

## **JUDGMENT SHEET**

### **IN THE ISLAMABAD HIGH COURT,** **ISLAMABAD**

#### **WRIT PETITION NO. 3315 OF 2020**

**M/s AZ Business Linkers.**

**Vs.**

**The Collector, Model Customs Collectorate, etc.**

**Petitioner by: Mr. Tofeeq ul Irfan, Advocate**

**Respondents by: Mrs. Misbah Gulnar Sharif, Advocate.**  
**Mr. Muhammad Tahir Khan, Principal Appraiser, MCC,**  
**Islamabad**

**Date of hearing : 25.11.2020.**

**LUBNA SALEEM PERVEZ, J.** The Petitioner, is a business concern, is aggrieved of blocking of his consignment by Customs Authorities imported, vide GD No. IPAF-HC-1479 dated 29.07.2020, at the time of airline gate out on 30.07.2020, without assigning any reason for detaining the goods.

2. Brief facts are that the petitioner imported a consignment of electrical parts on 25.06.2020, called Rotary Laser for agricultural machinery from Limburg Germany for home consumption and paid all the taxes, duties for clearance of the consignment, in accordance with law. After examination/verification by the Appraising Officer, and payment of CAA charges & godown rent, consignment was allowed to gate out but the same was blocked by the customs authorities who refused to release the consignment, despite written and verbal request. Hence, present petition.

3. Learned Counsel for the Petitioner submitted that the Rotary Laser is an electronic part of agricultural machinery has been imported for self-use, vide Airway Bill No. MAWB 157-2589-4842, bearing invoice No. 20200609 dated 09.06.2020; that all the duties, taxes & charges have been paid and no dues, whatsoever, are outstanding against the consignment; that no reason for blocking of the legally imported consignment has been communicated to the petitioner even though the petitioner had filed written request dated 25.09.2020 and has visited

the office of the Respondents several times for its release. He submitted that he came to know the reason for blocking of his consignment through comments filed in this petition, wherein it has been stated that the reason for blocking the petitioner's consignment is an FIR No. 19/2020 dated 22.06.2020, registered against the Petitioner in some other case; that admittedly no illegality has been found in respect of the instant consignment which has been lawfully brought into the country and cleared by the authorities after payment of all the requisite taxes & duties as per law. Thus, there is no lawful reason to seize the subject consignment by the respondents.

4. Learned Counsel for the Respondents, assisted by Principal Appraiser, submitted that the consignment of the petitioner has been blocked in consequence of an FIR No. 19/2020 registered against the petitioner with regard to other imports; that to safeguard the interest of government revenue the subject consignment has been blocked; that provision of section 202(b) of the Customs Act, 1969 (*the Act 1969*) empowered the Respondents to recover the Government dues by detaining and selling any goods belonging to the petitioner; that no unlawful action has been taken against the petitioner. Learned Counsel, however, admitted that all the leviable duties and taxes have been paid by the petitioner against the consignment under reference.

5. Arguments of the learned counsel for the parties have been heard and relevant record has also been perused.

6. At the outset, learned Counsel for the Respondents and Mr. M. Tahir Khan, Principal Appraiser, have categorically made statement that there is no issue or controversy with regard to the importability and payment of government dues in respect of consignment under reference. They, however, submitted that the consignment has been detained under section 202(b) of the Act, 1969 in order to recover the government dues against the petitioner in case FIR 19/2020 dated 22.06.2020, which admittedly pertains to some other consignment imported by the petitioner. The questions, therefore, arise whether the Respondents can invoke section 202(b) of Act 1969 for recovery of government dues before final adjudication of the case registered, vide FIR No. 19/2020 and determination of duties/taxes/charges under the Act, 1969, against the Petitioner? Whether Respondents are authorized to take action u/s 202 (b) of Act, 1969, on

presumptions to detain the lawfully imported goods of the petitioner without confronting reasons of its detention at the gate out? Whether provision relating to recovery of government dues can be invoked without first confronting the adjudged tax demand and without service of notice? To answer these questions it would be advantageous to reproduce the relevant part of section 202 of the Act, 1969 which reads as under:-

*“202. Recovery of Government dues.- (1) When, under this Act or under any other law for the time being in force, which provides for any tax, duty or other levy being collected in the same manner as customs-duties are collected, a penalty is adjudged against, or notice or demand is served upon, any person calling for the payment of any amount unpaid which may be payable by way of penalty or by way of duty, tax or other levy or under any bond [guarantee] or other instrument executed under this Act or such other law or the rules made there under, the appropriate officer-*

*(a) may deduct or require any other officer of Customs, Central Excise and Sales Tax to deduct such amount from any money owing to such person which may be under the control of the Customs, Central Excise or Sales Tax authorities; or*

