

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-7791 of 2022

Date

Order with signature of Judge

DIRECTION.

For orders as to maintainability of Petition.

24.01.2023.

Mr. Muhammad Nazeer Abbasi, Advocate for Petitioner.
Mr. Abrar Raza Ghumro, Advocate for Respondent.
Mr. Umer Sajjad, Assistant Collector MCC Appraisement West.

While issuing notices, an objection was raised as to maintainability of this Petition on 23.12.2022, whereas, pursuant to issuance of notice Vakalatnama has been filed by Mr. Abrar Raza Ghumro on behalf of Respondent Collectorate and on our directions Mr. Umer Sajjad, Assistant Collector, MCC Appraisement (West) is also in attendance.

Through this Petition, the Petitioner has sought the following prayers:

- a. Issue direction to the Respondent No. 2 and 3 not auction the subject vehicle till to the resolved (*sic*) the dispute of regulatory duty which is imposed by way of impugned SRO No. 1571(I)/2022 dated 22.08.2022.
- b. Direct to the Respondent No. 2 and 3 release the vehicle without collecting the RD.
- c. To grant any other relief(s) which the Honorable Court deems fit and proper in the circumstances.”

We have heard the Petitioner’s Counsel as well as the Assistant Collector present in Court. It appears that by way of SRO No. 1571(I)/2022 dated 22.08.2022 some regulatory duty has been imposed under Section 18(3) of the Customs Act, 1969 on the imported Vehicle and Petitioner’s case is that the vehicle in question was imported prior to such date. On the other hand, the Assistant Collector present in Court submits that the Goods Declaration (“GD”) attached with the memo of

petition is a draft and neither any duty has been deposited; nor any GD has been filed with the department.

As to payer clause (b), it has not been disputed that GD was never filed before issuance of SRO 1571(I)/2022, whereby regulatory duty has been imposed; though the Vessel through which the Vehicle has been imported arrived in June, 2022. The contention of the Petitioners Counsel that due to fulfillment of certain requirements as stipulated in the Import Policy, filing of GD was delayed and since the Vehicle had arrived earlier, the Petitioner is not liable to pay any regulatory duty, is misconceived and against the mandate of law including Section Section 30A¹ of the Customs Act, 1969 (“Act”) which presently governs filing of the same. It provides that the rate of duty applicable to any imported goods being cleared through the Customs Computerized System shall be the rate of duty in force on the date of payment of duty. Here, in this matter, neither the Petitioner has paid customs duties before 22.8.2022; nor for that matter any GD has been filed by him. This admitted position has not been disputed in any manner. Therefore, mere issuance of a Bill of Lading and even arrival of a Vessel does not create any vested right or protection from the levy of regulatory in question.

After coming to the above conclusion, as to prayer clause (a), it would suffice to hold that in absence of accrual of any legal right as above, the request to hold auction of the Vehicle in question will be in direct conflict with the provisions of Section 82 of the Act, which requires

¹ [30A. Date of determination of rate of duty for clearance through the Customs Computerized System.- Subject to the provisions of section 155A, the rate of duty applicable to any imported or exported goods if cleared through the Customs Computerized System, shall be the rate of duty in force on;-

(a) the date of payment of duty;

(b) in case the goods are not chargeable to duty, the date on which the goods declaration is filed with Customs

(c) Omitted.

Provided that where a goods declaration has been filed in advance of the arrival of the conveyance by which the goods have been imported, the relevant date for the purposes of this section shall be the date on which the manifest of the conveyance is filed at the customs-station of first entry:

Provided further that the [Board, with approval of the Federal Minister-in-charge] may, by notification in the official Gazette, specify any other date for the determination of rate of duty in respect of any goods or class of goods.]

payment of duties and taxes within certain time period; hence, cannot be acceded to. However, the petitioner, at best, may be entitled to sale proceeds in terms of Section 201(3) of the Act.

In view of such position, no case for indulgence is made out. The Petition being misconceived is hereby dismissed with pending application(s).

J U D G E

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Arshad/