

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.869 of 2023

Date

Order with signature of Judge

1. For orders on CMA No.2056/2023.
2. For orders on office objection No.25.
3. For orders on CMA No.1001/2023.
4. For hearing of main case.
5. For orders on CMA No.1002/2023.

02.05.2023

Mr. Khalid Rajpar, advocate for the applicant.

1. Granted. 3. Granted; subject to all just exceptions. 2,4&5. The applicant has impugned the Judgment dated 29.11.2022 ('Impugned Judgment') passed by the learned Customs Appellate Tribunal in Customs Appeal No.K-790 of 2022. The operative part of the Impugned Judgment is reproduced herein below:

"5. Heard arguments from both the sides and examined the case record. The appellant argued that the Collector Adjudication has not given any reason as to why the GDs produced at the adjudication are not relevant and arbitrarily held that the contention of the claimant could not be established. He further argued that the goods at serial No. 1 to 6 are lawful imports of the appellant on which the applicable customs duty and taxes have already been paid at the time of imports vide GD No.KAPE-HC-34857-19-08-2017, KAPW-HC-39949-06-09-2017, KAPW- HC-53117-09-10-2018, KAPW-HC-132503-16-01-2016 and others. The goods at serial No. 7 & 8 of Seizure Report are locally manufactured goods which were purchased by the appellant from local market hence, in no way can be treated as smuggled. The appellant further placed on record the pictures, of the goods imported vide the above mentioned GDs, in the open containers at the examination stage of the subject consignment. The concerned clearance Collectorate vide letter No.SI/MISC/192/2021-IV dated 04.11.2021 confirmed that the WeBOC record shows similar/identical goods mentioned at Sr. No. 01, 03 and 08 of the Show Cause Notice pertaining to the above mentioned GDs. Locally manufactured status of the seized goods "As made in Pakistan" at S. No. 5 and 6 according to Show Cause dated 15.12.2020 has also been confirmed by the seizing staff in writing to the Collector Adjudication. A similar report regarding goods at serial No. 9 and 10 has also been placed on record by the appellant. After this confirmation by the department itself, the contention of the department that original purchase invoices of local purchases were not available becomes meaningless, because in the absence of local purchase invoices of confirmed Pakistan origin goods, it can not be presumed that the goods are of foreign origin or smuggled. We have also examined the Inspection Report No. ASO-389/2020 dated Nil signed by the departmental staff only attached with the Parawise Comments submitted by the department. The subject report has not mentioned any mis-match of the description, sizes or origin of goods rather has only declared the produced documents irrelevant on account of GDs being 2-4 years old. We hold that under the law there is no time frame to dispose off the imported goods and the balance in stock is bonafidely possible. The subject report is silent about the main deciding factors that whether the seized goods mismatch with the GDs in terms of description, size or country of origin of the goods or not. Moreover, the respondent's contention regarding item at S. No.3, out of a total of 36 bundles of Micro Velvet embossed fabric weighing 370 kgs, the appellant provided a two year old GD for 352 kgs and the rest of the 26 bundles contained cutting and small cloth pieces. The appellant pleaded that the WeBOC has already confirmed import of this item vide the letter mentioned above and the bundles of cutting and small cloths pieces are never smuggled in the country and are local purchase. We agree with this contention of the appellant.

6. In view of the above, we hold that the appellant has reasonably discharged the burden of proof under section 187 of the Customs Act, 1969 and there is no conclusive proof of the seized goods being smuggled. Accordingly, the impugned Order in Original is set aside and the instant appeal is allowed.”

Perusal of the Impugned Judgment demonstrates that the learned Tribunal duly appreciated the evidence and concluded, post deliberation, that no case of smuggling could be established. The applicant’s learned counsel essentially sought for this Court to undertake a *de novo* appreciation of evidence and proposed three questions of law, formulated entirely to such effect.

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, nothing could be demonstrated before us to show that the conclusion reached could not have been rested upon the reasoning relied upon.

While three 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 do not qualify as questions of law to be answered by this Court in exercise of its reference jurisdiction.

Despite our repeated requests, the applicant’s counsel remained unable to articulate any question of law, arising from the Impugned Judgment, therefore, this reference application, and pending applications, 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

Khuhro/PA

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*.

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.