

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D- 2642 of 2021**

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Date	Order with signature of Judge
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For hearing of main case.  
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**31.05.2021.**

Mr. Muhammad Nazeer Tanoli, Advocate for Petitioner.  
Mr. Kafeel Ahmed Abbasi, DAG.  
Mr. Amer Raza, Advocate for respondent alongwith Mr. Tariq Aziz,  
Principal Appraiser, Port Qasim.

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The Petitioner has filed this Petition seeking following prayers:-

- a. Direct the Respondent No.2 allow the scrapping/cutting of remaining 15% oversize scrap.
- b. Direct to the Respondent No.2 to shifting the whole consignment to the customs warehouse.
- c. Direct to the Respondent No.2 for re-export permission of the whole consignment.
- d. Grant any order for better relief as may be demand appropriate in the case.

After issuance of the notice, comments have been filed and Para-5 of the comments reads as follows:-

- “5. The goods were inspected for mutilation permission under section 27A read with rule 592 of SRO 450(I)/2011. It was found out that approximately 45% of the consignment comprising of oversized pipes in old & used condition being damaged, bent & welded qualified for mutilation under the said section (Annex-B). The same was conveyed to the importer/his representative verbally also after that the petitioner started mutilation. Rest of the consignment comprising of oversized pipes that were not found old & used as these were neither damaged, bent nor had any welding marks – hence, not being in old and used condition did not qualify for mutilation. Accordingly, the same was not approved for mutilation. It may be submitted that another consignment imported vide IGM No.KPPI-0031-18012021, BL No. OVG/JEA/BQM-9021, Index No.89, GD No. KPPI-HC-70127-16-03-2021 by the petitioner was found in the same condition and was accordingly partially allowed for mutilation. It may be reiterated that the same consignment was cleared by the petitioner. Hence, his claim that DC MTO is neither allowing nor disallowing cutting is contrary to the factual position as the portion of the consignment that qualified for mutilation under section 27A of the Customs Act, 1969 read with rule 592 of SRO 450(I)/2001 was allowed for mutilation and same has already been mutilated by the Petitioner.”

After going through the memo of Petition and the comments filed by the department, including the above, it appears that factual dispute / controversy is involved in the instant matter inasmuch as the physical aspects of the consignment including its sizes and it being old and used scrap or new is in dispute, and therefore, in our considered view the same cannot be adjudicated by us in this Petition while exercising our Constitutional jurisdiction under Article 199 of the Constitution. Accordingly, the same is dismissed as being not maintainable; however, the respondents shall proceed in accordance with law, after providing an opportunity of being heard to the petitioner and if there is any further grievance left, the Petitioner may avail the remedy as may be available in law.

**J U D G E**

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