

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 4520-P of 2022 & WP No.4450-P/2022

Collector of Customs and others.

...Petitioners.

Vs.

President of Pakistan and others.

...Respondents.

For Petitioner:	Mr. Abdul Rauf Rohaila, Advocate.
For Respondents:	M/S Rahat Ali Khan Nahaqi, Assistant Attorney General, Mian Naveed Gul Kakakhel and Murad Safi, Advocates.
Research by:	Mr. Mazhar Ali Khan, Research & Reference Officer.
Date of hearing:	<u>11.09.2025</u>

J U D G M E N T

SYED ARSHAD ALI, J:- This consolidated judgment shall dispose of the instant as well as the connected W.P No.4450-P/2022 as both the petitions emanate from one and the same proceedings.

2. Factual matrix of the present petitions are that the petitioners, officers of the Customs Department, conducted an operation in pursuance of the Supreme Court of Pakistan directions against the grey trafficking of illegal Direct to Home (DTH) equipment. In this regard, a joint team of Customs and Police raided the godown of Respondent No. 4 **(private respondent)** at Kohati Gate, Peshawar on 29.10.2018, seizing a large quantity of foreign origin Digital Receivers suspected to be smuggled. Accordingly, a seizure case No. 216/2018 dated 29-10-2018 was framed and FIR No. 60/2018 dated 27-10-2018 was registered. These goods were seized under Section 168 of the Customs Act, 1969 **(Custom Act)** as no one claimed ownership during the raid. Subsequently, an Order-in-Original dated 13.03.2019 by the Collector (Adjudication), Islamabad **(Collector Adjudication)**

confiscated the goods outright. However, the Customs Appellate Tribunal, Peshawar Bench **(Appellate Tribunal)** vide order dated 09.03.2020 later remanded the matter back for rehearing. During the pendency of proceedings, the seized goods were destroyed/disposed of by the Customs authorities on 26.10.2020, purportedly in compliance with Supreme Court directions and Section 169(4) of the Custom Act. Post-remand, the Collector Adjudication vide Order-in-Remand dated 14.01.2021, ordered to release the goods of the private respondent those matching with the import record under Rule 126 of the Custom Rules, 2001 **(Custom Rules)** unconditionally. Respondent No. 4/private respondent then approached the Federal Tax Ombudsman **(FTO)**, who vide order dated 17.09.2021 directed the Customs authorities to investigate irregularities and compensate the private respondent equal to the market price in respect of lawfully imported receivers with valid NOCs. The petitioners' filed representation against the order of FTO which was rejected by the Worthy President of Pakistan on 13.07.2022 on the grounds of being time-barred, which impugned orders are now assailed herein.

3. As regards the connected petition, W.P. No. 4450, the petitioner therein **(Respondent No. 4 in the main petition/private respondent)** claims ownership of the seized electronics business. His grievance is that after the Customs Appellate Tribunal remanded the case, he successfully established the lawful import of his goods before the Collector Adjudication, leading to the Order-in-Remand No. 24/2021 which directed the release of verified goods. The Department's own Law Committee decided not to challenge this release order, allowing it to attain finality. However, when the petitioner approached the warehouse for the release of his property, he was

informed that the goods had already been destroyed during the pendency of litigation. Consequently, he seeks enforcement of the release order and reimbursement of the market value of the destroyed goods, calculated at approximately Rs. 27.1 million, arguing that the destruction was illegal and violated his fundamental rights.

4. Before examining the merit of the case, let us first refer to the relevant provisions of the Customs Act relating to seizure and disposal of the goods:

169. Things seized how dealt with.- (1) All things seized on the ground that they are liable to confiscation under this Act shall, without unnecessary delay, be delivered into the care of the officer of customs authorized to receive the same.

(2) If there be no such officer at hand, such things shall be carried to and deposited at the customs-house nearest to the place of seizure.

(3) If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Collector of Customs for the deposit of things so seized.

