

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1643/2020

Butt Machinery Store
Versus
Federal Board of Revenue, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24-07-2020	Mr Adnan Haider Randhawa, Advocate for petitioner. Mr Muhammad Amin Feroz Khan, Ms Naziran Malik, Advocates for respondents.

Athar Minallah, C.J.- Through this order, I shall decide the instant petition alongwith W.P. No. 1642/2020 titled '*Inayat International Trading Company v. Federal Board of Revenue, etc.*'.

2. The petitioner company is aggrieved because it has received notices through the WeBOC system for recovery of short levy in respect of goods which were cleared under the Customs Act, 1969 and had been given out of customs charge.

3. The learned counsel has stated that in case of goods which are pending clearance at the port, the Assessing Officer is of the opinion that the clarification issued by the Federal Board of Revenue vide letter, dated 29-04-2020, is binding on him and that he is barred from applying an independent

mind. This argument is misconceived because the assessment proceedings and passing of an assessment are quasi judicial functions. The Assessing Officer is under a statutory duty to apply an independent mind. Section 223 of the Customs Act, 1969 (*hereinafter referred to as the 'Act of 1969'*) expressly provides that order, instructions and directions of the Federal Board of Revenue shall not interfere with the discretion of the appropriate officer in the exercise of the latter's quasi judicial functions. The Assessing Officer, therefore, is required to apply an independent mind while passing an assessment order without being influenced by the clarification issued by the Federal Board of Revenue vide letter, dated 29-04-2020. Moreover, the Act of 1969 has prescribed a mechanism for recovery of short levy or non levy of duty and taxes. The notices received by the petitioner through the WeBOC system are not in consonance with the scheme of law provided under the Act of 1969 besides being in violation of the principles of due process. In case of recovery of short levied or non levied duty and taxes, the competent authority is required to proceed strictly in accordance with the scheme provided under the Act of 1969.

4. The petitions stand disposed of in the above terms. The respondents are expected to proceed in accordance with the scheme contemplated by the legislature, which has been described under the Act of 1969.

(CHIEF JUSTICE)

Lugman Khan/*