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**IN THE HIGH COURT OF SINDH
AT KARACHI**

(Constitutional Jurisdiction)

27/10/2022
C. P. No. D- 6609 of 2022
ADJUDICATED BY
JUDGE

C.P. No. D - 6609 of 2022

M/s Sea Liners,
A Proprietorship concern,
Having its office at Room No. 904,
9th Floor, Uni Plaza, I.I. Chundrigar Road,
Karachi – Pakistan;
Through its Proprietor, Mr. Naushad Ahmed
S/o Abdul Ghani.

PETITIONER

VERSUS

1. **Federation of Pakistan,**
Through Secretary,
Ministry of Finance & Revenue,
Finance Division, Pakistan Secretariat,
Islamabad – Pakistan;
2. **Chief Collector of Customs,**
Appraisalment (South),
8th Floor, Custom House,
Karachi – Pakistan;
3. **Additional Collector / Licensing Authority,**
Collectorate of Customs Appraisalment (West)
2nd Floor, Custom House,
EdujjeDinshaw Road,
Karachi – Pakistan;
4. **Additional Collector,**
Collectorate of Customs (Exports)
Custom House, Karachi – Pakistan;

RESPONDENTS

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

Respectfully Sheweth:

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-6609 of 2022

M/s.Sea Liners.....v/s.....Federation of Pakistan
& others

Date

Order with Signature of Judge

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ

MR. JUSTICE ABDUL MOBEEN LAKHO, J

- 1.For orders on Misc.No.28436/2023
- 2.For hearing of Misc.No.28437/2023
- 3.For hearing of main case.

13-03-2024

M/s.Muhammad Jamil & Sarosh Jamil, Advocates for the Petitioner

Mr.Khaleeq Ahmed, D.A.G.

Mr.Saleh Muhammad and Mr.Faheem Raza, Advocates for the Respondent No.4
(Customs Department).

ORDER

Through instant petition, the petitioner has impugned the Order-in-Original No.APPG/LA/1-106/93-P-II(CHAL#1588) dated 28.05.2022 and Order-in-Appeal dated 03.10.2022 passed in Appeal No.09/2022, whereby, according to learned counsel for the petitioner, the license of petitioner (M/s.Sea Liners) (Proprietor Naushad Ahmed son of Abdul Ghani) for Clearing and Forwarding Agent has been revoked on the basis of an FIR No.I&P/1-2021 dated 28.01.2021, wherein, according to learned counsel for the petitioner, along with exporter of the consignment the petitioner has been penalized in advance and the license of the petitioner has been revoked on the allegation of violation of Section 6, 7 and 8 of Control of Narcotics Substances, 1997 (Act XXV of 1997) punishable under Section 9(c) inspite of the fact that main case is still pending before the Special Court-II (C.N.S.) Karachi in Case No.36 of 2021, in which the petitioner has obtained bail, however, the matter is not being proceeded for various reasons including non-availability of case property involved in the alleged crime.

2. Learned counsel for the petitioner in addition to aforesaid grounds submits that in view of the allegations against the exporter, the petitioner's license has also been cancelled through impugned Order-in-Original and Order-in-Appeal as referred to hereinabove. Per learned counsel, the petitioner is merely a clearing

and forwarding agent, who has been issued license in terms of Rule 103 of the Customs Rules, 2001 after having completed all the codal formalities and has not violated any of the terms of the license nor withheld any information or documents, which are required to be maintained or given by the clearing agent to the Customs Authorities, but inspite of such fact the petitioner's license has been revoked. Learned counsel for the petitioner submits that admittedly, out of 05 consignments of pink salt, 03 consignments/containers were duly examined by Customs Authorities as well as ANF and also by Sniper Dogs, however, neither incriminating material nor any narcotic substance was found, whereas, the whole shipment was reportedly reached 09 destinations/ports, where such containers were downloaded and uploaded and eventually reached to the final destination. Whereas, as per allegation of the prosecution, at Netherland the subject narcotic substance was found in such consignment, however, inspite of lapse of considerable time, neither any material has been produced in Court nor the case property has been made available to connect the accused persons in the aforesaid crime including the petitioner. According to learned counsel for the petitioner, the petitioner has no role or nexus whatsoever in the shipment of the consignment, as according to learned counsel, the petitioner is a clearing and forwarding agent, who has limited role in the process to the extent of verifying and furnishing the requisite documents i.e. shipping documents G.D. etc., which in the instant matter were duly furnished and no deficiency in this regard or any violation of license has been found by the Respondents, whereas, petitioner being a clearing and forwarding agent (not the exporter) cannot otherwise be held liable for any offence if any committed by exporter. In support of his contention, learned counsel for the petitioner has placed reliance in the cases of *M/s.Farooq Chemical Co. (Pvt.) Ltd.....v/s.....Collector of Customs & others reported in 2015 PTD 2432* and *M/s.Docks Private Limited.....v/s..... Federation of Pakistan & others, reported in 2015 PTD 948*.

