

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

*Before: Muhammad Junaid Ghaffar &  
Mohammad Abdur Rahman, JJ*

**C.P. No.D-1820 of 2024**

M/s Marine Services (Private) Limited

Vs.

Federal Board of Revenue & others

**AND**

**C.P. No.D-1821 of 2024**

Portlink International Services (Private) Limited

Vs.

Federal Board of Revenue & others

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Petitioner : Dr. Shahab Imam, Advocate

Respondent No.1 : Mr. Kashif Nazeer, Assistant Attorney General

Respondents No.2 & 3 : Mr. Khalid Mehmood Rajpar

Date of hearing : 4 November 2024

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**ORDER**

**MOHAMMAD ABDUR RAHMAN,J:** Through these petitions, each maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners impugn audit notices dated 8 March 2024, issued by the Assistant, Directorate of Post Clearance Audit (South), Karachi under section 26A, 26B and 155 M of the Customs Act, 1969 contending that the notices have been issued illegally and with mala fide intent and each seeking the following relief:

“ ... I. Declare that the Audit Notice issued by the Respondent No. 3 to the Petitioner ultra Vires to the Constitution, illegal, in excess of jurisdiction and hence void ab-initio, therefore liable to be set-aside; and

II. Direct the Respondents, jointly and severally and directly as well as indirectly, to refrain from taking any adverse action or any coercive measures by way forceable compliance of the Audit Notice or on any other basis against the Petitioner, and

III. Restrain the Respondents, jointly and severally and directly as well as indirectly, from taking any adverse action or any coercive measures with regard to the Audit Notice as well as suspend the operation of the Audit Notice including but not limited to attaching the bank accounts, movable or immovable properties of the Petitioner OR until the final outcome of the instant Constitutional Petition; and

IV. Permanently, as well as during the pendency of the instant Constitutional Petition, restrain the Respondents, and their officials/agents from interfering in the affairs of the Petitioner Company and from blocking the User ID, NTN, STRN, Shipping License and other valid issued licenses of the Petitioner Company; and

V. Costs of the case; and

VI. Any other relief that this Hon'ble Court deems fit and proper in the circumstances of the case.”

2. The Petitioners are shipping agents licensed by the Collectorate of Customs Enforcements under section 207 of the Customs Act, 1969 and which section reads as hereinunder:

“ ... **207. Customs-house agents to be licensed.**

*No person shall act on behalf of any principal for the transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage at any customs-station unless such person holds a license granted in this behalf in accordance with the rules as a customs agent or a shipping agent.”*

3. Various powers have been conferred on the officers of the Customs to carry out audit and which are found in section 26A, 26B and 155M of the Customs Act, 1969 and which reads as under:

“ ... **26A. Conducting the audit.-**

*(1) The appropriate officer of customs conducting any audit under this Act shall proceed in the manner as the Board may by rules prescribe.*

*(2) Where any audit or inquiry or investigation is to be conducted for the purpose of ascertaining the correctness of any declaration or document or statement, for determining the liability of any person for duty, taxes, fees, surcharge, fines and penalties, or for ensuring compliance with all other laws administered by the customs, an appropriate officer of Customs may,-*

*(a) examine, or cause to be examined, upon reasonable notice, any record, or any statement or declaration or document described in the notice with reasonable specificity, which may be relevant to such audit, inquiry or investigation ;*

*(b) summon , by giving a notice and reasonable time,-*

(i) the person who imported, or exported or transported or stored or held under customs bond, or filed a goods declaration, drawback or refund claim;

(ii) any officer, employee or agent of any person described in clause (a); and

(iii) any person having possession, custody or care of records and documents required to be kept under the Act, and any other person, as deemed proper, to appear before him at a reasonable time and to produce such records and documents as specified in the notice and to give such testimony under oath as may be relevant.