(4) When anything liable to confiscation under this Act is seized by the appropriate officer under section 168, the Collector of Customs, or any other officer of customs authorized by him in this behalf, may notwithstanding the fact that adjudication of the case under section 179, or an appeal under section 193 or 194A or a proceeding in any court, is pending, cause the thing to be sold in accordance with the provisions of section 201 and have the proceeds kept in deposit pending adjudication of the case or as the case may be, disposal of the appeal or the final judgment by the court:

Provided that where the seized goods liable to confiscation are produced during any inquiry or trial before the court of Special Judge Customs and if such goods are subject to speedy or natural decay, the court may on an application after recording evidence, as it thinks necessary, order the goods to be sold or otherwise dispose of in terms of this section:

Provided further that if the property is a dangerous drug, intoxicant, intoxicating liquor

or any other narcotic or psychotropic substance seized or taken into custody, the Court may, either on an application or of its own motion and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other court and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf;

Provided also that such samples shall be deemed to be whole of the property in an inquiry or proceedings in relation to such offence before any authority or court.

(5) If on such adjudication or, as the case may be, in such appeal or proceeding in Court, the thing so sold is found not to have been liable to such confiscation, the entire sale proceeds, after necessary deduction of duties, taxes or dues as provided in section 201, shall be handed over to the owner.

5. Likewise para 34 (V) of Customs General Order (CGO) 12 of 2002 dated 15-6-2002 prescribes detail procedure and modalities for the disposal of seized/confiscated goods by the Customs department. The relevant para is reproduced as follow:

34. DISPOSAL OF SEIZED / CONFISCATED GOODS BY THE AGENCIES & CUSTOMS DEPARTMENT:

a) The following procedure for the disposal of seized/ confiscated goods is to be strictly followed by all concerned:--

(I)...

(II)...

(III)...

(IV)...

(V) Consumer durables & other miscellaneous goods.—Consumer durables like TVs, VCRs, refrigerators, deep freezers, micro-waveovens, etc. and other goods, when ripe for disposal, may be offered for sale at prices pre-determined by the Controller of Customs Valuation, in the first instance, to the Utility Stores Corporation of Pakistan, Canteen Stores Department, Co-operative Stores (Co-op) Organizations of the Provincial Governments, the National Logistic Cell, Frontier Corps, Baluchistan and NWFP and the Garrison Welfare Shop, Peshawar Cantonment, for disposal through their retail outlets. The Custodian of the warehouse shall be held responsible, if, any item is sold to the above mentioned agencies/organizations

at lesser prices than the prices predetermined by the Controller of Customs Valuation. The list of items not mentioned in the Controller of Valuation Advice shall be sent to the Collectorate for appraisal of its price before it is offered for sale to the authorized agencies.

(VI)...

(VII)...

(VIII)...

(IX)...

(X)...

(b) Seized/confiscated goods that cannot be disposed of in any manner specified above should be sold by the respective Agencies, in accordance with the prescribed Auction Rules in the presence of Assistant Collector of Customs incharge of auctions of the respective Collectorate of Customs. The goods would be disposed off through an open public auction on the values determined by the Customs Appraising Staff of the Collectorate concerned. The auction proceedings would be finalized by the concerned Collectorate in accordance with the provisions of the Auction Rules, under (Customs Rules, 2001 vide SRO 450(I)/2001 dated 18.06.2001) 1996. If any claim of refund comes up later in respect of the goods disposed of in any of the aforesaid manners, the same, where admissible, should be met from the general account relating to the sale proceeds in question.

6. The statutory framework governing the disposal of seized goods, specifically under Section 169 of the Customs Act, read with Para 34(V) of CGO 12/2002, establishes a clear hierarchy of actions to ensure both the security of the goods and the protection of the owner's potential rights. Section 169 mandates that upon seizure, goods must be immediately delivered to an authorized Customs officer or deposited at the nearest Custom-house. Crucially, sub-section (4) empowers the Collector to sell seized goods pending adjudication, particularly if they are perishable or if their storage is impractical, but explicitly requires that the sale proceeds be kept in deposit to be returned to the owner should the confiscation be later overturned. This legislative intent to preserve value is reinforced by CGO 12/2002, which prioritizes the sale of consumer durables (such as electronics) through established state entities like Utility Stores or Canteen Stores at pre-determined values,

or failing that, through open public auction under strict oversight. The scheme is designed to prevent arbitrary destruction; it mandates that unless goods are hazardous (like narcotics), they must be converted into monetary value (sale proceeds) which stands as a substitute for the goods during the pendency of legal proceedings, thereby safeguarding the owner's property rights against irreversible loss.

