

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

Special Customs Reference Application 483 of 2016

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Date

Order with Signature of Judge(s)  
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1. For hearing of main case.
2. For orders on CMA No.2662/2016.

**02.09.2021**

Mr. Muhammad Khalil Dogar, Advocate for the applicant.  
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The applicant has impugned the order dated 15.04.2016, rendered by the learned Customs Appellate Tribunal at Karachi ("Impugned Order"); primarily on the premise that the remission of the personal penalty upon the respondent herein, being a clearing agent, was contrary to the law.

The learned Tribunal had observed that the essential ingredients required to establish joint liability must include evidence to prove *mens rea* or at least guilty knowledge. It was held that these ingredients had not been established there before. It was also recorded 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, concluded that the clearing agent / present respondent discharged his duties properly in accordance with procedure and rules and no violation of the law, as attributed in relevant show cause notice, could be apportioned thereupon. In conclusion thereof, the personal penalty imposed upon the clearing agent / present 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 necessary element of *mens rea* was missing, 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 facts<sup>1</sup> 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

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