

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No. **D-3152 of 2018**

DATE

ORDER WITH SIGNATURE OF JUDGE

Priority.

1. For hearing of Misc. No. 14320/18.
 2. For hearing of main Case.
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18.02.2021.

Mr. Asad Khan, Advocate for Petitioner.
Mr. Khalid Rajpar, Advocate for Respondent No.2.
Ms. Masooda Siraj, Advocate for respondent No.3.
Mr. Muhammad Ahmar, Assistant Attorney General.

Through this Petition, the Petitioner has impugned a Notice dated 10.04.2018, whereby, the Petitioner was directed to pay the alleged short levied amount of duty and taxes with further directions to appear for hearing.

Learned Counsel for the Petitioners submits that the impugned Notice is a Demand Notice, through which without proper adjudication, an amount has been determined and Petitioners have been directed to deposit the said amount. According to him without a show cause notice and an order thereof, no demand notice can be issued; hence the impugned notice is without lawful authority and jurisdiction.

On the other hand, learned Counsel for the department has supported the impugned notice and submits that it also provided an opportunity of hearing.

We have heard both learned Counsel and perused the record. It would be advantageous to refer to the impugned Notice dated 10.04.2018, which reads as under:-

"GOVERNMENT OF PAKISTAN
MODEL CUSTOMS COLLECTORATE OF APPRAISEMENT –EAST
CUSTOM HOUSE, KARACHI

C.No.406/MCC/KAPE/DCVI/2018/

dated: 10.042018

M/s. ASHFAQ BROTHERS.
(NTN 4251315),
53-Umar Market, 99-Railway Road,
Lahore.

Subject: **DEMAND NOTICE UNDER SECTION 32(3) OF THE CUSTOMS ACT, 1969 FOR RECOVERY OF SHORT PAYMENT OF GOVERNMENT DUES RS.1,800,723/- APROX, DUE TO MIS-CLASSIFICATION OF GASOLINE ENGINES AGAINST GD NO.KAPE-HC-21869-13-08-2015 AND-KAPE-HC-148212-26-2015.**

Please refer to the above subject.

2. It is informed that Customs Duty and other Taxes amounting to Rs.1,800,723/- approximately have been short paid on account of mis-classification of Swan and Robinson brand Gasoline Engines imported against GDs No.KAPE-HC-21869-13-08-2015 and KPAE-HC-148212-26-05-2015 classified under PCT heading 8407.9010 (CD@8%) instead of its actual and correct PCT heading 8407.9090 (CD@20%). Accordingly, you are hereby directed to deposit the short paid amount of duty and taxes Rs.1,800,723/- within 07 days from the issuance of this notice or substantiate your claimed classification under PCT heading 8407.9010 to be correct with relevant catalog / literature and other documents. Hearing in the matter is fixed on 16.04.2018 before the undersigned, on which date you or your accredited representative may appear to defend the case.
3. If no reply is received within the stipulated period of time or no one appear for hearing, it shall be presumed that you have noting in defense and recovery proceedings as envisaged in section 202 of the Customs Act, 1969 read with recovery Rules, 2001 will be initiated against you without further notice.

(Muhammad Qasim Khokhar)
Deputy Collector G-VI

Perusal of the aforesaid notice reflects that it is though worded as a Demand Notice in the subject; but has been issued in terms of Section 32(3) of the Customs Act, 1969 and while confronting the Petitioner with directions to deposit the short paid amount of duty and taxes within seven (7) days, an opportunity has been provided to substantiate the claimed classification of the goods in question along with relevant catalog / literature and other documents. Not only this, a hearing was also fixed on 16.04.2018 with further directions to appear in person or through an authorized representative to contest the matter and so also to file a reply to the said notice. In our considered view, the

notice may not have been properly worded insofar as the Subject mentioned therein is concerned; however, this fulfills the requirements of a show cause notice required to be issued in terms of Section 32(3) of the Customs Act, 1969, which provides that where, by reason of any inadvertence, error or misconstruction, any duty, taxes or charge has not been levied or has been short-levied, the person liable to pay such amount on that account shall be served with a notice within three years of the relevant date requiring him to show cause why he should not pay the amount specified in the notice. We do not see any illegality in the impugned notice and merely for the reason that the word "*demand notice*" has been mentioned therein, this would not make the notice as without jurisdiction or as contended a direct demand notice without a show cause notice and adjudication. In our view it retains the ingredients of a proper show cause notice as required to be issued in terms of s.32(3) of the Act; hence, no case is made out. If this had been a mere demand notice without any opportunity of contesting the matter, then perhaps, the contention raised by the Petitioners Counsel would have been justified; as this by now is well settled; however, this is not the case in hand. An opportunity has been provided which the Petitioner may avail before the concerned department.

In view of hereinabove above facts and circumstances of this case, by means of a short order in the earlier part of the day, we had dismissed this petition and above are the reasons in support thereof.

Judge
Judge