

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.16 of 2024

Date	Order with Signature of Judge
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Hearing of case (priority)

1. For hearing of CMA No.56/2024
2. For hearing of main case
3. For hearing of CMA No.57/2024

02.03.2026

Mr. Pervaiz Ahmed Memon, Advocate for the applicant
Mr. Muhammad Nasir, Director, Directorate of Intelligence and Investigation,
Customs, Regional Office, Hyderabad

This reference is pending since 2024 without any progress. The diary demonstrated that the applicant department had made no effort to have it listed or heard since the time that it was filed. The matter came up for hearing on 11.02.2026 and the learned counsel was confronted as to the tenability hereof since the only articulated plea sought de novo appreciation of evidence. Upon being unassisted, the following order was passed:

“1. Exemption is granted subject to all just exceptions.

2&3. Paragraph 13 of the impugned judgment concludes on the basis of evidence / record that the impugned vehicle is not tampered and all relevant documentation has been considered by the respective judicial forums. Under such circumstances, the counsel is confronted as to what question of law arises. He seeks time to obtain instructions. At his request adjourned to 16.02.2026.”

On the next date, 16.02.2026, counsel remained unable to assist, yet again, therefore, in the interests of justice the following order was passed:

“On 11.02.2026, following order was passed:

1. Exemption granted subject to all just exceptions

2&3. Paragraph 13 of the impugned judgment concludes on the basis of evidence/record that the impugned vehicle is not tampered and all relevant documentation has been considered by the respective judicial forums. Under such circumstances, the counsel is confronted as to what question of law arises. He seeks time to obtain instructions. At his request adjourned to 16.02.2026”

Learned counsel remains unable to assist in view of the observation as to how the reference could be sustained. Under such circumstances, let the applicant, Director, Directorate, Intelligence & Investigation (Customs) Customs House, Regional Office, Hyderabad, be present in person on 02.03.2026.”

Today, Mr. Muhammad Nasir, Director, Directorate of Intelligence and Investigation, Customs, Regional Office, Hyderabad, is present and the only plea remains that the evidence was not appreciated in its proper perspective by the learned appellate Tribunal, hence, reappraisal was merited in reference jurisdiction.

In so far as the *de novo* appreciation of evidence is concerned, it would 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. Learned counsel remained unable to dispel the preponderance of reasoning / record relied upon in the impugned judgment and could not demonstrate that the conclusion reached could not have been rested thereupon.

It is reiterated that the learned Appellate Tribunal is the last fact-finding forum in the statutory hierarchy, therefore, such *de novo* adjudication does not fall within the ambit of reference jurisdiction². Since no question of law has been articulated before us to be adjudicated in reference jurisdiction, therefore, this reference application is dismissed in *limine*.

Respectfully, the matter ought not to end here. The Supreme Court has taken judicial notice of the fact that the fiscal docket in the superior courts has been clogged with unmerited litigation, including that precipitated / perpetuated at the behest of Revenue. The Supreme Court considers such conduct as that of a *habitual litigant* in the recent Supreme Court judgment in the case of *Umar Tariq Khan*³ especially paragraphs 8, 9 and 10 thereof; that read as follows:

“8. When government departments routinely file appeals/petitions (often up to the High Courts and the Supreme Court) on questions of law that have already been authoritatively settled, the practice results in serious institutional harms. The most immediate consequence is the clogging of court dockets. Courts are compelled to spend scarce judicial time revisiting issues that are no longer *res integra* at the cost of undecided legal and constitutional questions, criminal appeals involving personal liberty, and civil disputes pending for years. This undermines the constitutional mandate of speedy justice. Repeated appeals/petitions on settled law weaken respect for Article 189 of the Constitution, the doctrine of *stare decisis*, and judicial discipline within the executive branch. When the State itself disregards binding precedents, it sends the wrong signals to subordinate courts, tribunals, and litigants. Such appeals/petitions result in unavoidable litigation costs, consumption of public funds for counsel, court fees and administrative processing.

9. The State is expected to act as a responsible and fair litigant, not as a compulsive appellant/petitioner. The practice and tendency within government departments to file appeals/petitions mechanically, particularly when the outcome is foreseeable in light of settled law, has already been deprecated by this Court in the judgments reported as *Federal Public Service Commission through Secretary, Islamabad Vs. Kashif Mustafa* (PLJ 2025 SC 386), *Director General, Rawalpindi Development Authority Vs. Mian Muhammad Sadiq* (PLD 2006 SC 142), *Regional Manager, NADRA RHO, Hayatabad, Peshawar Vs. Mst. Hajira*

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*; *Collector of Sales Tax vs. Qadbros Engineering Limited* reported as 2023 SCMR 939; *Army Welfare Trust vs. Collector of Sales Tax* reported as 2017 SCMR 9; *Pakistan Match Industries (Pvt.) Ltd. Vs. Assistant Collector, Sales Tax and Central Excise* reported as 2019 SCMR 906; *Commissioner of Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd.* reported as 2022 SCMR 1082.

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.

³ Per Miangul Hassan Aurangzeb J in *ACIR Rawalpindi vs. Umar Tariq Khan* (CPLA 1990 of 2025); judgment dated 15.01.2026.

(2024 SCMR 197), State Life Insurance Corporation of Pakistan Vs. Mst. Zubeda Bibi (2024 SCMR 426) and Amjad Ali Vs. Board of Intermediate and Secondary Education (2001 PLC (CS) 280).

10. Courts already possess both constitutional authority and jurisprudential tools to address the problem of repeated appeals/petitions by government departments on settled questions of law. Not just can the courts dismiss such appeals/petitions in limine, one of the most effective tools is the imposition of costs. In egregious cases, courts may require identification of the officer for authorizing the appeals/petitions. It is imperative for there to be internal accountability by government departments and careful legal scrutiny before filing appeals/petitions. Had such scrutiny taken place before the filing of the instant petition, it would have been realized that the primary question of law sought to be agitated by the petitioners already stands authoritatively settled by a number of judgments of this Court referred to herein above. In the case of order to address this problem it is imperative for the Chairman, F.B.R. to consider constituting committees which function with the highest degree of independence and includes a retired Judge of the superior judiciary, an experienced tax practitioner, and senior serving or retired officers of the F.B.R. with distinguished record and impeccable credentials with the mandate to timely examine each case before a decision is made to file a reference before the High Court or a petition before this Court. The F.B.R. may also consider undertaking review of all pending cases in order to determine whether the questions of law sought to be agitated therein already stand settled by judgments of superior courts.”

It is apparent that precipitation and / or perpetuation of unmerited litigation has been unequivocally disapproved by the superior courts and the aforementioned judgment meticulously reiterates the same.

Prima facie the present case appears to fall within the ambit of such proscription. Perpetuating such matters clogs the docket of the Courts and the consequence thereof is eventually borne by Revenue. The learned Director's assistance was sought, however, the outcome was as particularized supra. While exercising maximum restraint, we leave mitigation of such matters to the better judgment of the Exchequer.

The Office is instructed to directly convey a copy hereof to the learned Attorney General Pakistan, Secretary Revenue and Chairman Federal Board of Revenue at Islamabad.

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

JUDGE

JUDGE

Asif