7. A bare perusal of the statutory scheme discussed above reveals a fatal flaw in the petitioners' conduct. The combined reading of Section 169(4) of the Customs Act and Para 34(V) of CGO 12/2002 creates a mandatory obligation: seized goods, especially consumer electronics, must be preserved or, if perishable/depreciating, sold to generate "sale proceeds" which act as a secure substitute for the res (property) during litigation. The destruction of goods is a measure of last resort, strictly reserved for hazardous contraband like narcotics or expired items unfit for human consumption. In the instant case, the Digital Receivers were neither hazardous nor prohibited per se; their confiscation was subject to the outcome of appellate proceedings. By destroying these commercial goods during the pendency of the appeal and remand proceedings, without converting them into sale proceeds, the Customs authorities not only violated the express provisions of Section 169 but also irreversibly extinguished the private respondent's property rights before a final verdict was rendered.

8. This precipitous destruction renders the remedial machinery of the Customs Act nugatory. If a citizen succeeds in appeal, as the private respondent did via the Order-in-Remand, Section 169(5) entitles them to the return of the goods or their sale proceeds. By destroying the goods and failing to secure proceeds, the petitioners

have created a *fait accompli* (something that has been done and cannot be changed) where the citizen holds a valid release order that is practically unenforceable. This conduct is a textbook definition of “mal-administration” as correctly identified by the learned FTO. The petitioners’ reliance on Supreme Court directions to justify this destruction is misplaced; judicial directions to curb smuggling cannot be construed as a license to bypass statutory due process or to destroy evidence and property subject to active adjudication. Consequently, the findings of the FTO are unexceptionable and are entirely in accordance with the law.

9. This Court finds that the petitioners (officers of customs) abused their authority and acted in a manner violative of the law and Constitution. They deprived citizens of their property without due process, an action which cannot be condoned under any jurisprudence of justice. This case also highlights a broader principle: the deterrence of executive abuse through judicial action. Courts around the world have recognized that when rights are violated by state agents, remedies must be robust enough to vindicate the right and deter future violations. In some common law jurisdictions, courts have developed the concept of vindictory or constitutional damages to mark the breach of fundamental rights and underscore their inviolability.

10. The Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**) is founded on the principles of a welfare state, emphasizing democracy, freedom, equality, tolerance, and social justice as enshrined in Islamic ideals. It mandates that every individual must adhere to the Constitution, which serves as a social contract binding the state and its citizens. Each state organ is required to operate within its defined constitutional parameters,

thereby safeguarding life, liberty, and property. Key provisions, such as Articles 4,¹ 9,² 14,³ 23,⁴ and 24,⁵ collectively affirm the inviolability of personal dignity, the right to a fair trial,⁶ and protection against unlawful deprivation of property. This constitutional scheme reflects the state's obligation to uphold justice and prevent oppression, ensuring that lawful processes are followed before any deprivation of rights occurs.

11. Public office is a public trust. Officers are servants of the State whose authority derives from law, and they must exercise that authority within its bounds. Every public officer must serve the citizenry in good faith with sheer dedication but within the peripheries of powers granted by law. In solemn compliance with Article 5 of the Constitution and the Oath of Office, government servants are “servants of the State” whose duty is to obey the Constitution and serve the people, not exploit their authority. The Supreme Court in *Junaid Wazir’s*⁷ case illustrated this concept in the words: “*Public functionaries are supposed to execute and perform their duty in good faith, honestly and within the precincts of their legally recognized powers so that the person concerned may be treated in accordance with law.*”

12. In the same vein, the Sindh High Court in *Pakistan Medical Commission*⁸ case observed that “*the edifice of the government and the powers ascribed to the different parts of its structure are as defined by the law, with it being a*

1. **Article 4:** “no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”.

