

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. D-2866 of 2023

<i>Date</i>	<i>Order with signature of Judge</i>
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Priority

1. *For hering on Misc. No.13738/2023*
2. *For hearing of Main Case*

12.06.2023.

Mr. Amjad Hayat Advocate for the Petitioner
Mr. Zafar Hussain Advocate for the Respondent No.2
Qazi Ayazuddin, Assistant Attorney General

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Through this petition the Petitioner has impugned demand cum hearing notice dated 16.02.2023 as well as the blocking of its Tax Number (NTN) by the Respondents pursuant to such notice.

Department's counsel has effected appearance and has relied upon Section 155-M of the Customs Act, 1969, in support thereof and submits that since the Petitioner never responded; therefore, NTN has been blocked.

We have heard the counsel and perused the record. Insofar as the Demand-Cum- hearing / impugned notice is concerned, it does not specify any provision of any law, under which it has been issued. It appears that it is only a hearing notice and based on this and purportedly, since no response was received, they have blocked the NTN of the Petitioner. Such a harsh action of the Respondent department is not justifiable and does not find any support from law. The mode and manner in which a recovery can be made is, by way of a Show Cause Notice under Section 32 of the Customs Act, 1969, and not otherwise. Not only this, mere issuance of such a notice would not suffice to block the NTN of the Petitioner. Such recourse, if at all, is only available after an adjudication has been made and recovery modes as provided under Section 202 of the Act have been exhausted.

The august Supreme Court has consistently maintained¹ 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 maintained² 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 frame³. This has already been reiterated by this Court in somewhat similar / identical facts in the case of *Shoe Planet*⁴ & *Harris Silicones*⁵.

In view of such position the impugned hearing notice cannot be made basis for blocking the NTN of the petitioner. Accordingly, it is directed to de-block the NTN immediately, whereas, the Respondents are at liberty to proceed strictly in accordance with the provisions of the Customs Act 1969 including Section 32 thereof. With these observations the petition along with listed application stands allowed / disposed of.

J U D G E

J U D G E

Amjad / PS

¹ Per Mian Muhammad Ajmal J. in Assistant Collector Customs & Others vs. Khyber Electric Lamps & Others reported as 2001 SCMR 838.

² Collector of Customs (Preventive) Karachi vs. PSO reported as 2011 SCMR 1279.

³ 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.

⁴ 2021 PTD 875 (Shoe Planet (Pvt.) Ltd v Collector of Customs)

⁵ 2022 PTD 1163 (Harris Silicones and Glass (Pvt.) Limited v Federation of Pakistan