ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI C. P. NO. D-5077 / 2020

Date

Order with signature of Judge

FRESH CASE.

- 1) For orders on CMA No. 21532/2020.
- 2) For orders on office objection No. 10 & 18.
- 3) For orders on CMA No. 21533/2020.
- 4) For orders on CMA No. 21534/2020.
- 5) For hearing of main case.

15.10.2020.

Mr. Sardar Faisal Zafar Advocate for Petitioner.

- 1) Granted.
- 2 to 5) Through this Petition the Petitioner has sought the following relief:-
 - "1. Under the facts and circumstances, it is requested and prayed to vacate the Show Cause Notice.
 - 2. Under the facts and circumstances it is requested and prayer not to pass any adverse order while releasing the consignment after the payment of duty and taxes as assessed."

At the very outset, we have confronted the learned Counsel for the Petitioner as to how the above prayer could be granted by this Court in its Constitutional jurisdiction as neither vires of law have been challenged; nor a question of jurisdiction of the officer issuing Show Cause Notice is before us and to that learned Counsel has not been able to satisfactorily respond and instead has argued that Respondents have failed to appreciate the provisions of the Customs Act and more specifically the second proviso to Section 32(3) read with CGO 12 of 2002 (Para 101) and therefore, this Court can issue any directions for vacating

the Show Cause Notice and so also releasing the goods on payment of duty and taxes.

We are afraid the contention of the learned Counsel appears to be completely out of context and misconceived inasmuch as not only a Show Cause Notice has been issued but the Petitioner has even joined the proceedings by filing a reply, whereas, no substantive legal issue vis-à-vis. exercise of our Constitutional jurisdiction has been raised; rather the Petitioner wants this Court to act as an adjudicating authority and to decide that whether the Petitioner / importer has committed any misdeclaration within the contemplation of Section 32 of 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.

Accordingly, the Petition is misconceived as well as premature and without any cause of action; hence, the same is dismissed in limine, whereas, as and when, if any adverse order is passed, and the Petitioner intends to seek release of the goods pending decision of any appeal, the Petitioner can approach the competent authority including this Court for such relief.

Petition is dismissed in limine with listed applications.

JUDGE

JUDGE

Arshad/