

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 335 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection 1.
2. For orders on CMA 2238/2021.
3. For hearing of main case.

19.09.2025

Mr. Muhammad Abbas, advocate for the applicant.
Ms. Afsheen Aman, advocate for respondent.

This reference impugns judgment dated 28.02.2017 rendered by the learned Special Customs Appellate Tribunal in Customs Appeal K-445/2016, the operative part of the judgment is reproduced hereunder:

“6. I have heard both the contesting parties and also examined the relevant record. The main argument of the Appellant is that as per relevant import documents, they declared Three Burner Gas Stove in their Goods Declaration, however, on examination, the Respondent Department found the same as Gas Hob (03 Burners). The Appellant has asserted that there was no mala fide intent on their part as both Gas Stove and Gas Hob fall in the same PCT heading i.e. 7321.1110, attracting the same rate of duty, as such, fine and penalty has been imposed by the adjudicating authority arbitrarily and unjustly upheld by the Collector, Customs (Appeals), Karachi. I do not find much weight in the said argument of the Appellant. The Valuation Ruling No.618/2013 dated 06.12.2023 distinctly determined value of Gas Stove with difference Burners and Gas Hobs with different Burners. Not only this, at the bottom of Valuation Ruling under the caption Explanation (para 4 (b) of V.R), the difference between a Gas Stove and Gas Hob has been clearly spelt-out. It reads as under:-

“For the purpose of this Ruling a Gas Hob has knobs on top with concealed buttons and a Gas Stove has knobs in front with open button”

The difference in description between a Gas Stove and Gas Hob, has been made so clear in the Valuation Ruling that there is no point of getting confused by a person with normal senses. More importantly, the Valuation Ruling No.618/2013 dated 06.12.2013 was in the field, when the Appellant imported the consignment under reference, I am, therefore, constrained to subscribe to findings of the learned Collector, Customs (Appeals), Karachi that the Appellant is a regular importer of the product and it is not convincing that he could not make distinction between the two products.

7. In view of above, the malafide intent of the Appellant is as vivid as the daylight. I, therefore, do not find any ground legal or factual to interfere with the impugned Order-IN-Appeal. I dismiss the instant appeal being devoid of merit.”

This concurrent findings of the statutory hierarchy are on the record. The crux of the learned counsel’s argument is that in some other instance, in a show-cause notice to some other person, the discretion to impose fine / penalty

was not exercised. Respectfully, that could not be demonstrated to give rise to a question of law.

The present reference assails the findings of fact. The learned counsel essentially sought *de novo* appreciation of the evidence / record by this Court and for the findings be set aside. Suffice to reiterate settled law that the learned tribunal is the last forum of fact in the pertinent statutory hierarchy. The appreciation of evidence was only material before the subordinate adjudication fora and no appreciation of evidence is merited before this Court in the exercise of its reference jurisdiction¹. Even otherwise, the learned counsel remained unable to dispel the preponderance of reasoning / record relied upon in the respective order / judgment and could not demonstrate that the conclusion reached could not have been rested thereupon.

While several questions of law are listed in the memorandum of application, it is observed that the same *prima facie* seek *de novo* appreciation of evidence, are argumentative and raise factual controversies², therefore, we respectfully observe that the same are extraneous, dissonant and do not qualify as questions of law to be answered by this Court in exercise of its reference jurisdiction in the present facts and circumstances. Since no question of law, arising from the Impugned Judgment, could be demonstrated before this Court, therefore, this reference and pending application are dismissed.

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

M. Khan

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.