

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. **D - 972** of 2019

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Zulfiqar Ahmed Khan.

1. *For hearing of Misc. No. 4404/2019.*
2. *For hearing of Main Case.*

03.05.2019

Mr. Salman Yousuf, advocate for petitioner.

Mr. Muhammad Bilal Bhatti, advocate for respondents

Ms. Lubna Perwez, Deputy Attorney General.

ORDER

1. Through instant petition, petitioner has impugned the suspension of his Customs Agent's License by the respondents, on the grounds that in the absence of any violation of Customs Licensing Rules by a clearing forwarding agent, the license cannot be suspended, nor the recovery of custom duty and taxes liable to be paid by an importer can be made from the clearing forwarding agent. Learned counsel for petitioner has submitted that respondents, without initiating any proceedings against importer for the recovery of duty and taxes has suspended the license of the petitioner, however, without issuing any show cause notice or providing any opportunity of being heard to the petitioner. Learned counsel further submits that similar controversy has already been decided by this Court in the case of *M/s. Services v. Assistant Collector of Customs and others [C.P.No.D-5968/2014]*, wherein, according to learned counsel, similar suspension of customs agent license has been declared to be illegal and without lawful authority. In support of his contention, learned counsel for the petitioner has

placed on record copy of order dated 26.09.2018 passed by this Court in the aforesaid petition.

2. Mr. Muhammad Bilal Bhatti, advocate representing the respondents, while confronted with hereinabove factual and legal position, could not controvert the same, however, referred to comments filed on behalf of respondents and submitted that since the GD and other import documents were filed by the petitioner on behalf of importer, therefore, in order to ensure recovery of outstanding amount of duty and taxes against the importer, petitioner is required to make payment of outstanding amount in terms of Section 209 of the Customs Act, 1969, whereas, in case of any default, Customs Agent License can be suspended in terms of Rule 101 & 102 of the Customs Act, 1969.

3. We have heard the learned counsel for the parties, perused the record with their assistance, which reflects that without issuance any show cause notice or having pointed out any violation of licensing rules by the petitioner, Customs Agent's License has been suspended on the grounds that there is outstanding liability of duty and taxes against the importer. From perusal of the order dated 26.09.2018 passed by a Divisional Bench in the case of *M/s. Services v. Assistant Collector of Customs and others [C.P.No.D-5968/2014]*, it appears that the legal issue involved in the instant petition has already been decided, whereas, it has been held that in terms of sub-section (3) of Section 209 of the Customs Act, 1969, the clearing agent cannot be held liable for the payment of duty and taxes not levied or short-levied or erroneously refunded in respect of an importer. It will be advantageous to reproduce the relevant findings as contained in Para: 3 to 5 of the aforesaid order, which read as follows:-

“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 or 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.”

4. While respectfully following the aforesaid order, the ratio of which is squarely applicable in the facts of instant petition, instant

petition is allowed alongwith listed application. Consequently, the suspension of Customs Agent's License of the petitioner is hereby set-aside. Respondents are directed to restore the Customs Agent's license of the petitioner within seven days from the date of this order.

5. It is, however, clarified that respondent will be at liberty to proceed against the importer for the recovery of legitimate dues towards customs duty and taxes in accordance with law.

6. Instant petition stands disposed of in the above terms alongwith listed application.

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A.S.