from one Aizaz Ahmed s/o Mumtaz Ahmed in consideration of Rs. 910,000/- vide contract dated 14-10-2009 and is the bona fide owner/purchaser thereof. The Subject Vehicle was stolen from outside the Applicant's home on 04-07-2010. The Applicant registered FIR dated 08-07-2010 at Police Station Wah Cantt for the offence under Section 381-A, PPC. Thereafter Applicant was verbally informed by the officials of Police Station Wah Cantt on 16-12-2012 that a car of similar description as given in the Applicant's FIR has been recovered from the CB Ground. According to entry in the police register, the Subject Vehicle's chassis number was in accordance with the FIR nevertheless the police officials at Police Station Wah Cantt referred the matter to the Forensic Science Laboratory ("**FSL**") Islamabad without associating the Applicant and managed to obtain a lab report dated 21-12-2012 according to which the

uncertified

chassis of the vehicle was found tampered with. The Applicant submits that the Subject Vehicle may have been tampered with when stolen by unknown person and that he had verified the authenticity of the Subject Vehicle from all quarters before entering into contract for purchase in October 2009.

3. The Applicant moved an application for *Superdari* of the Subject Vehicle before the Area Magistrate (Wah Cantt). On 04-02-2013, the learned Area Magistrate allowed application for *Superdari*. The Subject Vehicle, after requisite procedure, was handed over to the Applicant. However, the Subject Vehicle was intercepted by the staff of the Respondent No.3 [The Deputy Director, In-charge Car Cell, Directorate General of Intelligence and Investigation] allegedly that the Subject Vehicle was non duty paid/smuggled one. The Subject Vehicle was referred to FSL, Islamabad Police for lab test of its chassis number/frame and it was reported vide letter No.9512013 dated 12-02-2013 that the Subject Vehicle has already been examined in FSL Islamabad vide Lab Report No. 2041/2012 dated 21.12.2012 wherein it was reported that the chassis number of the Subject Vehicle has been found tampered with after chemical treatment. The detention of the Subject Vehicle was converted into seizure vide Contravention Report No. 10/2013 dated 18.02.2013.

4. It has been further stated in the Reference Application that the Subject Vehicle had been previously seized by the staff of Model Customs Collectorate (Preventive), Rawalpindi on 24-03-2010 but was released when it was confirmed that it was lawfully imported and all duty/taxes leviable had been paid. It was also mentioned in the order of Model Customs Collectorate, Rawalpindi dated 31.03.2010 that the Subject Vehicle was subjected to a forensic lab examination vide office letter No.V.Cus.(P)Seiz/382/2010/3538 dated 26-03-2010 which resulted in Lab Report No. 1110/2010 dated 29-03-2010 issued by FSL Islamabad wherein it was concluded that chassis number of the Subject Vehicle was neither tampered with nor grinded.

5. Notwithstanding the above, a Show Cause Notice C. No.V-CUS/ADC/Adj/26/2013/4906 dated 10.04.2013 was issued which was responded to by the Applicant vide Reply dated 30-05-2013. However, an Order-in-Original No. 17/2013 dated 31-07-2013 was passed for the outright confiscation of the Subject Vehicle. Being aggrieved, the Applicant filed an

Uncertified

Appeal before the Tribunal which was decided vide the Impugned Judgment, hence the instant reference petition. The Applicant has proposed the following questions of law in the Customs Reference Application:

1. *Whether the Impugned Judgment/proceedings are legally sustainable?*

2. *Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the Orders of the lower authorities?*

3. *Whether the Impugned Judgment suffers from non-reading and mis-reading of the evidence/facts on record, inter alia, the fact that there was no 'cut and weld' of the chassis plate (means the plate was genuine)?*

4. *Whether all the proceedings including the seizure and Seizure Report are illegal, unlawful, without jurisdiction and authority and are liable to be quashed/vacated, accordingly.*

5. *Whether the Impugned Judgment is against the judgment passed by the Supreme Court in CA 208/2004 vide Order dated 04-10-2011, and judgment dated 22-05-2002 passed by the Lahore High Court, Rawalpindi Bench in Customs Appeal No. 25/2002. The judgments are applicable to the case in hand on all fours and binding precedents. The Order-in-Original is also hit by "stare decisis".*

