

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

C.P. No.D-2616 of 2018

M/s Sea King Shipping Agencies
Versus
Assistant Collector of Customs & others

Date	Order with signature of Judge
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1. For hearing of Misc. No.11311/18
2. For hearing of main case

Dated: 24.09.2021

Mr. Zia-ul-Hassan for petitioner.

Mr. Khalid Mehmood Rajpar for respondent No.2.

Mr. Hussain Bohra, Assistant Attorney General for respondent No.3.

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Through this petition, petitioner, being custom's clearing and forwarding agent, has challenged the impugned notice issued for the recovery of duties and taxes as assessed finally by the customs authorities.

Brief facts are that the consignee "Baroz Khan" son of Noor Khan imported a vehicle. At the time of clearance the value declared was objected by the customs authorities and the value was consequently, in terms of ITP of older models was enhanced to 5% provisionally under section 81 of Customs Act, 1969 followed by release of the vehicle provisionally. The matter was then referred to Director General Valuation and vide its advice dated 02.04.2014 the value of the vehicle in question was determined under section 25(8) read with 9(9) of the Customs Act, 1969. Consequently assessment order was issued and the provisional assessment was finalized and the importer was required to deposit additional amount of duties and taxes, as assessed. In pursuit of

such recovery petitioner, being a clearing and forwarding agent, has received a notice dated 05.03.2018, after about four years of such assessment. Petitioner hence in consequence of such notice has filed this petition.

We have heard the learned counsel and perused material available on record.

This is not objected that the Collector Appeals might have rejected the appeal of the importer on 07.11.2014 however the Collector Appeals did not attribute any obligation on the part of clearing and forwarding agent/petitioner. The recovery was required to be made from importer, even in terms of the impugned notice. There is not an iota of evidence through which it could even remotely be presumed that there was any kind of connivance between clearing and forwarding agent and the importer or that he (petitioner/clearing & forwarding agent) acted as ostensible importer.

Rule 101(e) of Customs Rules 2001 requires a clearing and forwarding agent to pay the evaded amount of duties and taxes only in case it is established that the evasion has taken place because of negligence and failure to perform his (licensee/clearing & forwarding agent) functions as prescribed under the law and/or because of connivance or willful act of its (importer's) employee or permit holder. Similarly, other sub-clauses of ibid Rules i.e. (i), (j), (k) require customs authorities to have established the connivance and willful negligence on the part of the clearing and forwarding agent. In fact this was not even a case when the goods declared in terms of its value was objected to by the customs officials. There is no show-cause notice issued to the petitioner attributing such allegations requiring to give effect to Rule 101 and 102 of Customs Rules, 2001 and/or for that matter Section 32 of Customs Act.

We have inquired from Mr. Khalid Rajpar, learned counsel appearing for the respondent/department, if any show-cause notice, at the relevant time, was issued to which he declined. He, however, submits that the petitioner being an agent of importer has the certain responsibilities to fulfill under the law, which, per learned counsel it failed.

Section 202 of Customs Act, 1969 does not extend its arms against a clearing agent acting in good faith without any collusion or negligence to cause financial loss to national exchequer. As observed, neither a show-cause was issued nor the assessment order declared such terms of recovery to be made against clearing agent. In fact the importer failed to substantiate his declared value in terms of Section 25 of the Customs Act, 1969 read with Rule 109 of the Customs Rules, 2001. The declared value may have varied with the advice of Director General Customs Valuation however, the connivance of clearing agent to cause losses to national exchequer is missing. Not all such Goods declarations be categorized as false or untrue statement and hence require a burden to be discharged by customs officials, if such is attributed separately against importer and clearing agent. Not necessarily a declared value, which is objected by the customs officials be always considered to be a willful act of causing losses to national exchequer in terms of duties and taxes, however, a mechanism is provided to levy duties and taxes in terms of transactional value i.e. price actually paid or payable for the goods under section 25 of Customs Act, 1969 when sold for export from Pakistan, subject to provisos therein.

We have perused the *ibid* Rules in detail which Rules could only be given effect against the clearing and forwarding agent provided the prerequisites in terms of the *ibid* rules are available whereby the collusion, intention and negligence could be established without any

shadow of doubt. In the absence of such determination, notice for the recovery of outstanding duties and taxes against the clearing and forwarding agent (petitioner) is unlawful. Petition as such is allowed as prayed.

Judge

Judge