

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Junaid Ghaffar** and **Agha Faisal, JJ.**

CP D-3240 of 2020 : Shoe Planet (Pvt.) Ltd vs.  
Collector of Customs & Others

For the Petitioner : Mr. Pervaiz Iqbal, Advocate

For the Respondents : Mr. Muhammad Ahmar  
(Assistant Attorney General)  
Mr. M Bilal Bhatti, Advocate  
(For Respondent Nos. 1 till 3)

Date/s of hearing : 16.10.2020

Date of announcement : 16.10.2020

## JUDGMENT

**Agha Faisal, J:** The present petition assails a demand notice dated 26.06.2020 (“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 over the previous year and a half, predicated primarily on the grounds that the same was patently an abuse of process and manifestly unjust / prejudicial.

2. Briefly stated, GDs, eleven (11) in number dated 27.03.2019 till 03.03.2019 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 in the previous eighteen months, and required payment within three days under threat of coercive action, hence, this petition.

3. It was argued on behalf of the petitioner<sup>1</sup> that the GDs under consideration pertained to released goods and that no re-assessment was permissible in respect thereof without issuance of a show cause notice. Learned counsel referred to section 80(3) of the Customs Act 1969

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<sup>1</sup> Mr. Pervaiz Iqbal, Advocate.

("Act") and demonstrated that the said provision of the law could be employed to re-asses unreleased goods and invocation thereof for post facto realization was not contemplated by the law. Learned counsel placed reliance upon the *Ahmed Crockery judgment*<sup>2</sup> and concluded that in application of the ratio thereof the Impugned Notice must be set aside.

4. The learned Assistant Attorney General<sup>3</sup> submitted that the petition was not maintainable, however, did not endeavor to provide any rationale in such regard. The learned counsel<sup>4</sup> for the respondent nos. 1 till 3 eschewed articulation of any defense hereto.

5. 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 law<sup>5</sup> 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.

6. Section 80 of the Act *prima facie* contemplates pre clearance re-assessment, however, even in the said scenario there is now a requirement for service of prior notice and provision of an opportunity of hearing<sup>6</sup>. The insertion of the provision of notice, in the aforementioned section, took place vide the Finance Act 2020, assented four days post issuance of the Impugned Notice, however, even in the pre amended state the said provision of the law could not have been relied upon by the respondents since the GDs under reference admittedly pertained to items in respect whereof clearance / release had already taken place, therefore, the apparent alternative recourse available to the respondents may have been section 32 of the Act<sup>7</sup>.

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<sup>2</sup> Order of a Division Bench of this Court dated 17.08.2016 in the case of *Collector of Customs vs. Ahmed Crockery (SCRAs 132 to 153 of 2016)*.

<sup>3</sup> Mr. Muhammad Ahmar, Advocate.

<sup>4</sup> Mr. Muhammad Bilal Bhatti, Advocate.

<sup>5</sup> Per *Muhammad Ali Mazhar J. in Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516*.

<sup>6</sup> Per *Proviso to section 80(3)* of the Act, albeit added vide the *Finance Act XIX of 2020* assented on 30.06.2020.

<sup>7</sup> Providing the mitigating mechanism in respect of untrue statements and errors etc.

Section 32 deals extensively with the remedial mechanism in mitigation of revenue loss occasioned due to false representations and / or errors, however, expressly states that the remedial process ought to be commenced vide a show cause notice.

7. The august Supreme Court has consistently maintained<sup>8</sup> 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 maintained<sup>9</sup> 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 frame<sup>10</sup>.

8. In the present facts and circumstances it is manifest that the GDs under reference pertained to pre released items, re-assessment whereof was not mandated per section 80 of the Act. Recourse to section 32 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.

9. 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 sustained<sup>11</sup>. Therefore, this petition was allowed, and the Impugned Notice set aside, vide our short order announced in open court earlier today. These are the reasons for our aforementioned order. The respondents shall remain at liberty to seek mitigation of any subsisting grievance in accordance with the law.

JUDGE

JUDGE

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<sup>8</sup> Per Mian Muhammad Ajmal J. in *Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others* reported as 2001 SCMR 838.

<sup>9</sup> *Collector of Customs (Preventive) Karachi vs. PSO* reported as 2011 SCMR 1279.

<sup>10</sup> *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.

<sup>11</sup> 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.