

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP D 6314 of 2019 : Sparkworld (Pvt.) Ltd. vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Ghulam Hyder Shaikh, Advocate
Mr. Manzar Hussain Memon, Advocate

For the Respondents : Mr. Muhammad Khalil Dogar, Advocate

Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Date of hearing : 24.03.2021

Date of announcement : 24.03.2021

JUDGMENT

Agha Faisal, J. The present petition assails a demand notice dated 26.09.2019 (“Impugned Notice”), issued by the Customs department without any precursor show cause notice, whereby amounts were demanded in respect of alleged short payment of duties pertinent to goods declaration forms (“GDs”) pertaining to items cleared previously, predicated primarily on the grounds that the same was patently an abuse of process and manifestly unjust / prejudicial.

2. Briefly stated, GDs, five (5) in number dated 23.01.2019 till 20.07.2019 respectively, were filed, assessed and the relevant goods were subsequently released subject to payment of duties and taxes. The Impugned Notice was issued raising a demand for alleged short payment in respect of the GDs, pertinent to cleared consignments, and required payment within two days under threat of coercive action, hence, this petition.

3. It was argued on behalf of the petitioner that the GDs under consideration pertained to released goods and that no demand / re-assessment was permissible in respect thereof without prior issuance of a show cause notice. The respondents’ counsel supported the Impugned Notice while citing factual issues in support thereof.

4. We have appreciated the arguments of the respective learned counsel and have also considered the law to which our attention was solicited. It is settled law¹ that a departmental notice may not ordinarily merit interference unless it is manifest that it suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. Therefore, the only question for determination before us is whether the Impugned Notice suffers from any infirmity meriting interference by this Court.

5. The august Supreme Court has consistently maintained² that demand notices in absence of statutory show cause notices were without lawful foundation. It was observed that in the absence of the pre-requisite show cause notice no demand notice requiring payment of any alleged short levy could be issued. The superior Courts have maintained³ the primacy of the show cause notice in proceedings emanating from section 32 and have also illumined that the said instrument is required to be issued within the statutorily mandated time frame⁴.

6. In the present facts and circumstances it is manifest that the GDs under reference pertained to pre released items and any subsequent re-assessment required issuance of a show cause notice, admittedly abjured by the respondents. Therefore, the Impugned Notice, having been issued without any prior show cause notice, was devoid of any lawful foundation.

7. In view of the reasoning and rationale herein contained, it is our considered view that the Impugned Notice appears to be an abuse of process and manifestly unjust / prejudicial towards the petitioner, hence, cannot be sustained⁵. Therefore, this petition is allowed and the

¹ Per Muhammad Ali Mazhar J. in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516*.

² Per Mian Muhammad Ajmal J. in *Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others* reported as *2001 SCMR 838*.

³ *Collector of Customs (Preventive) Karachi vs. PSO* reported as *2011 SCMR 1279*.

⁴ *Lever Brothers Pakistan Limited vs. Customs, Sales Tax & Central Excise Appellate Tribunal & Another* reported as *2005 PTD 2462*; *Union Sport Playing Cards Company vs. Collector of Customs & Another* reported as *2002 MLD 130*.

⁵ Per Saeeduzzaman Siddiqui J. in *PIA vs. CBR & Others* reported as *1990 CLC 868*; *Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others* reported as *2001 SCMR 838*.

Impugned Notice is set aside The respondents shall remain at liberty to seek mitigation of any subsisting grievance in accordance with the law.

JUDGE

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