**26B. Access for the purposes of audit.-**

(1) The appropriate officer of Customs, after giving a notice in writing specifying the date of visit, shall have access to business or manufacturing premises, registered office or any other place where any goods, stocks, documents or records relating to the ongoing audit are kept or maintained. Such officer may inspect the goods, stocks, documents, records, data, correspondence, accounts, statements, utility bills, bank statements, information regarding nature and sources of funds or assets with which his business is financed, and any other records or documents required under any Federal or Provincial laws, maintained in any form or mode. Such an officer may take into his custody such documents, records or any part thereof, in such form as he may deem fit, against a signed receipt.

(2) In all cases, except where it would defeat the purpose of the audit, a reasonable advance notice regarding a visit shall be given to the person concerned.

(3) Whosoever causes any obstruction or fails to provide any documents, record, statement etc, as required under subsection (1), with an intention to defeat the purpose of the Act by way of destroying, altering or concealing any books, documents or records required to be maintained under this Act, shall be guilty of an offence under this section.]

**155M. Requisition of documents.-** (1) The appropriate officer may, by notice in writing, require a person, as and when specified in the notice,-

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(a) to produce for inspection by a specified Customs Officer, documents or records that the appropriate officer considers necessary or relevant to

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(i) an investigation under this Act; or

(ii) an audit under this Act; or

(iii) the recovery of dues payable under this Act;

to allow the specified Customs officer to take extracts from or make copies of, documents or records of the kind referred to in paragraph (a);

(c) to appear before a specified Customs officer and answer all questions put to the person concerning -

(i) goods, or transactions relating to those goods, that are the subject of the investigation or audit, or that are relevant to the recovery of dues referred to in clause (a); or

(ii) documents or records of the kind referred to in clause (a).

(2) In this section, person includes an officer employed in a government department, corporation, local authority or an officer employed in a bank.

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4. Pursuant to that the Petitioner in CP No. D-1820 of 2024 has received a notice from the Government of Pakistan, Directorate of Post Clearance Audit (South) in the following terms:

“ ... C. No PCA/7249/2024/Audit2510 Dated: 08.03.2024

M/S. MARINE SERVICES (PVT) LTD,  
201-205 BUSINESS CENTRE, MUMTAZ HASAN ROAD,  
KARACHI

Subject: AUDIT IN TERMS OF SECTION 26A, 268 AND 155M OF  
THE CUSTOMS ACT, 1969

Please refer to the subject noted above.

To ascertain compliance of Shipping Agent Rules, issued vide SRO 450(I)/2001, dated 18.6.2001, M/S. MARINE SERVICES (PVT) LTD has been selected for audit in terms of Section 26A, 268 and 155M of the Customs Act, 1969, read with Post Clearance Audit Manual and Post Clearance Audit Policy issued by FBR vide C. No. 7(1) Valuation/2019, dated 14.4.2021. The audit is being carried out for the last 5 financial years i.e. from 01.07.2018 to 30.06.2023. An Audit team headed by Mr. Abdul Ghaffar, AO, has been constituted for this audit. For the purpose of audit, you are requested to provide all Notified/Published Tariffs" for the FYs 2018 to 2023 and provide preliminary summary information for each FY as per following format:

S No.	Category of Customs Business	Clients' /	Containers Court		Freight Charges Collected		Additional Charges Collected other than Freight		Gross Income For the FY		Amount Remitted Abroad under various heads US \$
			20 ft	40 ft	In US\$	In PKR	In US\$	In PKR	In US\$	In PKR	
1	Imports	(Nos)									
2	Exports										
3	Transit										
4	Others										
<b>Total</b>											

3. You are also requested to provide audited “**financial statements**” for the period under audit and "SOPs including documentation requirements for the manifestation of cargo to various ports and for the release of DO and BL.

4. It is requested to provide requested information/records by **18.03.2024**; and also depute relevant staff well-versed with the business, financial records and tax matters to assist the Audit Team and share his contact details.

5. Your timely cooperation and provision of information/records for the purpose of audit will indicative that you are a bona fide business that takes its legal obligations seriously, while unjustified delays will be reflective of otherwise. Please note that undersigned is the principal contact for this Audit.

In case of any queries, please do not hesitate to contact the undersigned.

