

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.767 of 2022
CP D 7621 of 2022

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| Date | Order with signature of Judge(s) |
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1. For orders on office objection No.16.
2. For orders on CMA No.4386/2022.
3. For hearing of CMA No.43.87/2022.

09.05.2023

Mr. Muhammad Faheem, advocate for the applicant in SCRA 767 of 2022.

Mr. Muhammad Adeel Awan, advocate for the petitioner in CP D 7621 of 2022.

Qazi Ayazuddin Qureshi, Assistant Attorney General.

The learned Customs Appellate Tribunal at Karachi had rendered an order dated 08.09.2022 in Customs Appeal K-1760 of 2022 (“Impugned Order”), confirming the findings arrived at in Order in Original 908/2021-2022 dated 10.06.2022. The aforesaid SCRA assails the Impugned Order, whereas, the aforesaid petition seeks the implementation thereof.

The order sheet demonstrates that on 11.01.2023 the applicant’s counsel was confronted with the manifest absence of any questions of law proposed in the reference, hence, time was granted in such regard. On 24.02.2023, rephrased questions of law were submitted vide a statement, however, yet again the same were found to be dissonant with the ambit of the reference jurisdiction. Today yet another statement containing reformulated questions was filed and the same *prima facie* seek *de novo* appreciation of evidence, are argumentative and raise factual controversies¹, therefore, we respectfully observe that the same do not qualify as questions of law to be answered by this Court in exercise of its reference jurisdiction.

The entire crux of the applicant’s case was that it sought *de novo* appreciation of the evidence. 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.² Even otherwise, nothing could be demonstrated before us to show that the conclusion reached could not have been rested upon the reasoning relied upon.

Despite our repeated requests, the applicant’s counsel remained unable to articulate any question of law, arising from the Impugned Order, therefore, this reference application, and pending applications, is hereby dismissed with costs³ of Rs. 10,000/- imposed upon the applicant, to be deposited with the Sindh High Court Clinic within 7 days hereof. Consequently, the aforesaid petition is allowed to the remit that the

¹ 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.

² Per *Qazi Faez Isa J* in *Middle East Construction vs. Collector Customs*; judgment dated 16.02.2023 in *Civil Appeals 2016 & 2017 of 2022*.

³ Reliance is placed upon 2017 PTD 1832.

respondents are directed to implement the Impugned Order, in consonance with law interpreted vide *Kashif Feroz vs. Federation & Another* reported as *2021 PTD 867*.

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