6. *That the genuineness of the Registration Book issued by the Motor Registration Authority, Islamabad, and the documents on file of the Motor Registration Authority are not disputed presumption of truth is thus attached to the same being 'public documents' and onus of proof lied/lies on the other side to prove their case against the documents etc.*

7. *Whether the Orders of Superdari, passed by the learned Area Magistrate, Wah Cantt., on 04-02-2013, in FIR No.478 dated 08-07-2010, has been considered/given any weightage. Since the Respondents have accepted/admitted the facts as to the theft and Superdari.*

8. *Whether and without prejudice, in the given circumstances, the Applicant is not entitled to have the concessions as per law as laid down by the Supreme Court in Vulcan Company Ltd. Vs. Government of Pakistan, PTCL 1983 CL 83, inter alia, being a bonafide purchaser for due consideration?*

9. *Whether the learned Tribunal has erred in appreciating the facts that the Applicant verified the authenticity of the Subject Vehicle before entering into contract for purchase in October, 2009. The Subject Vehicle was subjected to FSL four times, however, reports are at variance as detailed here under:-*

Sr. No.	*Report No./Date/by*	*Findings*
1.	*Lab No.1110/2010 dated 29.03.2010 by Forensic Science Laboratory, Islamabad*	*(i) Chassis number is not grinded not tampered.* *(ii) The chassis number is not self-punched. The formation and alignment of the digit is normal.* *(iii) The chassis number frame has not been cut and welded.*
2.	*Lab Report No.2041/2012 dated 21.12.2012, by Forensic Science Laboratory Islamabad*	*The chassis number of the said vehicle has been found tampered*

uncertified

	Police, Islamabad	*after chemical treatment.*
3.	*Lab Report No.02A1303 dated 05.05.2014 by the Ministry of Interior National Forensic Science Agency, Islamabad*	*(i) Before examination the Chassis No.V44-3003003* *(ii) After examination the Chassis No.V44-3003003* *(iii) The frame bearing the chassis number has not been cut and welded.* *(iv) No other number has been deciphered underneath the present chassis number.* *(v) Chassis number has not been tampered/self-punched.*
4.	*Lab Report No.S.V.34-1498-014 dated 29.09.2014 by Forensic Science Laboratory Police Investigation Peshawar.*	*The following number has been found deciphered in its chassis number: V44-4034889*

10. Whether on the facts and in the circumstances of the case the learned Respondent No. 1 [The Additional Collector (Adjudication), Model Customs Collectorate] was not under legal obligation to extend the benefit of doubt to the Applicant?

11. Whether it was incumbent upon the Respondents to produce the alleged original vehicle which was allegedly imported and 'cleared' against the genuine import documents (in ownership of the Applicant), as per dictum of the judgments of the Supreme Court?

12. Whether the customs authorities have jurisdiction to seize and confiscate vehicle registered by the competent motor registration authority after fulfilling all the legal requirements?

13. Whether the possession of undisputed genuine documents of import and registration not create a legal presumption of truth in favour of the Applicant? And whether secondary evidence can prevail over primary evidence?

14. Whether the learned Tribunal has erred in appreciating the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, especially as contained in Articles 18, 23, 24 and 25, read with Article 2A and 4 thereof?

6. The learned counsel for the Applicant argued that the vehicle was imported by the Saudi Embassy which is evident from the registration book of the car that reflects serial No. 'CD' which is the series used for vehicles of the Saudi Embassy. However, import documents were submitted to the excise department at the time of registration. In any event, import by the Saudi Embassy has not been refuted. The Applicant purchased the vehicle in 2009. According to the Applicant, the Lab Report issued by FSL Islamabad in 2010 did not reflect tampering. Although this report is not on the record but according to the learned counsel for the Applicant it has been referred to in an order. An FIR was registered with regard to theft of the Subject

uncertified

Vehicle which was released on *Superdari* by the Applicant. On the same day the vehicle was seized by the Respondent. The forensic report dated 21.12.2012 issued by FSL Islamabad indicated tampering. It is not clear why forensic was conducted for the third or the fourth time but in any event the report dated 05.05.2014 issued by National Forensic Science Agency (Vehicle Examination Section) confirmed that there was no tampering whereas the forensic conducted by the FSL Peshawar on 29.09.2014 showed tampering. No finding has been given by the Tribunal regarding the third and fourth forensic reports.

