

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Naeem Akhter Afghan
Mr. Justice Muhammad Shafi Siddiqui

Civil Petition No.327-P of 2020

*[Against order dated 16.04.2020 of the
Peshawar High Court, Peshawar passed
in Customs Reference No.23-P/2020]*

*Collector of Customs, Model Customs
Collectorate, Peshawar.*

... *Petitioner*

Versus

Shamsur Rehman.

... *Respondent*

For the Petitioner:

Mr. Ishtiaq Ahmad, ASC.
a/w Mr. Irfan ur Rehman,
Member Customs, FBR.

For the Respondent:

Nemo.

Date of Hearing:

17.08.2026.

JUDGMENT

Muhammad Shafi Siddiqui, J. This petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is directed against the judgment dated 16.04.2020 passed by the Peshawar High Court, Peshawar, in Customs Reference No.23-P/2020.

2. The facts giving rise to the present petition are that on 09.12.2018, a motor car bearing Registration No.LE-854 (Lahore) was intercepted while coming from Jamrud by the officials of the Customs Mobile Squad with the assistance of the local police. Upon search, certain foreign-origin goods were recovered from the vehicle. The owner/occupants neither justified importability nor could produce any documents evidencing their lawful

import or possession. The goods were accordingly seized under section 168 of the Customs Act, 1969 (hereinafter referred to as the '**Act**') for the alleged violation of section 2(s) and section 16 thereof read with section 3(1) of the Imports and Exports (Control) Act, 1950. The vehicle used for their transportation was seized under section 157 of the Act. The matter was thereafter taken up by the adjudicating authority, which, through Order-in-Original No.477/2018 dated 13.12.2018, ordered outright confiscation of the seized goods while allowing the vehicle to be released against payment of a redemption fine equivalent to 20% of its value. Aggrieved by the imposition of the redemption fine upon the vehicle and confiscation, the respondent preferred an appeal before the Collector of Customs (Appeals), Peshawar. The appeal was dismissed through Order-in-Appeal Nos.149-154/2019 dated 31.01.2019.

3. The respondent thereafter approached the Customs Appellate Tribunal, Peshawar Bench, which remanded the matter to the Collector of Customs (Appeals) for a fresh decision after affording the parties an opportunity to produce evidence and for passing a speaking order. Upon remand, the Collector of Customs (Appeals), through Order-in-Appeal No.257/2019 dated 27.08.2019, maintained the Order-in-Original and dismissed the respondent's appeal, holding, *inter alia*, that the vehicle had been used for the transportation of the seized smuggled goods categorized under section 2(s) of the Act. The respondent again approached the Customs Appellate Tribunal, Peshawar Bench (hereinafter referred to as '**the Tribunal**') through Customs Appeal No.Cus-198/PB/2019. By judgment dated 18.11.2019, the Tribunal maintained the confiscation of the offending goods but modified the order to the extent of the redemption fine imposed upon the vehicle. It directed that the fine be calculated at 20% of the

proportionate customs value of the offending goods instead of 20% of the value of the vehicle. The Department-petitioner assailed the said judgment before the Peshawar High Court through Customs Reference No. 23-P/2020 under section 196 of the Act. By the impugned judgment dated 16.04.2020, the High Court dismissed the reference in *limine* and held that the findings recorded by the Tribunal did not suffer from any illegality or irregularity. The questions proposed by the Department-petitioner were accordingly answered in the negative. Hence, the instant petition.

4. We have heard the learned counsel for the petitioner and perused the material available on record.

5. The controversy requires determination of the scope of section 181 of the Act read with S.R.O. 499(I)/2009 dated 13.06.2009 (hereinafter referred to as '**SRO 499**'). In particular, the question is whether a conveyance falling within the class specified in clause (b) of SRO 499 can be released against payment of redemption fine under section 181 of the Act, i.e., vehicle found carrying goods covered under section 2(s) of the Act.

6. Section 157(2) of the Act provides that every conveyance, of whatever kind, used in the removal of any goods liable to confiscation under the Act shall also be liable to confiscation. Section 181, on the other hand, deals with the option to pay a fine in lieu of confiscation and has conditionalized it. The officer passing the order of confiscation may, therefore, give the owner of the goods an option to pay such fine as the officer thinks fit. Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods. This power is, however, expressly subject to the first proviso to section 181, which

authorises the Board to specify, by an order, the goods or classes of goods in respect of which such **option shall not be given**.