2. **Article 9:** “no person shall be deprived of life or liberty save in accordance with law.”

3. **Article 14** declares the “inviolability of the dignity of man”.

4. **Article 23:** “Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan”.

5. **Article 24** provides that “No person shall be deprived of his property save in accordance with law,” and that “no property shall be compulsorily acquired or taken possession of save for a public purpose... which provides for compensation”

6. **Article 10-A** guarantees “fair trial and due process”.

7. *Junaid Wazir v. Superintendent of Police, PRU/ Dolphin Police, Lahore* (2024 SCMR 181).

8. *Pakistan Medical Commission v. Province of Sindh* (2024 CLC 53 Sindh).

*cardinal duty of Government to preserve the rule of law and ensure compliance of Constitutional provisions.” Likewise, on the rights of citizens, the Hon’ble Supreme Court in PML (N)⁹ case observed that “...every citizen has an inalienable right to enjoy the protection of law and to be treated in accordance with law.” The Court further elaborated that “...Any invasion upon the rights of citizens by anybody no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country...” The duty to obey the law by the public authorities is not only the requirement of service rules but consistently recognized as high constitutional obligation. In the case of *Supreme Court Bar Association*,¹⁰ the Court observed that: “The State power is solely meant to serve the people and it is always accountable to those over whom it is exercised.” While the citizens who suffers any wrong “on account of transgression, wrongful exercise of authority, abuse of power or reckless disregard for or neglect of public duties the constitutional rights are denied or breached,” becomes entitled to lawful remedies including damages.*

13. It is a famous saying that “Power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still more when you superadd the tendency or the certainty of corruption by authority”.¹¹ When public officials exceed the lawful limits of their authority, the result is an injustice that shakes the foundations of rule of law. Montesquieu observed that “there is no greater tyranny than that which is perpetrated under the shield of

9. *Pakistan Muslim League (N) v. Federation of Pakistan* (PLD 2007 SC 642).

10. *Supreme Court Bar Association Of Pakistan through its Secretary, Islamabad Versus Federation Of Pakistan through Secretary, Cabinet Division, Islamabad* (PLD 2024 Supreme Court 1).

11. Lord Acton (John Emerick Edward Dalberg) in an 1887 letter to Bishop Mandell Creighton.

the law and in the name of justice."¹² In a nutshell, the public authorities in modern constitutional democratic states are no longer the absolute arbiters of power; they are bound by the rule of law and must respect the rights guaranteed under the Constitution and applicable laws. These authorities cannot violate these rights with impunity, as accountability mechanisms are in place to ensure that any infringement upon individual liberties is subject to scrutiny and redress. With this background, we approach the present matter.

14. The United Kingdoms' Judicial Committee of the Privy Council, in the case of *Maharaj*,¹³ held that constitutional provisions create a new cause of action in public law directly against the State, distinct from vicarious liability for private law torts. It was recognised that this empowered courts to grant effective redress, including monetary compensation. Lord Diplock opined that such damages were a claim in public law for compensation of deprivation of a right. This formed the basis for "vindicatory damages," a concept earlier introduced in *Ramanoop*¹⁴, where Lord Nicholls highlighted that such damages are an extra dimension awarded to reflect the sense of public outrage, emphasize the importance of the violated right, and deter future breaches.

15. Similarly, the High Court of Australia in *Plenty v. Dillon*¹⁵ recognized that if courts do not uphold rights by granting remedies, they invite anarchy. The Court held: "*Nothing breeds social disorder as quickly as the sense of injustice which is apt to be generated by the unlawful invasion of a person's right particularly when the invader is*

12. *The Spirit of the Laws by Montesquieu.*

13. *Maharaj v. Attorney-General of Trinidad and Tobago* [2019] UKPC 6.

14. *Attorney General of Trinidad and Tobago v. Ramanoop* [2005] UKPC 15.