7. Conversely, the learned counsel for the Respondent opposed the arguments advanced by the learned counsel for the Applicant and submitted that the Impugned Judgment is in accordance with law as the FSL report confirms tampering of the chassis number of the Subject Vehicle, therefore, the Impugned Judgment does not call for any interference.

8. We have heard the arguments of the learned counsel for the parties and perused the record.

9. The perusal of the Impugned Judgment reveals that it has been passed mainly on account of the report dated 21.12.2012 issued by FSL Islamabad according to which the chassis number of the Subject Vehicle was tampered with. Essentially the question of law that arises in the instant case is the same as the core issue that was involved in the case before the learned Division Bench of the Peshawar High Court in the case of *Sultan Muhammad Vs. Collector of Customs and another*, 2015 PTD 570 i.e. *"What should be the ultimate result, when an imported vehicle, which on suspicion of being non-duty paid, is seized by custom staff and for verification sent for chemical examination, the report whereof, confirms that the chassis number of the seized vehicle was manipulated"*. The Peshawar High Court vide the said judgment disposed of a number of Custom Reference Applications; some of which were filed by the vehicle owners whereas others were filed by the Department. The References were decided in two categories. The first category comprised of those cases where the Appellate Tribunal did not allow the release of vehicles to their owners in view of confirmed FSL reports of tampered chassis of engine number. The Peshawar High Court decided that such decisions of the Appellate Tribunal were in accord with settled principles and as such required no interference.

uncertified

The second category included cases where the Tribunal released the vehicles despite clear FSL reports of tampered chassis numbers. The Peshawar High Court held that these decisions warranted correction as any manipulation of chassis number included cutting of chassis plate, the removal thereof and welding another piece thereon or any other mode, whereby the original chassis number of the vehicle is altered, amounts to tampering especially, when the owner was unable to explain and justify the said manipulation of the chassis number.

10. The learned counsel for the Applicant has relied upon the unreported judgment of the Supreme Court dated 16.02.2021 passed in the case of *Nazakat Khan Vs. The Collector of Customs, Custom House, Peshawar,* Civil Appeal No.452 of 2015, which reveals that one of the vehicle owners approached the Supreme Court assailing the judgment rendered by the Peshawar High Court in *Sultan Muhammad (Supra)* whereby the findings of the Appellate Tribunal were reversed by holding that the vehicle had a tampered chassis number and was therefore smuggled and as such liable to confiscation. The apex Court set aside the Judgment dated 24.11.2014 passed by the Peshawar High Court to the extent relevant to the discussion therein. The Supreme Court in *Nazakat Khan (Supra)* reproduced the FSL report which in a nutshell concluded that the chassis number is re-stamped one. The apex Court took note of the fact that the Appellate Tribunal in its judgment held that the finding of such FSL report did not amount to tampering. The Supreme Court reflected that it is settled law that a finding of fact recorded by the Tribunal cannot be made the subject of a tax reference unless it is shown there has been misreading or non-reading of evidence. The Supreme Court observed that nothing had been shown in the case before it to reach such a conclusion. It was further stated that a tax reference is maintainable only on question of law but that the Peshawar High Court has interfered with the finding of fact recorded by the Tribunal without any question of law in relation thereto having been properly raised. It is noted that this applies equally to customs' references. Reliance is placed upon *Messrs Middle East Construction Company Karachi Vs. The Collector of Customs, Karachi,* 2023 SCMR 838 and *Messrs T & N Pakistan Private Limited Vs. The Collector Customs and others,* 2022 SCMR 1119. The Supreme Court, therefore, held that the High Court could not have

uncertified

interfered with the finding of fact recorded by the Tribunal i.e., that the forensic report did not show tampering and without any question of law having been raised by the Department in relation thereto.

11. Be that as it may, more importantly for us, the Supreme Court goes on to say that and we quote ***"At the forefront must be the clear understanding that cases such as the one at hand are not concerned with tampering in and of itself (which would, e.g., be the position under the provincial statute). The question is always whether there has been smuggling within the meaning and for the purposes of the Customs Act. To simply jump from a (factual) conclusion that there has been "tampering' (if such be the case) to the (legal) determination that there must therefore have been smuggling is facile".*** In other words, tampering is neither synonymous with smuggling nor does it by itself automatically lead to the conclusion that the vehicle was smuggled. On the other hand, perusal of the Impugned Judgment before us indicates that tampering of chassis number as per the report dated 21.12.2012 issued by FSL Islamabad has been taken as incontrovertible proof of smuggling. Such an approach is not sustainable in light of Nazakat Khan *(Supra)*.