7. Section 157 is seemingly an enabling provision and determines the liability of a conveyance to confiscation, whereas section 181 concerns the availability of an option in lieu of confiscation. The discretion contemplated by section 181 is not absolute, as the first proviso empowers the Board to exclude specified goods or classes of goods from the benefit of such option. The scope of this power was considered by this Court in *Collector of Customs*¹, wherein it was recognised that the Board may, in exercise of the power conferred by the first proviso to section 181, specify goods or classes of goods in respect of which the option contemplated by section 181 shall not be available.

8. In exercise of the power conferred by the first proviso to section 181, the Board issued SRO 499. The said notification specifies the goods and classes of goods in respect of which no option of payment of fine in lieu of confiscation is to be given. Clause (b) thereof is material for the present purposes. It covers a lawfully registered conveyance, including packages and containers, found carrying smuggled goods in false cavities or being used exclusively or wholly for the transportation of offending goods under clause (s) of section 2 of the Act. The SRO 499, as it stood at the relevant time, is reproduced as under:

Fixation of redemption fine.-- Redemption fine has been fixed by the Federal Board of Revenue in exercise of its powers under Section 181 by Notification No. S.R.O. 499(I)/2009, dated 13th June, 2009. Notification is as under:-

“Notification No. S.R.O. 499(I)/2009, dated 13th June, 2009.-- In exercise of the powers conferred by section 181 of the Customs Act, 1969 (IV of 1969), and in supersession of its Notification No. S.R.O. 487(I)/2007, dated 9th June, 2007, the Federal Board of Revenue is pleased to direct that no option shall be given to

¹ Collector of Customs v. Wali Khan (2017 SCMR 585).

pay fine in lieu of confiscation in respect of the following goods or classes of goods, namely:--

- (a) smuggled goods falling under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969);
- (b) lawfully registered conveyance including packages and containers found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Customs Act, 1969 (IV of 1969); or
- (c) goods imported in violation of section 15 of the Customs Act, 1969 (IV of 1969);
- (d) banned items, goods of Israeli origin and goods of Indian origin other than those importable from India in accordance with the Import Policy Order, for the time being in force; or
- (e) job lot and stock lot goods;
- (f) restricted and other items which are subject to procedural requirements under Import Policy Order, for the time being in force unless such condition and procedural requirements are fulfilled; or
- (g) commodities which are not importable in used or second-hand condition under the Import Policy Order, for the time being in force:

Provided that in respect of the following goods or classes of goods where an option is given to pay fine in lieu of confiscation, the quantum of fine in lieu of confiscation in respect of offences specified in column (2) of the Table below shall be at a rate specified in column (3) of that Table and shall be over and above the customs-duties and other taxes and penalties imposed under the relevant law, namely:--

TABLE

S. No.	Description	Redemption fine on customs value
(1)	(2)	(3)
1.	Offences related to misdeclaration of,--	
(a)	...	...
(b)	...	...
(c)	...	...
(d)	...	...
(e)	...	...
(f)	...	...
(g)	...	...
2.	Other offences related to,--	...
(a)	...	...
(b)	...	...
(c)	...	...
(d)	...	...
(e)	...	...
(f)	lawfully registered conveyance including packages and containers, not covered under clause (b) of the preamble of this notification, found carrying offending goods under section 2(s) of the Customs Act, 1969 (IV of 1969).	20%

9. The scheme of SRO 499 is required to be understood in this context. It identifies the categories in respect of which the option under section 181 is excluded, whereas the Table appended to the notification prescribes the rate of redemption fine for those categories in respect of which such option remains available. The Table, therefore, cannot be read independently of the exclusions contained in the SRO 499. Significantly, Serial No. 2(f) of the Table refers to a lawfully registered conveyance, including packages and containers, not covered under clause (b) of the preamble of this notification, i.e, found carrying offending goods under section 2(s) of the Act. Thus, where a conveyance is found falling within clause (b), its inclusion in the class of conveyances carrying offending goods under section 2(s) does not bring it within Serial No. 2(f), since that provision expressly excludes conveyances covered by clause (b).

