

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.1059 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No.2199/2023.
2. For orders on office objections No.14 & 25.
3. For orders on CMA No.2106/2023.
4. For hearing of main case.
5. For orders on CMA No.2200/2023.

11.05.2023

Sardar Faisal Zafar, advocate for the applicant.

1. Granted. 3. Granted; subject to all just exceptions. 2,4&5. Briefly stated, a show-cause notice dated 03.12.2018 was issued to the applicant, post release of consignment, *inter alia*, per section 32 of the Customs Act 1969. Post adjudication, the applicant was adjudged culpable for mis-declaration vide order in original 658/2018-2019 dated 09.01.2019. The appeal preferred in respect thereof was rejected, post detailed deliberation, by the learned Customs Appellate Tribunal in Customs Appeal K-238/2019 vide judgment dated 24.03.2023 (“Impugned Judgment”). Hence, the present reference.

The entire crux of the arguments articulated before us by the learned counsel was that notwithstanding the concurrent findings there against, the applicant had in fact made a correct declaration and the concurrent fora did not appreciate the evidence / record in its proper perspective. The learned counsel sought *de novo* appreciation of the evidence / record by this Court and essentially sought for the concurrent findings be set aside.

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. 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 application is hereby dismissed in *limine*.

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.

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