

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.65 of 2010

03.04.2023

Mr. Danyal Muzaffar, advocate for the applicant.

Mrs. Masooda Siraj, advocate for the respondent.

Briefly stated, on 18.05.2007 the applicant was apprehended at Karachi Airport with foreign currency, being UAE Dirhams 160,000/- and Saudi Riyals 50,000/-, stated to be tied to his legs and concealed under socks. On the allegation of smuggling foreign currency out of Pakistan, proceedings were initiated and culminated *inter alia* in an order in original dated 29.09.2007, whereby the applicant was adjudged culpable and consequently the foreign currency was confiscated and penalty imposed. The order in original was maintained by the Collector Appeals vide Order in Appeal dated 18.12.2007, which in turn was maintained by the learned Tribunal vide Judgment dated 19.01.2010 ("Impugned Judgment"). This reference was filed in 2010, however, till date remains unadmitted.

The entire thrust of the arguments articulated by the applicant's counsel was that the petitioner had purchased the foreign exchange overseas and brought it with him to Pakistan and that it was the same that was being taken out by him yet again. Per learned counsel, the respective fora of adjudication failed to appreciate this evidence, hence, the exercise be conducted afresh by this Court, albeit in reference jurisdiction.

Perusal of the defense of the applicant, particularized in the order in appeal, demonstrates that the aforementioned plea was never taken and instead it was pleaded that the foreign exchange included that which belonged to certain other persons. Learned counsel admitted that this plea was novel to the present proceedings and no evidence of any foreign exchange purchased overseas was ever adduced. It was also admitted that no declaration of the existence of the foreign exchange was made, either upon arrival in the country or upon departure when the applicant was apprehended. 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.<sup>1</sup>

While various questions of law are listed in the memorandum of application, it is observed that the same are *prima facie* argumentative / raise factual controversies<sup>2</sup>, 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 from the Impugned Judgment, this reference application is hereby 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

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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.