(Sultan Aurangzeb)  
Assistant Director”

5. That the Petitioner in CP No. D-1821 of 2024 has also received a notice from the Government of Pakistan, Directorate of Post Clearance Audit (South) in the following terms:

“ ... C. No PCA/7249/2024/Audit2510 Dated: 08.03.2024

M/S. PORTLINK INTERNATIONAL SERVICES (PVT) LTD,  
201-205 BUSINESS CENTRE, MUMTAZ HASAN ROAD,  
KARACHI

Subject: AUDIT IN TERMS OF SECTION 26A, 268 AND 155M OF  
THE CUSTOMS ACT, 1969

Please refer to the subject noted above.

To ascertain compliance of Shipping Agent Rules, issued vide SRO 450(I)/2001, dated 18.6.2001, PORTLINK INTERNATIONAL SERVICES (PVT) LTD, has been selected for audit in terms of Section 26A, 268 and 155M of the Customs Act, 1969, read with Post Clearance Audit Manual and Post Clearance Audit Policy issued by FBR vide C. No. 7(1) Valuation/2019, dated 14.4.2021. The audit is being carried out for the last 5 financial years i.e. from 01.07.2018 to 30.06.2023. An Audit team headed by Mr. Imran saifi, AO, has been constituted for this audit. For the purpose of audit, you are requested to provide all Notified/Published Tariffs for the FYs 2018 to 2023 and provide preliminary summary information for each FY as per following format:

S No.	Category of Customs Business	Clients' /	Containers Court		Freight Charges Collected		Additional Charges Collected other than Freight		Gross Income For the FY		Amount Remitted Abroad under various heads
			20 ft	40 ft	In US\$	In PKR	In US\$	In PKR	In US\$	In PKR	
1	Imports	(Nos)									US \$
2	Exports										
3	Transit										
4	Others										

3. You are also requested to provide audited **“financial statements”** for the period under audit and "SOPs including documentation requirements for the manifestation of cargo to various ports and for the release of DO and BL.

4. It is requested to provide requested information/records by **18.03.2024**; and also depute relevant staff well-versed with the business, financial records and tax matters to assist the Audit Team and share his contact details.

5. Your timely cooperation and provision of information/records for the purpose of audit will indicative that you are a bona fide business that takes its legal obligations seriously, while unjustified delays will be reflective of otherwise. Please note that undersigned is the principal contact for this Audit.

In case of any queries, please do not hesitate to contact the undersigned.

(Sultan Aurangzeb)  
Assistant Director"

6. Dr. Shahab Imam entered appearance on behalf of the Petitioners in both the Petitions and contended that each of the audit notices issued by the Respondent No. 2 were mala fide and were in fact a roving inquiry into the affairs of the Petitioners and which, having no basis in any law, were in fact an abuse of jurisdiction exercised by the Respondent No. 2. He contended that there was no nexus as between the audit notices issued by the Respondent No. 3 with regard to the scope of the license issued 2 to the Petitioners in terms of Section 207 of the Customs Act, 1969 and in terms of the jurisdiction that was to be exercised by the Respondent No. 3 under Sub-Section (2) of Section 26A and 26B of the Customs Act, 1969

and which requires that any audit or inquiry or investigation is to be conducted for the purpose of “ascertaining the correctness of any declaration or document or statement, for determining the liability of any person for duty, taxes, fees, surcharge, fines and penalties, or for ensuring compliance with all other laws administered by the customs” and hence the audit is abuse of exercise of jurisdiction of the Respondent No 3. He therefore called for the

7. Mr. Khalid Mehmood Rajpar entered appearance on behalf of the Respondents No.2 & 3 and contended that the Respondent No.3 had requisite jurisdiction under Section 26A and 26B read with section 155 M of the Customs Act, 1969 to issue such notices as the license of the shipping agent came within the jurisdictional domain of the Customs and which had the requisite authority to issue license under Rules 657 and 658 of the Customs Rules. He stated that the general power to audit is not restricted in any manner by the language of those section and having authority to issue license the Petitioner, the Respondent No.3 has jurisdiction to conduct audit thereof