12. Here it is necessary to consider as to who has the burden of proof to establish that a vehicle is smuggled or otherwise. The relevant provision of law in the context of the facts of the instant case is Section 156 (2) of the Customs Act, 1969 ("**Customs Act**") which is reproduced herein below:

> *"156. Punishment for offences.-(I) Whoever commits any offence described in column I 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 hereof :-*
>
> *Nothing in column 3 of the above Table shall be deemed to have the force of law.*
>
> *Explanation.-For the purposes of any penal provisions of this Act, the offence of contravening, in respect of any goods, any of the provisions of this Act or the rules or any other law for the time being in force, shall be deemed to have been committed when, in the case of import, any vessel containing such goods arrives within twelve nautical miles of the sea coast of Pakistan (each nautical mile measuring six thousand and eighty feet) or when, in the case of export, such goods have been loaded on any conveyance for transport to any destination outside Pakistan, or when, in either case, the connected customs documents have been presented to the appropriate officer.*
>
> *(2)* ***Where*** *currency, gold, silver, precious stones, ornaments or other manufactures of gold, silver or precious stones,* ***or any other goods which the Central Government may, by notification in the official Gazette, specify are seized under this Act in the reasonable belief that an act to defraud the Government of any duty payable thereon*** *or to evade any, prohibition or*

uncertified

restriction for the time being in force by or under this Act ***has been committed*** *in respect of such goods, that there is intent to commit such act,* ***the burden of proving that no such act has been committed or there was no such intent shall be on the person from whose possession the goods were seized.***

(3) Where any person charged of an-offence under clause 8 or clause 89 of the Table under subsection (1) is acquitted by a Magistrate, and the finding of the Magistrate be that the goods in respect of which the person was charged are not smuggled goods, such person shall not be liable to any penalty, nor such goods shall be liable to confiscation, and if any order confiscating the goods or imposing any penalty has already been made by an officer of customs, it shall become null and void." [Emphasis Added]

13. The burden of proof is also covered in Section 187 of the Customs Act, which has already been considered by another Division Bench of this Court comprising one of us (Saman Rafat Imtiaz J.) in an unreported judgment in the case of *The Directorate General, Intelligence and Investigation-FBR Vs. Ghulam Mustafa and others***,** Customs Reference No.33 of 2020. Relevant portion of the said judgment is reproduced herein below:

"6. In our opinion the contentions of the Applicant are based on a mis-appreciation of Section 187 of the Act. Before we go any further it is beneficial to reproduce the said provision of law which is as such given herein under:

> ***187. Burden of proof as to lawful authority etc.-*** *When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, licence or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, licence or other document shall lie on him .*

7. ***No doubt that the initial burden of proof to show that any act done by or anything in possession of an accused person is with lawful authority or under a permit, license or other document prescribed by any law is upon the accused person under Section 187 of the Act. However, it is now well settled that it is only the evidential and tactical burden which is initially placed on the accused in a custom offence and that the accused need only show some evidence to prima facie discharge his evidential burden and thereafter the onus shifts upon the customs authorities.*** *This concept was discussed by the Honourable Sindh High Court in the case of Abdul Razzaq Vs. Director General Intelligence and Investigation-FBR, Regional Office Karachi and 2 others, 2016 PTD 1861. The relevant portion is reproduced herein below:*

> *"31. The question of the initial evidentiary burden of proof falling on the applicant was decided in the case of Kamran Industries v. Collector of Customs (PTCL 1996) which found as under on CL 15:-*
>
> > *"Scope of section 187. Section 187 covers two situations which we state as follows:-*
> >
> > *(a) when a person is charged with an offence under the Customs Act, the burden of proof is cast upon him to show that he had the lawful authority to commit that act,*
> >
> > *(b) when a person is found in possession of any goods the burden of proof is cast upon him to show that he was holding*

Uncertified

such goods under some lawful authority, permission or licence, etc.

