

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**Special Customs Reference Application 562 of 2022**

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Date	Order with signature of Judge(s)
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1. For order on office objection Nos. 7 & 24
2. For hearing of main case
3. For hearing of CMA No.3125/2022

**24.05.2023**

Ms. Masooda Siraj, advocate for the applicant  
Mr. Faisal Siddiqui, advocate for respondent

Briefly stated, a show-cause notice dated 29.03.2021 was issued to the respondent essentially alleging *over invoicing*. Post adjudication, an exhaustive order in original dated 24.11.2021 was rendered, and it was held that the “*making agency has failed to demonstrate beyond any reasonable doubt that the respondent had committed over invoicing*”. The appeal preferred in respect thereof by the department was dismissed, post detailed deliberation, by the learned Customs Appellate Tribunal in Customs Appeal K-42/2022 vide judgment dated 14.06.2022 (“Impugned Judgment”) and the learned Tribunal observed that the department had failed to produce any tangible evidence to establish its allegation of over invoicing. The present reference assails the concurrent findings of fact. The department’s counsel essentially sought *de novo* appreciation of the evidence / record by this Court and for the concurrent findings be set aside.

The counsel was queried as to whether the correct quantum of taxes and duties was paid in respect of the consignment, albeit on the value declared, and the counsel answered in the affirmative. The counsel was asked if there was any loss of revenue apprehended / alleged by the department and she replied in the negative.

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 jurisdiction<sup>1</sup>. 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 controversies<sup>2</sup>, 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,

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

<sup>2</sup> 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.

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