

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.845-2019

M/s Attock Petroleum Limited

Vs.

Federation of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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13.02.2020	Mr. Ali Sibtain Fazli, Advocate for petitioner. Ms. Farah Yasmin, Advocate for respondent Department.
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Through the instant petition, the petitioner has challenged the recovery proceedings initiated by the respondents.

2. The facts, in brief, are that petitioner is engaged in the business of purchase, storage, distribution and marketing of petroleum products; it received recovery notice dated 31.01.2019 demanding a sum of Rs.53,32,540/- with respect to arrears for the period 2005-2007.

3. The case of the petitioner is that no proceedings were initiated for determination of liability and direct recovery notice has been issued in violation of law. Reliance was placed on case reported as 'Z.N. Exporters Pvt. Ltd. Vs. Collector of Sales Tax (2003 PTD 1746).

4. Learned counsel for the respondents, *inter alia*, contended that it is the practice of respondent Department that notices are issued in order to facilitate the assessee.

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. In somewhat similar circumstances, this Court allowed the petition (W.P. No.4879-2018) in case titled 'M/s Pakistan Mobile Communications Limited Vs. Federation of Pakistan through Chairman, Federal Board of Revenue, Islamabad etc.' vide order dated 23.10.2019. It was observed as follows: -

*"6. Under section 32(3A) of Customs Act, 1969, where any duty, tax or charge has been short levied or is erroneously refunded and it is discovered subsequently, the Customs Department, within five years of the relevant date, require the person liable to pay duty to show cause why he should not pay the amount specified in the notice. It is a clear mandate of law that before recovering the amount, a notice/show cause notice is to be issued to the person liable to pay the amount in question. In the instant petitions, notices impugned are not in the nature of show cause notices or notices simplicitor rather demand letters/notices inasmuch as it is provided in the same that sum mentioned therein is to be paid, failing which, recovery proceedings are to be initiated. In view of above position of law and facts, impugned demand notices are not tenable, as the same are in violation of section 32(3A) ibid.*

*7. For the above reasons, instant petitions are allowed; consequently, the impugned demand notices dated 06.12.2018 are set aside. However, the respondent Department may initiate proceedings against the petitioners in accordance with mandate of section 32(3A) of Customs Act, 1969".*

Since facts and circumstances of instant case are also the same hence instant petition merits same treatment.

7. In view of above, instant petition is allowed; consequently, impugned demand notice dated 31.01.2019 is set aside. However, respondent Department may initiate proceedings against the petitioner in

accordance with mandate of section 32(3A) of  
Customs Act, 1969.

(AAMER FAROOQ)  
JUDGE

Zawar