In situation (a) the question whether the burden of proof solely lies upon the petitioner to disprove allegations of mis-declaration and misdescription leveled by the Customs authorities and whether the Customs authorities are under no obligation to lead evidence and discharge any onus of proof. This part of Section 187 of the Customs Act perhaps appears to be contrary to the general principle of the law of evidence contained in Article 117 of the Qanun-e-Shahadat that whosoever alleges existence of particular fact must prove the same.

On a closer scrutiny of the provisions of Section 187 and the case law settled by our courts on the subject it appears that in such a situation it is only the evidential and tactical burden of proof which is cast upon the accused while the legal burden to bring home the allegations remains with the prosecution. (bold added)

Situation (b) provides that where a person is found to be in possession of certain goods which fall under a prohibited category or which in an unlawful manner find place in the possession or custody of the accused. In such cases the burden is upon the accused to show that he falls under some exemption or exception to hold such goods. This type of eventuality as envisaged and stated in situation (b) above is essentially a statement of the general principle of the law of evidence contained in Article 121 of the Qanun-e-Shahadat that who so ever claims to fall under a preferential or exempt or excepted category must show that he fulfills that condition to fall within that category. This obviously should not be confused with the factum of possession for which no presumption or burden of proof has been spelt out, in view of the possession itself has to be proved independently by the prosecution beyond all reasonable doubt." [Emphasis added].

8. ***In other words the burden of proof upon the accused under Section 187 of the Act is only to establish a prima facie case and if he is able to raise a probable defense which creates doubt, the benefit of such doubt must go to the accused whereas the ultimate burden remains on the custom authorities to prove the case against the accused beyond reasonable doubt*** *as was explained in the case of Collector Customs, Sales Tax and Central Excise, Custom House, Quetta Vs. Naimtullah, 2003 PTD 2118, by the Honorable Quetta High Court." [Emphasis Added].*

14. Before we consider whether the parties before us met their respective burden of proof in the case at hand, we find it useful to also consider some other rulings of the Supreme Court relied upon by the Peshawar High Court in *Sultan Muhammad (Supra)*. Although the Peshawar High Court while relying upon such case law reached the conclusion that vehicles cannot be released in case forensic reports indicate tampering of chassis number which has now been overturned by the Supreme Court, the said case law does provide guidance as discussed below.

uncertified

15. For instance the judgment in *Sultan Muhammad (Supra)* notes that the apex court in the case of *Ch. Maqbool Ahmed Vs. Customs, Federal Excise and Sales Tax Appellate Tribunal,* 2009 SCMR 226 upheld confiscation of the vehicle in view of FSL report establishing that chassis number was found cut and weld. The Supreme Court held that it could be safely concluded that the particulars entered in the registration book related to another vehicle especially when the said particulars did not tally with the model etc. recovered from the vehicle's owner. The said case is clearly distinguishable from the case before us as firstly there are conflicting forensic reports on the record in the case at hand, which aspect has been ignored by the Respondent No.4. While the first report dated 29.03.2010 issued by Islamabad is not on record, the order dated 31.03.2010 passed by the Model Customs Collectorate, Rawalpindi refers to the same as having concluded that the Subject Vehicle was not found tampered with after chemical treatment and that it was legally imported. Secondly, there is no finding in the Order-in-Original dated 31.07.2013 or in the Impugned Judgment that particulars entered in the registration book produced by the Applicant are at variance with the model, etc. of the Subject Vehicle.

16. The Peshawar High Court also referred to *Saleh Jan's* case, decided on 13.06.2013, Civil Appeal No.58-P of 2010 wherein the apex Court recorded its finding as follows:

> *"**In our opinion once a valid registration book had been produced by the respondent to support his contention that the vehicle was imported according to law, then it was incumbent upon the authorities to have summoned the entire record from the port authorities etc as well as motor registration authority in order to establish the origin of the vehicle in question which they failed to do.** It appears that some tampering was done to the chassis number of the vehicle as a result of which it became defaced and this perhaps happened when the vehicle was in the use of the custom authorities.*
>
> *In view of the foregoing circumstances, we would conclude that it could not be established by the custom authorities that the vehicle was a smuggled one. Hence we do not find any defect or material irregularity in the conclusions reached by the Learned lower forums below so as to convince us to interference in the matter. Consequently this Appeal is dismissed."* [Emphasis Added].