8. We have heard Dr. Shahb Imam and Mr. Khalid Mehmood Rajpar and have perused the record.

9. In international trade, the role of a shipping agent in the transportation of cargo is well defined. As is well understood the carrier simply carries the goods on board a vessel on behalf of the Shipper and for the benefit of the Consignee and broadly speaking the role of the carrier being limited to the release the goods into the hands of the person nominated as the Consignee in the Bill of Lading or the House Bill of Lading. A Shipping Agent, acting as an agent of the carrier, therefore simply assists the Master of the Vessel in terms of services such as port and terminal liaison, port entry and clearance, berth arrangements and crew services, limiting his role in terms of the cargo to the submissions of bills of lading, port documentation and paper work and occasionally to cargo surveys. To summarise the shipping agent has no responsibility or liability whatsoever in respect of the payment of customs duties. There being no liability to any customs authorities regarding the payment of customs duties, the regulation of Shipping Agents by the Respondent No. 2 would therefore not be in terms of ascertaining any duties paid by the shipping agent but rather in the performance of its duties and obligations to the carrier, the release of the goods to the consignee and its statutory obligations to port authorities.

10. There is no dispute as to the fact that the Respondent No. 2 has the power to license each of the Petitioners and which power is to be found in Section 207 of the Customs Act, 1969 read with Rule 657 of the Customs Rules, 2001 and which regulatory power is limited to **“the transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage at any customs-station.”** A bare perusal of each of the notices issued by the Respondent No. 3 would clarify that the information being demanded is in respect of the amount of freight charges collected, charges other than freight that are being collected, the gross income of the shipping agent and the amount of money remitted abroad by the shipping agent. To begin with we are clear that the amount of money being remitted by the shipping agent abroad has no connection with any *“transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage at any customs-station”* and is therefore information that goes well beyond the regulatory powers of the Respondent No. 2 and the Respondent No. 3 and to our mind would actually be within the regulatory domain of the State Bank of Pakistan.

11. Regarding all the other information demanded we are equally clear that the information being requested, while connected with the *“transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage at any customs-station,”* does not involve the payment of any duty to the Respondent No. 2 or the Respondent No. 3 and rather would be related to the income earned by the shipping agent bringing it within the purview of Section 177 of the Income Tax Ordinance, 2001 and not under Section 26 A of the Customs Act, 1969 as such an audit would not be to verify *“the correctness of any declaration or document or statement, for determining the liability of any person for duty, taxes, fees, surcharge, fines and penalties”*

12. Finally, as to whether the audit notice under Section 26 A of the Customs Act, 1969, as issued by the Respondent No. 3, could be justified on the threshold that it was required for *“for ensuring compliance with all other laws administered by the customs”* we note that the Respondent No. 3 has, in each of the notices, failed to mention as to how the information sought is required to ensure compliance of *“laws administered by customs”* inasmuch as the Respondent No. 2 has failed to mention the nexus as between the information being requested and the laws which they are purportedly ensuring compliance of by the issuance of each of the notices.

To our mind, for the Respondent No. 2 to be able to demand such information under the provisions of Section 26 A of the Customs Act, 1969 would mandatorily require the Respondent No. 3 to mention in the audit notice the law of which compliance of the Respondent No. 3 was attempting to ensure and the nexus as between that law and the information being sought. Each of the Audit notices miserably fails to state this and therefore would, to our mind be an act in excess of the jurisdiction of the Respondent No. 2 under Section 26A of the Customs Act, 1969 and hence render each of the audit notices nothing more than a roving inquiry and which is obviously premised in mala fide and hence arbitrary, illegal and void and cannot be sustained and are to be set aside.

13. For the foregoing reasons, we had on 4 November 2024 by a short order allowed each of these petitions and set aside each of the audit notices dated 8 March 2024 issued to each of the Petitioners and these are the detailed reasons for that order.

JUDGE

JUDGE

Karachi dated 6 February 2025