

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application 303 of 2018

Date

Order with Signature of Judge(s)

1. For orders on office objection no. 21.
2. For orders on CMA No.2579/2018.
3. For hearing of main case.

02.09.2021

Mr. Muhammad Rashid Arfi, Advocate for the applicant.

1 & 2. Deferred; Exemption granted subject to all just legal exceptions.

3. The applicant has impugned the order dated 03.05.2018, rendered by the learned Customs Appellate Tribunal at Karachi ("Impugned Order") primarily on the premise that the remission of the penalty upon the respondent herein, being a clearing agent, was contrary to the law.

The learned Tribunal had observed that throughout the proceedings no specific charge was levelled against the clearing agent / present respondent nor any specific role was assigned thereto. It was thus held that apportionment of any liability there against was not borne from the evidence / record. It is imperative to denote that no element of *mens rea* had been established with respect to the respondent and that the department / present applicant had failed to establish any culpability in respect of the clearing agent / present respondent through cogent documentary evidence or otherwise. In summation the learned Tribunal, after appraising the evidence led there before, found no culpability with respect to the respondent, hence, the penalty imposed upon the respondent was annulled.

The applicant has proposed various questions of law which we, respectfully, consider extraneous and dissonant to the Impugned Order. The learned Appellate Tribunal has already appraised the evidence and concluded that no role had been attributed / proven with respect to the respondent and even otherwise the necessary element of *mens rea* was never established, hence, no penalty was liable to be imposed upon the clearing agent / present respondent. It is trite law that the learned Tribunal is final arbitrator of facts¹ and that factual controversies are not amenable before the reference jurisdiction of this court.

In view hereof, we are of the considered view that the applicant has failed to raise any question of law arising out of the Impugned Order meriting the consideration of this court, therefore, the present reference is hereby dismissed *in limine*.

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

¹ Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as 2011 PTD 2577.