

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Applications 1040 & 1041 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection No.14
- 2. For orders on CMA No.2022/2023
- 3. For hearing of main case

29.09.2025

Mr. Umer Farooq, advocate for the applicant

These reference applications assail judgment dated 05.12.2022, passed in Customs Appeal No. K-450 and 449 of 2018. The operative part whereof reads as follows:

“7. During the hearing of present appeal and pleading of parties, the following questions emerged and will decide the fate of this instant appeal:-

1. Whether the appellant has violated the provisions of section 2(s) and section 16 of Customs Act, 1969?

2. Whether the appellant has exported the turtles under the garb of fresh potatoes by misusing the facility of green channel?

8. Take up the Question No.1 involved in this case, it is pertinent to reproduced section 2 sub clause (s) which states that:-

"smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or evading payment of customs-duties or taxes leviable thereon-

[(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances, or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed [one hundred and] [fifty thousand rupees) in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station.] and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly:]

9. From the plain reading of the section 2(s) defined that "smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction of the time being in force, or evading payment of customs duties or taxes leviable thereon. It appeared from the aforesaid definition of section 2(s) that breach of any prohibition or restriction for the time being in force or evading payment of customs duties or taxes leviable thereon, thereby means prohibition or restriction are covered under section 2(s) of the Customs Act, 1969, it would be appropriate to reproduced section 16 of the Customs Act, 1969 for the ease of reference:-

16. **Power to prohibit or restrict importation and exportation of goods.** The [Federal Government] may, from time to time, by notification in the official Gazette, prohibit or restrict the bringing into or taking out of Pakistan of any goods of specified description by air, sea or land.

10. Notwithstanding the above, in exercise of the power conferred by sub-section (1) of section 3 of the Imports and Exports (Control) Act, 1950 (XXXIX of 1950) the Federal Government is pleased to issue Notification No.SRO 345(1)/2016 dated 18th April, 2016 and Notification No.SRO 344(1)/2016 dated 18 April, 2016, it would not be out of place to

mention that the Section 3(3) of Imports and Exports (Control) Act, 1950 read as follows:-

3(3). All goods to which any order under sub-section (1) applies shall be deemed to be goods of which import or export has been prohibited or restricted under section 16 of the Customs Act, 1969 (IV of 1969) and all the provisions of that Act shall have effect accordingly".

11. That the above mentioned section 3(3) of the Imports and Exports (Control) Act, 1950, obviously explain that the all goods to which any order under sub-section (1) applies shall be deemed to be goods to which the import or export has been prohibited or restricted under of the Customs Act, 1969 and provisions of Customs Act, 1969 shall have effect, therefore, the section 3(3) of Imports and Exports (Control) Act, 1950 clearly define that all the goods prohibited or restricted in the import or export policy order issued under the Import and Export (Control) Act, 1950 would be same effect provided under section 16 of Customs Act, 1969.

12. It would be imperative to reproduce section 16(i) of Export Policy Order which is most relevant to this case reads as follows:-

"16. **Restrictions imposed under other Acts and laws.** Restrictions or conditionalities imposed under relevant provisions of the following Acts, Ordinances and Laws and the rules made there under shall be treated to be restrictions and conditionalities under this Order, namely:-"

(i) the Pakistan Animals Quarantine (Import and Export of Animal and Animal Products) Ordinance, 1979 (XLIX of 1979);

13. By aforesaid section which means that import or export of Black Spotted Turtle is prohibited and restricted, therefore, the export of the black spotted turtle is cover with the definition of section 2(s) and section 16 of Customs Act, 1969. The appellants have violated the provision of section 2(s) and section 16 of Customs Act, 1969.

14. Coming to the second question, as per case file that the actual exporter in the instant case is M/s AL. Hameed Enterprises, Karachi who admitted before the Investigation Officer that exported consignment of fresh potatoes of accused namely Muhammad Rafi was exported from his user ID against an undertaking. That in customs there is no provision that a registered exporter can export consignment of someone else on his ID. It was in his knowledge that the consignment has black spotted turtles. That appellants have been found involved in the smuggling of black spotted turtles under the garb of fresh potatoes. His collusion with the clearing agent in the offence of mis-declaration and smuggling is quite evident.

15. Given above mentioned perspective and for the forgoing facts, reasons and discussion, instant appeals are dismissed with no order as to costs"

While several questions were pleaded for determination, learned counsel remained unable to dispel the preponderant notion that the same were argumentative and / or sought to agitate factual / evidential aspects of the case. Learned counsel sought a *de novo* appreciation of evidence, however, could not befall such an exercise within the ambit of the reference jurisdiction of this court.

The export of prohibited items, *inter alia* black spotted turtles, in the garb of potatoes has not been dispelled. Such factum is even otherwise a question of fact and that same has been conclusively deliberated by the fora below. The cited provision of the Export Policy Order *admittedly* proscribes such activity and the juxtaposition of the provision with sections 16 and 17 of the Customs Act 1969 has not been denied. The law, as it stood at the relevant time, has been quoted in the impugned judgment and no cavil was articulated with respect to its applicability to the facts under consideration.

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 impugned 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, these references and pending applications are dismissed. Office to place a copy hereof in the connected file.

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

Amjad

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. Qadbro 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.