3. On 29.02.2024, when the matter was fixed in Court, the aforesaid contention was duly recorded in the order, whereas, further reliance was also placed by learned counsel for the petitioner in the case of *M/s. Khatri Brothers.....v/s.....Federation of Pakistan & others, reported in 2010 PTD 1225*, whereby, according to learned counsel for the petitioner, the controversy agitated through instant petition relating to liability of the clearing Agent, has already been decided by the Division Bench of this Court in the aforesaid judgments, whereas, learned counsel for Respondent (Customs Department) as well as learned D.A.G. had requested for time to examine the said judgment and to assist this Court on the next date of hearing.

4. Today, when the matter was taken up for hearing, learned counsel for the Respondent (Customs Department) could not controvert the aforesaid factual and legal position, however, submits that the facts of the instant case are little different from the facts of the aforesaid cases, for the reasons that in one of the above cited cases, the license of the petitioner was revoked merely on the basis of FIR, whereas, in another case, the petitioner was acquitted from the crime, however, in the instant case trial is still pending. In response to such contention, learned counsel for the petitioner has submitted that the case of the petitioner is fully covered by the afore cited judgments, wherein principle with regard to liability of a clearing and forwarding agent in respect of any consignment has been decided, and has been categorically held that in case of any offence or violation of Customs Act, 1969 by importer or exporter, the clearing and forwarding agent cannot be held liable for such offence unless there is some direct involvement or material available on record to establish the connection with the alleged offence. According to learned counsel for the petitioner, the criminal case is baseless particularly against the petitioner, as no material whatsoever has been produced by the Respondents either before the Special Court-II (C.N.S.) Karachi or this Court during trial nor the petitioner has been confronted in the show cause notice issued to the petitioner and similarly, in Order-in-Original and Order-in-Appeal no adverse order has been passed against the petitioner by the Customs Authorities. There has been no alleged violation of the provisions of Customs Act, 1969 particularly, Rule 103 of Customs Rules, 2001 by the petitioner, therefore, it has been prayed that the revocation of the license of the petitioner, who has been engaged in this business since 1994 and has never been involved in any criminal activity whatsoever nor charged with any offence punishable under the Customs Act, 1969 for violating the terms of the license (Rule 103 of Customs Rules, 2001), may be declared as illegal, as livelihood of the petitioner has been stopped through impugned orders passed by the Respondents. It has been prayed that since the petitioner is still contesting the criminal case, which may be directed to be decided in accordance with law at early date, however, in the meanwhile, the license of the petitioner may be restored so that the petitioner may be in a position to earn his livelihood.

5. Heard learned counsel for the parties, perused the record and have also examined the case law as well as relevant provisions of Customs Act, 1969 and Rule 103 of Customs Rules, 2001, which prima facie reflects that there is no material available or confronted to the petitioner which may directly connect the petitioner with the alleged crime nor there seems any violation of Rule 103 of Customs Rules, 2001, therefore, we are of the opinion that instant case is covered

by ratio of aforesaid judgments. Accordingly, while setting-aside the impugned Orders, instant petition is allowed and the Respondents are directed to restore the license of the petitioner within 15 days from the date of receipt of copy of this order. It is, however, further clarified that such restoration of the license of the petitioner would have no bearing or effect on the merits of the case before the Special Court-II (C.N.S.), which shall be decided on its own merits in accordance with law.



JUDGE



CHIEF JUSTICE

Nasir