

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 52 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.2.
2. For orders on CMA No.399/2019.
3. For hearing of main case.

17.09.2025

Mr. Muhammad Adeel Awan, advocate for the applicant.

This reference application is pending since 2019 and even notice has not been sought / issued till date. Per learned counsel, the applicant has virtually abandoned the consignment at the port and is unaware whether it remains or has been auctioned since lying unclaimed from 2019. The judgment in appeal is dated 20.10.2018 rendered by the learned Customs Appellate Tribunal in Customs Appeal No.K-1070/2016. The findings of the learned Tribunal are reproduced herein below:

“8. We have heard arguments of both the sides. Briefly the appellants imported Rechargeable sealed Lead Acid Batteries of assorted amperes “(20% customs duty) whereas the department made out case in audit that these were in fact automotive batteries attracting 35% customs duty and 15% additional customs duty. The department further stated that the appellants are banking on old customs appeal No. 1070/2016 but facts of this case does not match the present case. In the instant case the Lead-acid Batteries (Calcium MF Batteries) were supplied by consignor M/s. JW Sun Co Limited, Seoul, Korea having brand “Delkor” whereas in the earlier decided Customs Appeal No.K-786/2014, Lead-Acid Batteries (Calcium Premium Batteries) having brand “Solite” were supplied by the consignor M/s. Al Muqarram Auto Spare Parts LLC, UAE. As far as the decision in the Customs Appeal No.K-786/2014 is concerned, the Customs Appellate Tribunal observed that the respondents failed to provide basis/documents that the impugned “Calcium Premium Batteries” contained Lead Calcium Electrodes which fall under sub-heading 8507.1020 and after considering examination report, scheme of classification and facts about the existence, manufacturing and its working it was held that the impugned goods were correctly classifiable under heading 8507.8000 @ 10% C/D. The department filed Special Customs Reference Application No.1135/2015 before the honourable High Court of Sindh at Karachi. The department provided the catalogue/ literature, examination reports and images of the impugned batteries which confirm that the essentially Lead-Acid Batteries which are modified with Lead-calcium Electrodes to make them maintenance-free batteries for the dedicated purpose of “Automotive Vehicle” instead of traditional Lead-animony Electrodes. Furthermore, the instructions/directions given on all 04 models of batteries read as “THIS 12V BATTERY IS ONLY FOR STARTING ENGINES. DO NOT APPLY THIS PRODUCT FOR OTHER USES. REFER TO THE INSTRUCTION MANUAL OF VEHICLE OR BATTERY BEFORE USING BOOSTER CABLE.”

9. This shows that the impugned Lead-Calcium Batteries are for “Automotive Vehicles”. These are classifiable under PCT Heading 8507.1020 attracting custom duty @ 35% and additional customs duty @ 15% as against declared /claimed customs duty @ 20% on into-bond and Ex-bond GDs by the importers. M/s. Rastek Technologies have, therefore, deliberately, mis-declared and concealed the actual

description of goods, PCT classification to deprive the government of its legitimate revenue amounting to Rs.10,741,168/-.

10. In view of above we don't see any reason to interfere in the order passed by the adjudicating authority. The appeal is therefore, dismissed with no order as to cost."

The entire thrust of the arguments articulated by the applicant's counsel was that the consignment was other than that evidentially proven. Per learned counsel, the learned tribunal failed to appreciate evidence in its proper perspective, hence, the exercise be conducted afresh by this Court, albeit in reference jurisdiction.

Concurrent orders have been rendered against the applicant by successive statutory fora. Paragraphs 4 and 5 of the impugned judgment demonstrate that the applicant had also unsuccessfully sought recourse to writ jurisdiction in the past. The evidence appears to have been duly deliberated by the learned tribunal and no case could be made out to suggest that the conclusion could not be rested thereupon. Be that as it may, the appreciation of evidence was only material before the subordinate adjudication fora and the learned Tribunal was the last forum in such regard. No appreciation of evidence is merited before this Court in its reference jurisdiction.¹

While various questions of law are listed in the memorandum of application, it is observed that the same are *prima facie* argumentative / raise factual controversies², therefore, we are, respectfully, constrained to observe that the same are extraneous and dissonant to the impugned judgment. Despite our query, learned counsel remained unable to put forth any question of law, arising from the impugned judgment, before the Court, therefore, in the manifest absence of any question demonstrated to be arising therefrom, this reference application is hereby dismissed in *limine*.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS

¹ Per Qazi Faez Isa J in *Middle East Construction vs. Collector Customs*; judgment dated 16.02.2023 in *Civil Appeals 2016 & 2017 of 2022*.

² Per Munib Akhtar J in *Collector of Customs vs. Mazhar ul Islam* reported as 2011 PTD 2577 – Findings of fact cannot be challenged in reference jurisdiction.