

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-5969 of 2014

Date

Order with signature of Judge

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Ashraf Jahan, JJ

Priority Case:

1. For hearing of CMA No.31743/2014.
2. For hearing of main case.

26.09.2018

Mr. Zia-ul-Hassan, Advocate for Petitioner.

Ms. Masooda Siraj, Advocate for Respondents No.1&2.

Mr. Meer Hussain Abbasi, Asst. Attorney General for
Respondent No.3.

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Aqeel Ahmed Abbasi, J : -- Through instant petition, petitioner, who is a clearing agent, has impugned a demand notice dated 18.02.2014 issued by the Assistant Collector of Customs, MCCA-Group-VII, towards short recovery of surcharge amounting to Rs.382727/- on importation of one unit old and used Toyota Prius Hybrid Car bearing Chasis No.ZVW30-5058130, Model 2009 vide GD Machine No.11972 dated 22.10.2013 IGM No.97 dated 11.10.2013 Index No.367, which according to learned counsel for petitioner, has been issued in violation of law, without proper adjudication or providing any opportunity of being heard to the petitioner. It has been contended by the learned counsel for petitioner that impugned demand notice, even otherwise, cannot be issued against the petitioner, who is a clearing agent and has not committed any violation of the provisions of the Customs Act, 1969 or the license issued to the petitioner as a clearing agent, whereas, according to learned counsel, the liability, if any, towards custom duties, taxes or surcharge, is to be recovered from the importer and not from the clearing agent. Learned counsel for the petitioner has referred to the proviso of subsection (3) of Section 209 of the Customs Act, 1969,

which according to learned counsel, provides that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than willful act, negligence or default of the agent, the same cannot be recovered from the agent and the same is only recoverable from the importer in accordance with law. According to learned counsel for petitioner, there is no allegation against the petitioner for having committed any willful act, negligence or default in respect of subject demand, which otherwise is illegal, as no assessment or adjudication has been made by the respondents even against the importer before creating said demand, in accordance with law, whereas, respondents have not initiated any recovery proceedings against the importer in the instant case.

2. While confronted with hereinabove factual and legal position as argued by learned counsel for the petitioner, learned counsel for the respondent No.1&2 could neither submit any response nor could justify issuance of impugned demand notice for the short-recovery of surcharge in the instant case and candidly submitted that impugned demand has not been recovered from the importer in accordance with law.

3. We have heard the learned counsel for the respective parties, perused the record of the case and the relevant provisions of the Customs Act, 1969, particularly the proviso to sub-section (3) of section 209 of the Customs Act, 1969, which is reproduced hereunder for the sake of convenience: -

“(3). When any customs agent is expressly authorized by the principal to be his agent under sub-section (1) of section 208 in respect of such goods for all or any of the purposes of this Act, such agent shall, without prejudice to the liability of the principal, be deemed to be the principal of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than willful act, negligence or default of the agent, such duty shall not be recovered from the agent.”

4. Perusal of above provision clearly reflects that unless there is an allegation against the clearing agent for having committed any willful Act, Negligence or Default, the clearing agent cannot be held liable for the payment of duty and taxes not levied or short-levied or erroneously refunded by the importer.

5. In view of hereinabove facts and circumstances of the instant case and from perusal of hereinabove legal position as emerged in the instant case, we are of the opinion that demand notice issued to the petitioner, who is admittedly a clearing agent, is without lawful authority, which is hereby set aside and instant petition stands allowed in the aforesaid terms alongwith listed application. However, it is clarified that respondents will be at liberty to proceed against the importer in accordance with law for the recovery of duty, taxes or surcharge, however, as may be levied in accordance with law.

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