*(b) if it cannot be so recovered, may recover, or may require any other officer of Customs, Central Excise or Sales Tax to recover, such amount by detaining and selling any goods belonging to such person which are under the control of the Customs, Central Excise or Sales Tax authorities*

*Provided that notwithstanding anything contained in any other law for the time being in force, if a defaulter sells or transfers ownership of his assets, the defaulted amount of duty and taxes shall be the first charge on the business so transferred.”.*

7. The plain language of the above provision shows that it provides for a mechanism for recovery and collection of government dues i.e. tax, duty or other levy, being collected as custom duty including penalty, after it is determined through adjudication proceeding and the duty/tax demand is communicated to the person through proper service notice prescribed under the law. Clause (a) of section 202(1) authorizes the officer of Customs, Central Excise and Sales Tax to deduct the determined / adjudged government dues from any money which may be under the control of the authorities and vide clause (b) *ibid* if such government dues cannot be recovered in terms of clause (a) then the same can be recovered by detaining and selling the goods belonging to the person which are under the control of customs authorities. Thus, any amount of customs duties and taxes become due when it is determined / adjudged as payable after due process of adjudication under the Customs Act, 1969. It is also clear from the plain reading of section 202 that no hypothecated amount to be adjudged in future on conclusion of any assessment could be recovered nor lawfully imported duties / taxes paid goods can be lawfully withheld prior to the determination/assessment of government dues. In this regard,

Customs Rules, 2001 have also been perused, wherein, vide Rules 133 to 215 a detailed procedure for recovery of the government dues has been elaborated. These rules are to be read in conjunction with section 202 of Act 1969. It would not be out of place to refer rule 134 of Rules 2001, according to which *all government dues shall be referred to recovery officer if the referring authority is satisfied that these are not recoverable in any other manner or on the expiry of thirty days from the date such dues were adjudged to be final*. Thus, no ambiguity or doubt is found in the language of section 202, read with relevant Rules that initiation of recovery proceedings u/s 202 of the Act, 1969 is invoked to recover collecting those government dues which are adjudged as final and are not recoverable through any other prescribed manner.

8. At this juncture, it would also be advantageous to cite the judgment of the Hon'ble Supreme Court, re: *M/s Noon Sugar Mills Limited v. The Commissioner of Income Tax, Rawalpindi (PLD 1990 SC 1156)*, while placing reliance on the judgment reported as *Muhammad Amir Khan v. The Controller Estate Duty and another (PLD 1962 SC 335)*, wherein, the Hon'ble Court has quoted the following observation from the judgment of Lord Dunedin:-

*"As observed by Lord Dunedin at page 110 in the case of Whitney v. The Commissioner of Inland Revenue (10 T C (HL) 88), "there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That ex hypothesis has already been fixed. But assessment particularise the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."*

Firstly the tax should be leviable under the charging provision of statute; secondly the leviable tax/duty is adjudged and qualified through assessment/adjudication proceedings and then thirdly it is recoverable through provided in law. The authorities are not legally permitted to jump to the third stage on the basis of speculations and guess work. The Hon'ble Supreme Court, vide above observation has explained there are three types of provisions in the fiscal statutes (i) charging provisions (ii) assessment/adjudication provisions and (iii) recovery provisions. The charging provisions provides for imposition and levy of taxes and duties, whereas, the assessment / adjudication provisions relates to determination and calculation of liability of tax, duties and other charges etc against a person and recovery provisions meant for collection of such duties and taxes etc, assessed /

adjudged as a result of adjudication proceedings. Therefore, liability of tax/duty is created through assessment / adjudication proceedings. It is now well established principle of law that “a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law or not at all” as observed by Hon’ble Supreme Court in *Assistant Collector Customs v. M/s Khyber Electric Lamps (2001 SCMR 838)*.

9. In the present case the respondents has acted the expectation of levy of tax and duty consequent upon the proceeding vide FIR NO. 19/2020 dated 22.06.2020 has directly invoked the recovery provision of section 202 (b) of the Act, 1969 it may be observed the provisions for recovery of government dues cannot be used as precautionary measures to be adopted on speculations and expectation of creating of Govt dues as a result of any proceedings under Act, 1969, as it may also conclude in taxpayer’s favour. I am of considered opinion that such actions of the respondents not only cause harassment to the taxpayer/business concern, also create unnecessary hurdles in running the business but also burden the courts with undue litigation.

10. Consequent upon above discussion it is held that respondents have unlawfully detained the petitioner’s consignment by misinterpreting provisions of section 202 (b) of the Act, 1969, and acted on the basis of presumption and surmises, hence, illegal, unlawful, without jurisdiction and *void ab initio*.

11. These are the reasons for short order dated 25.11.2020, whereby the instant petition was allowed with the direction to release the consignment of the petitioner, forthwith.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in the open Court on 31-12-2020

**JUDGE**

**APPROVED FOR REPORTING.**  
*Blue Slip added*