17. Similarly, the Sindh High Court in the case of *The Additional Director, Directorate General of Intelligence and Investigation-FBR Regional Office, Karachi Vs. Imran and another,* 2021 PTD 1683 held as follows:

uncertified

"8. We would now examine the provisions of Section 187 of the Customs Act, 1969, relating to discharge of burden of proof, according to which, when any person alleged to have committed an offence under this Act, and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall be upon such person. In all the above references and the petitions, it has been noted that original Registration Book issued by Motor Vehicle Registration Authority in respect of subject vehicles, along with Customs Auction documents, Bank Challans towards payment of Additional duty and taxes. Form of Transfer Order, Capital Value Tax (CVT), Registration Fee and other charges were produced before the Customs Authorities to justify the lawful ownership/possession towards discharge of initial burden of proof in terms of Section 187 of the Customs Act, 1969. In the afore cited judgment, the learned Divisional Bench of this Court has elaborately dilated upon all the above legal issues related to discharge of burden of proof and has been pleased to hold that in terms of Section 187 of the Customs Act, 1969, ***once the initial burden relating to ownership and lawful possession of the imported vehicle has been discharged through production of original Registration Book issued by the Motor Vehicle Registration Authority or any other document prescribed by law or under any other law for the time being in force, then burden shifts upon the Customs Authorities to establish that either the Documents produced are forged, bogus or the same have been obtained illegally, hence of no legal consequences. However, in these cases, no proceedings, whatsoever, appear to have been initiated either against the previous owners of the subject vehicles, whose particulars have been provided by the respondents to the Customs Authorities to verify the mode and manner in which such vehicles were brought into Pakistan, nor any action against the officials of the Motor Vehicle Registration Authority. Customs Authorities and the Bank officials has been taken, for having issued the Registration Books, Custom Auction documents and Bank paid challans which, according to Customs Authorities are forged and bogus documents.*** *On the contrary, in the absence of any material, inquiry/investigation or any steps required to be undertaken for establishing the charge of smuggling in terms of Section 2(s), or to make out a case that owners of the vehicles are found in possession of smuggled vehicles in terms of Sections 156(1), (89) and (90) of the Customs Act, 1969, and even without following the legal course of adjudication as provided under Chapter XIX of the Customs Act, 1969, subject vehicles have been detained/seized on the charges of smuggling. In all these cases, subject vehicles have been detained / confiscated by the Customs Authorities in a highly arbitrary manner while the same were plying within the territorial city limits, inspite of the fact that initial burden to prove the lawful ownership and possession of subject Registered Vehicles was discharged by the owners through production of aforesaid documents. Reliance in this regard can be placed in the case of Messrs Muhammad Ateeq Paracha and others v. The State (2005 PTD (Trib.) 135) and Abdul Razzaq v. Directorate General of Intelligence and Investigation - FBR and 2 others (2016 PTD 1861)".* [Emphasis Added].

18. The Respondent No. 4 has itself discussed the presumption of truth attached to the registration book in *Muhammad Naeem, District Gujrat Vs Additional Collector (Adjudication), Customs House, Lahore*, 2017 PTD (Trib.) 1391, which discussion is reproduced as follows:

"19. ***Now adverting to the ancillary question, posed in context of evidential value of registration book of impugned vehicle and its legal value with regard to lawful import of impugned vehicle,*** *it would be proper to advert to*

the relevant provisions of West Pakistan Motor Vehicles Ordinance, 1965. ***Section 25 thereof has been reproduced below for ease of reference;***

> ***"25; <u>Registration how to be made</u>****.--(1) An application for registration of a motor vehicle shall be made to the registering authority by the owner personally or through a duly authorized agent, in Form "F" as set forth in the First Schedule to this Ordinance, and shall be accompanied by the following:--*
>
> > *(a) Import permit and the bill of lading through which the motor vehicle is imported and paper indicating the payment of customs duty, etc, leviable on the import of such a motor vehicle;*
> >
> > *(b) Sale authority letter and invoice issued by the authorized manufacturer of the motor vehicle or by his authorized dealer in Pakistan; and*
> >
> > *(c) In case of re-registration under section 30 of this Ordinance the registration certificate issued by the original registering authority together with a No. Objection Certificate (NOC) issued by it.*
>
> *(2) -----*
>
> *(3) -----*
>
> *Provided---*
>
> *Provided---*
>
> *(4) The certificate issued under subsection (2) shall be provisional certificate till documents referred to in clauses (a), (b) and (c) of subsection (1) are verified from the concerned agencies by the registering authority:*
>
> *Provided that if the concerned agencies fail to verify the documents within a period of one year from the date of reference, it shall be presumed that the documents produced are fake and the provisional certificate shall stand suspended and cancelled as provided in sections 35 and 35 of this Ordinance:*
>
> *Provided further that the motor vehicles of which the registration certificate is cancelled under the first proviso of the motor vehicles Ordinance the owners or keepers whereof may fail to produce any valid documents in support of their ownership, shall be seized by Government and disposed of in the prescribed manner.*