15. *Plenty v. Dillon* (1991) HCA 171 CLR 635.

a government official.” Furthermore, the Supreme Court of Canada, in *Vancouver (City) v. Ward*,¹⁶ enunciated a test for Charter damages based on compensation, vindication, and deterrence. These international principles, though not binding, carry significant persuasive weight. They affirm that judicial oversight must be meaningful; if courts were powerless to correct executive excesses like those at issue here, citizens would lose confidence in lawful governance.

16. In our jurisprudence the above principles have been recognized by the superior courts within our own constitutional design. In the case of *Supreme Court Bar Association* (supra), Justice Athar Minallah (as he then was) in his separate note articulated that if officials transgress their lawful authority, courts will not hesitate to intervene. His lordship maintained that, Article 212 of the Constitution explicitly creates a constitutional remedy for cases involving the “transgression, wrongful exercise of authority, abuse of power, or reckless disregard for or neglect of public duties.” When a right is breached by the government or any person in the service of Pakistan, the aggrieved individual can seek damages against the officer responsible. This provision distinguishes itself by conferring the right to claim public law remedies for tortious acts committed by three categories of public authorities. It is a right that, regrettably, has not received adequate attention in the courts nor has it been invoked by victims of wrongful public power exercise. The absence of established special courts, as envisioned by the framers of the Constitution, does not negate this right. No right is without a remedy; even in the absence of a functional Service Tribunal, civil servants can seek recourse through other forums, including the High Courts. The right to claim remedies against the tortious acts of public authorities

16. *Vancouver (City) v. Ward*, 2010 SCC 27.

remains intact and cannot be denied simply because a special court has not been established. The jurisdiction of courts of plenary civil jurisdiction, and the High Courts in appropriate cases, is not barred until such a court is created. This constitutional right is vital for victims to vindicate their rights, hold public authorities accountable, and ensure that public powers are not abused. If effectively exercised, this right empowers citizens to monitor the misconduct of public authorities and the government, enabling them to seek compensation for wrongs suffered. The courts bear the responsibility to ensure that citizens can enforce this valuable right. The courts possess the discretion to design or create remedies to address constitutional violations and deter future tortious acts, including the potential for awarding exemplary or vindicatory damages as appropriate.

17. It is, therefore, the duty of this Court not only to grant relief in the instant case but to send a clear message that abuse of authority by state agents will have consequences. The petitioners had the temerity to invoke the writ jurisdiction to cover their own statutory violations, thereby wasting the Court's time and attempting to deny justice to the victim. Therefore, the petition filed by the Customs officials is devoid of merit and is hereby DISMISSED. The impugned order of the FTO and the subsequent rejection of representation warrants no interference.

18. This connected petition No. 4450-P/2022 is ALLOWED. The destruction of the petitioner's goods is declared illegal and without lawful authority. The respondents (Customs Department) are directed to reimburse the petitioner the market value of the destroyed goods. The Chairman Federal Board of Revenue is directed to constitute a committee for determination of loss caused

to the petitioner/owner of the goods and shall ensure that the amount determined is paid to the petitioner in time. The worthy Chairman is also directed to conduct an inquiry against the delinquent official who were involved in the illegal destruction of the goods stated above. Similarly, the officers involved in destruction of the goods shall pay compensation of rupees 500,000 (five lac) to the petitioners, in addition to the costs of the goods.

19. Given the egregious abuse of power and the frivolous nature of the litigation initiated by the officials to defend their illegality, this Court finds it appropriate to burden them with exemplary costs. The petitioner who has filed constitutional petition is also directed to deposit a fine of Rs. 500,000/- (Rupees Five Hundred Thousand) into the public treasury for filing frivolous petition before this Court. The worthy Chairman FBR shall ensure that the said cost as well as compensation is recovered from the said officer and paid to the owner of the goods. This cost is to be deposited within one month from today and shall be borne by the responsible officials personally, not indemnified by the state exchequer, to serve as a deterrent against future maladministration.

Announced on:

11.09.2025

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