10. The scope and effect of the power exercised by the Board under the first proviso to section 181 fell for consideration before this Court in *Bashir Ahmad*². This Court held that section 181 empowers the Board to specify goods or classes of goods in respect of which the option contemplated thereunder shall not be given and that, upon exercise of such power, the prohibition so prescribed is binding. The Court further held that SRO 499 identifies the goods or classes of goods in respect of which no option under section 181 can be given, whereas the Table specifies the goods or classes of goods in respect of which the amount or limit of fine has been fixed for purposes of giving such option. As a corollary, once the Board has exercised its power and excluded a class of goods from the option, the Tribunal is bereft of jurisdiction to order release of such goods or class of goods against

² Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar (2025 SCMR 684).

payment of fine under section 181. In particular, the Court held that clause (b) to SRO 499 expressly excludes from the option a lawfully registered conveyance found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods under clause (s) of section 2 of the Act.

11. The aforesaid position was subsequently considered by this Court in *Director, Intelligence and Investigation (Customs), FBR, Peshawar*³, wherein the subsequent amendments to SRO 499 were also examined. It was noted that S.R.O.1280(I)/2024 dated 20.08.2024 introduced a brief and limited relaxation, which conditionally permitted release of certain vehicles not falling within clause (b), seized for the first or second time. The said concession, however, stood rescinded by S.R.O.1619(I)/2024 dated 03.10.2024, thereby restoring the original and complete prohibition with insertion/inclusion of clause (ba). This Court further held that the issuance of SRO 499 creates a statutory bar, leaving no discretion with the adjudicating officer or the Tribunal to grant release on redemption fine where the conveyance falls within the class specified in clause (b).

12. It may, however, be clarified that the vehicle in the present case was intercepted on 09.12.2018, much prior to the aforesaid amendments introduced in the year 2024. The amendments are, therefore, not being applied to the present case and are noticed only to the extent that they demonstrate the subsequent treatment of the statutory scheme by the Board and its consideration by this Court. The position applicable to the present case is governed by SRO 499 as it stood on the date of seizure. Under that notification, where a conveyance falls within clause (b) of the preamble, the

³ Director, Intelligence and Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq (2026 SCMR 885).

option of redemption under section 181 is excluded. Thus, the subsequent amendments do not alter the legal position applicable to the present case.

13. In the present case, the vehicle was found being used exclusively for the transportation of the smuggled goods covered under section 2(s) above and was accordingly seized under section 157 of the Act. It therefore falls within the class specified in clause (b) to SRO 499. Consequently, the option of redemption under section 181 was not available in respect of the vehicle. The initial order allowing its release against payment of redemption fine was thus contrary to the statutory scheme and could not confer any right of redemption upon the owner.

14. In the absence of any such option, the question of determining the quantum or basis of redemption fine did not arise. The Tribunal, however, proceeded on the premise that the vehicle could be released against payment of redemption fine and modified the basis on which the fine was to be calculated. This approach failed to give effect to the exclusion contained in clause (b) of the preamble to SRO 499.

15. The reliance placed on Serial No.2(f) of the Table to SRO 499 does not alter this position. The said provision applies to a lawfully registered conveyance "not covered under clause (b)" of the preamble. Its application is, therefore, expressly excluded where the conveyance falls within clause (b). Accordingly, the rate prescribed under Serial No.2(f) could not be invoked to sustain an option of redemption which was otherwise unavailable under the notification.

16. The question whether the redemption fine was to be calculated with reference to the value of the vehicle or the proportionate customs value of the offending goods was consequently immaterial in this case. That question

could arise only after establishing the availability of redemption under section 181. The Tribunal, therefore, erred in proceeding to determine the basis of the redemption fine, and the High Court likewise failed to appreciate the legal effect of clause (b) while upholding the Tribunal's judgment.

17. In view of the above analysis and findings, this petition is converted into an appeal and the same is allowed. The impugned order of the High Court dated 16.04.2020, judgment dated 18.11.2019 passed by the Tribunal, judgment dated 27.08.2019 passed by the Collector of Customs (Appeals), Peshawar and order-in-original dated 13.12.2018 passed by the Deputy Collector of Customs (Adjudication), Peshawar are set aside to the extent of allowing release of the vehicle against payment of redemption fine, and in consequence thereof, the vehicle is held liable to outright confiscation falling in clause (b) of the SRO 499, as it stood at the relevant time.

Chief Justice

Judge

Judge

Islamabad:
17.08.2026

Approved for Reporting
[Simra Sohail, L.C]