ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.1021 of 2023

Date	Order with Signature of Judge

Fresh Case

1. For orders on office objection No. 25
2. For order on CMA No. 742/2025
3. For hearing of Main Case
4. For order on CMA No. 743/2025

30.01.2026

Mr. Pervaiz Ahmed Memon Advocate for the Applicant
Mr. Muhammad Nasir, Director, Directorate of Intelligence & Investigation, Customs, Regional Office, Hyderabad.

The following questions were proposed for determination:

(1) Whether the impugned judgment passed by the learned Appellate Tribunal is sustainable in law as the same has been passed without appreciating the facts on record and law applicable thereto and by not investigating the facts of the case? Rectification application was also filed by the department which is pending before the Customs Appellate Tribunal.

(2) Whether the Appellate Tribunal has not erred in law by ignoring that the legal document provided by the Appellant in this case i.e. Goods Declaration (DG) under section 79 of the Customs Act, 1969 and Sale Tax Invoice under Section 23 of the Sales Tax Act, 1990 are fake? The GD number does not contain any code or Collectorate name which is customary in the numbering system of all GDs. Similarly there are two GDs of same number and same date showing the different importers whereas, the invoice presented by the claimant of the bitumen is also fake, as it is not reflecting in the sale tax summary invoice of suppler of M/s. Shaikh International (NTN-6759872-8). These facts make the GDs & invoice fake and fabricated.

(3) Whether the Appellate Tribunal while concluding impugned judgment has seriously erred in law and failed to appreciate that the Claimant of bitumen, has presented fake import documents to legalize the smuggled goods and has failed to discharge burden of proof of law possession as envisage under sub-section (2) of Section 156 and 187 of the Customs Act, 1969? The impugned notified goods were brought into the country through unauthorized route without payment of duty and taxes livable thereon. Therefore, goods were order outright confiscation in accordance with law.

Prima facie the said questions were observed to argumentative and sought to *de novo* agitate questions of fact/evidence. The final fact finding forum for such questions is the learned Appellate Tribunal and no case could be articulated for consideration of evidence in reference jurisdiction.

This matter has remained pending in the docket since 2023 without any progress. Learned counsel was confronted on previous dates with regard to the aforesaid, however, he remained unable to assist.

On 16.01.2026, following order was passed:

> "The question agitated before the Court was with regard to de novo appreciation of evidence. It was the department's contention that the burden of proof has not been discharged by the assesse, therefore, the impugned judgment was not sustainable. On the last date, learned counsel was confronted as to how the said issue could be construed as

question of law since the last fact-finding forum is the statutory hierarchy is the learned Tribunal. Learned counsel had sought time and today once again remains unable to assist. Let applicant-Director, Directorate of Intelligence and Investigation-Customs, Regional Office, Hyderabad be present in person in the Court to assist."

Today, Mr. Muhammad Nasir, Director, Directorate of Intelligence & Investigation, Customs, Regional Office, Hyderabad is present and once again reiterates that the burden of proof has not been discharged before the learned Appellate Tribunal, so as to merit the conclusion reached.

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[1]. Even otherwise, the officer 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.

Respectfully, it is reiterated that the learned Appellate Tribunal is the last fact finding forum in the statutory hierarchy, therefore, such de novo adjudication does not fall within the ambit of reference jurisdiction[2]. Since no question of law has been articulated before us to be adjudicated in reference jurisdiction, therefore, this reference application is dismissed in *limine*.

Before parting with this order, we are constrained to refer to a recent judgment of the Hon'ble Supreme Court dated 15.01.2026 in CPLA No. 1990 of 2025 paragraphs 8, 9 and 10 thereof read as follows:

> 8. When government departments routinely file appeals/petitions (often up to the High Courts and the Supreme Court) on questions of law that have already been authoritatively settled, the practice results in serious institutional harms. The most immediate consequence is the clogging of court dockets. Courts are compelled to spend scarce judicial time revisiting issues that are no longer res integra at the cost of undecided legal and constitutional questions, criminal appeals involving personal liberty, and civil disputes pending for years. This undermines the constitutional mandate of speedy justice. Repeated appeals/petitions on settled law weaken respect for Article 189 of the Constitution, the doctrine of stare decisis, and judicial discipline within the executive branch. When the State itself disregards binding precedents, it sends the wrong signals to subordinate courts, tribunals, and litigants. Such appeals/petitions result in unavoidable litigation costs, consumption of public funds for counsel, court fees and administrative processing.
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> 9. The State is expected to act as a responsible and fair litigant, not as a compulsive appellant/petitioner. The practice and tendency within government departments to file appeals/petitions mechanically, particularly when the outcome is foreseeable in light of settled law, has already been deprecated by this Court in the

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[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. Qadbros 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.

judgments reported as Federal Public Service Commission through Secretary, Islamabad Vs. Kashif Mustafa (PLJ 2025 SC 386), Director General, Rawalpindi Development Authority Vs. Mian Muhammad Sadiq (PLD 2006 SC 142), Regional Manager, NADRA RHO, Hayatabad, Peshawar Vs. Mst. Hajira (2024 SCMR 197), State Life Insurance Corporation of Pakistan Vs. Mst. Zubeda Bibi (2024 SCMR 426) and Amjad Ali Vs. Board of Intermediate and Secondary Education (2001 PLC (CS) 280).

10. Courts already possess both constitutional authority and jurisprudential tools to address the problem of repeated appeals/petitions by government departments on settled questions of law. Not just can the courts dismiss such appeals/petitions in limine, one of the most effective tools is the imposition of costs. In egregious cases, courts may require identification of the officer for authorizing the appeals/petitions. It is imperative for there to be internal accountability by government departments and careful legal scrutiny before filing appeals/petitions. Had such scrutiny taken place before the filing of the instant petition, it would have been realized that the primary question of law sought to be agitated by the petitioners already stands authoritatively settled by a number of judgments of this Court referred to herein above. In the case of order to address this problem it is imperative for the Chairman, F.B.R. to consider constituting committees which function with the highest degree of independence and includes a retired Judge of the superior judiciary, an experienced tax practitioner, and senior serving or retired officers of the F.B.R. with distinguished record and impeccable credentials with the mandate to timely examine each case before a decision is made to file a reference before the High Court or a petition before this Court. The F.B.R. may also consider undertaking review of all pending cases in order to determine whether the questions of law sought to be agitated therein already stand settled by judgments of superior courts.

It is apparent that reagitating settled questions of law has been consistently disapproved by the superior courts and the aforementioned judgment meticulously reiterates the same. *Prima facie* the present case appears to fall within the ambit of such proscription.

Preferring such matters clogs the docket of the Courts and the consequence thereof is eventually borne by revenue. The learned officer / applicant's assistance was sought, however, the outcome was as particularized supra. While exercising maximum restraint, we leave mitigation of such matters for the better judgment of the executive. The office is instructed to directly convey a copy hereof to the learned Attorney General Pakistan, Secretary Revenue Board and Chairman FBR at Islamabad.

Judge

Judge

Amjad PS