

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
C.P. No.D-3673 of 2021

DATE **ORDER WITH SIGNATURE OF JUDGES**

Direction

For orders as to maintainability of petition

23.06.2021

Raj Ali Wahid Kunwar, advocate for the petitioner

This petition has been filed seeking a declaration that seizure of the vehicle in question is without lawful authority and jurisdiction. Since a Show Cause Notice has already been issued on 13.04.2021 by the adjudicating authority, on the last date of hearing, we had confronted the counsel for the petitioner as to maintainability of this petition.

Today, once again, we have asked him as to maintainability and have even offered him to withdraw the petition and we will issue directions to the Adjudicating Authority to decide the matter expeditiously. However, he has insisted that the petition is maintainable and he will argue on the same including merits of the case. He submits that the petitioner seeks interim release of the vehicle in question, as according to him, the vehicle was originally imported by the Consulate General of Saudi Arabia and was released in the year 2000 under diplomatic exemption of duties and taxes. He further submits that thereafter the vehicle has been purchased by the petitioner and requisite letters issued by the Royal Consulate General of Saudi Arabia to the Customs Authorities as well as Excise and Taxation Department are on record; hence the vehicle is lawfully imported and therefore, the Show Cause Notice is without jurisdiction and lawful authority. According to him, the petition is also maintainable as it is settled law that if an order is without lawful authority and jurisdiction, this Court under Article-199 of the Constitution can exercise its discretion.

We have heard the learned counsel for the petitioner and perused the record. Insofar as the maintainability of this petition is concerned;

though there is no cavil to the proposition that if any notice or order which is without jurisdiction and has been impugned by way of a Constitutional petition, this Court under Article 199 of the Constitution can exercise its discretion; however, the said rule is not absolute, but is an exception. The Courts do exercise such discretion, but that is subject to the peculiar facts and circumstances involved in a particular case. The Petitioner wants this Court to act as an adjudicating authority and to decide that whether the Petitioner has committed any offence under the Customs Act, 1969 or not. Such exercise, in the present facts as above cannot be undertaken in our Constitutional jurisdiction. Even otherwise no case of abuse of process and / or want of jurisdiction nor of mala fides is manifest before us. Moreover, we may also observe that tendency of impugning Show Cause Notices directly in constitutional jurisdiction is on an increase without any justifiable cause and instead of responding to the Show Cause Notice, Constitutional jurisdiction of this Court is being invoked under Article 199 of the Constitution. We have also come across cases wherein, even after responding to the Show Cause Notices and joining of proceedings before the Department, petitions have been filed and the Show Cause Notices have been challenged. We may observe that no question of jurisdiction has been raised before us in this Petition. It may be the case of the petitioner that some illegality has been committed by the respondents; but for that alone, we are afraid the Constitutional jurisdiction of this Court cannot be invoked.

The question that whether a Show Cause Notice could be challenged directly before a Court of law has been dealt with in a number of Judgments by the High Courts as well as the Hon'ble Supreme Court and it has been a consistent view that such tendency to impugn a Show Cause Notice issued under a taxing law and to casually bye-pass the remedy as provided under a Special Law is to be discouraged as it amounts to ruining the statutory norms as meaningless, more so, when

the proceedings initiated by the Department does not suffer for want of jurisdiction and malafides. In addition, the very Special Law provides a complete mechanism of Appeals up to the level of Special Tribunals and then by way of a reference before the High Courts, and therefore, ultimately such question of law has to come before the High Court for its final adjudication. For these reasons, time and again the Courts have held that ordinarily a tax payer must respond to such Show Cause Notice and contest the matter before the Departmental hierarchy inasmuch firstly, the Department being a specialized forum has been conferred with such powers; and secondly, until a determination (adverse or otherwise) is made; mere issuance of such a notice by the department cannot be looked into on mere suspicion and apprehension of a tax-payer. The tendency to impugn the show-cause notices issued by the Public Functionaries under taxing statutes, before this Court under Article 199 of the Constitution, and to casually bye-pass the remedy as may be provided under a Special Statute is to be discouraged as it tends to render the statutory forums as nugatory¹. In the matters of show cause, this court cannot assume a supervisory role in every situation to pass an interim order with the directions to the authority concerned to proceed but no final order should be passed till decision of the constitution petition or to suspend the operation of show-cause notice for an unlimited period of time or keep the matters pending for an indefinite period. By saying so, we do not mean that the show cause notice cannot be challenged in any situation but its challenge must be sparing and cautious². Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for

¹ Speaking through Aqeel Ahmed Abbasi, J, Maritime Agencies (Pvt.) Ltd. through Company Secretary, V. Assistant Commissioner-II of SRB and 2 others (2015 P T D 160)

² Speaking through Muhammad Ali Mazhar, J.Dr. Seema Irfan and 5 others V. Federation of Pakistan through Secretary and 2 others (2019 P T D 1678)

the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time³.

Insofar as, instant petition is concerned, we have confronted the counsel for the petitioner that even if the vehicle in question was originally imported by the Royal Consulate General of Saudi Arabia, as contended, then how the same came into possession and ownership of the petitioner in absence of a requisite no objection certificate by the Ministry of Foreign Affairs and so also by the Customs Authorities and to this he has not been able to satisfactorily respond. In fact, as per documents available on record, the vehicle is still plying with a number plate issued to the Royal Consulate General of Saudi Arabia (CC-52-33). Merely having certain letters purportedly issued by Royal Consulate General of Saudi Arabia stating that vehicle has been sold and can be used by a private person, and without certification of the same from the concerned Ministry of Foreign Affairs, is not sufficient. The policy governing import and sale of diplomatic vehicles under SRO 577(I)/2006 dated 5.6.2006 specifically requires certain permission(s) and no objections, before the vehicle can be sold to and used by a private person. It specifically requires permission from Ministry of Foreign Affairs as well. Since a show cause has already been issued, therefore, we have restrained from giving a definitive opinion in this aspect of the matter.

As to seeking interim release and custody of the vehicle through this petition, we may observe that vehicle has been seized and the allegation in the Show Cause Notice is alleged violation of Sections 16, 32

³ Speaking through Faisal Arab, J. Indus Trading and Contracting Company V. Collector of Customs (Preventive) Karachi and others (2016 S C M R 842)

of the Customs Act, 1969 punishable under clauses (9), (10-A) and (14) of section 156(1) ibid and may result into an order of outright confiscation of the same; hence the said relief is not only premature; but beyond the scope of these proceedings. Despite all this as noted earlier, we had given the petitioner's counsel an option not to press instant petition; however, he had insisted that petition is maintainable.

In view of hereinabove facts and circumstances of this case, the petition at this stage of the proceedings appears to be misconceived and not maintainable and was therefore dismissed by means of a short order in the earlier part of the day by imposing cost of Rs.10,000/- [Rupees Ten Thousand Only] to be deposited in the account of Sindh High Court Clinic and these are the reasons thereof.

JUDGE

JUDGE

Qurban/PA*