20. ***A perusal of section 25 as reproduced above reveals that the registration of motor vehicles requires the Registering Authority to take all possible steps to verify the genuineness of applications for registration and in connection with this specific documents have to be produced by the person applying for registration, i.e. in case of imported vehicles paper indicating the payment of customs duty etc, leviable*** *or in case of locally manufactured vehicles Sale Authority Letter and invoice issued by the authorized manufacturer or in case of re-registration, registration certificate issued by the original Registering Authority together with a No Objection Certificate (NOC) issued by it. It would be noteworthy to mention here that according to subsection (4) of section 25 of the Ordinance, only temporary registration can be effectuated on basis of initially tendered documents and that* ***final registration certificate can only be issued subsequent to authentication by the relevant quarters; that under first***

> ***and second provisos to section 25, in case of non verification by concerned agencies, the temporary registration stands annulled*** *and the Government wields the power to seize the delinquent vehicle and dispose it of in accordance with law.* ***Conclusively speaking with context to instant case. Motor Vehicle Registration Law in vogue stipulates a narrow and strict colander so that the smuggled car could be prevented from getting registered; I am therefore of the considered opinion that an original motor vehicle registration book authenticated by the Registering Authority has presumption of truth attached to it under Article 92 of the Qanun-e-Shahadat Order, 1984."*** [Emphasis Added]

19. In the case before us too, the Applicant produced the registration book, however, the Department failed to summon the record from the port authorities or from the motor registration authority to establish the question of vehicle as per the judgment of the Supreme Court. It is noteworthy that such exercise was duly carried out when the Subject Vehicle was seized which culminated in order dated 31.03.2010 passed by Model Customs Collectorate, Rawalpindi whereby the Subject Vehicle was released as it was found not to have been tampered with. This order further reveals that a letter was sent to the ETO/MRA Islamabad vide letter C.No.V.No.Cus(P) seized 382/20103539 dated 26.03.2010. In response, ETO Islamabad provided attested documents i.e. (i) NOC issue from Assistant Collector Customs Dry Port Islamabad, (ii) Exemption certificate, (iii) Sale Agreement, (iv) Request of KSA Embassy for registration, and (v) Verification letter issued by the Assistant Collector Customs Islamabad on the basis of which the inquisition vehicle was registered. Therefore, vide the said order the Model Customs Collectorate, Rawalpindi found that the Subject Vehicle was legally imported. In view of the foregoing, we find that the initial burden cast upon the accused under Sections 156(2) and 187 of the Customs Act was successfully discharged by the Applicant and as such the burden of proof that the Subject Vehicle was a non-duty paid/smuggled one, shifted upon the Department. However, no evidence worth the name has been shown by the Department to prove its allegation in respect of the Subject Vehicle.

20. Before concluding, it is also necessary to note that the Respondent No.4 while considering Section 211 of the Customs Act in the Impugned Judgment has held that it is not correct to suggest that the record may be destroyed after five years. Firstly, the Respondent No.4 has ignored that an individual importer of any good for personal or private use does not come within the purview of Section 211 of the Customs Act. Reference may be

uncertified

made to *Collector of Customs (Preventive), Karachi Vs Ghulam Muhammad*, 2008 PTD 525. Even otherwise an importer who is covered under Section 211 of the Customs Act is under no obligation to maintain any record pertaining to import beyond the period of five years has held in *Imran (Supra)*. Consequently, all the questions proposed by the Applicant are answered in his favour, the Impugned Judgment is set aside and the instant Reference Application is **allowed**.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 10.08.2023.

JUDGE **JUDGE**

JUNAID

uncertified