

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 804 of 2018

M/s Max Diplomatic Bonded Warehouse

Vs

Collector of Customs, Model Customs Collectorate, Islamabad

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

06-08-2020. Mr. Sikandar Naeem Qazi, Advocate for the petitioner.
Mr. M.D Shahzad, Advocate for the respondent.

The jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been invoked by M/s Max Diplomatic Bonded Warehouse (hereinafter referred to as the "**Petitioner Company**") assailing Order in Original no. 02/2018, dated 09.02.2018 passed by the Collector of Customs in exercise of powers vested under section 13 of the Customs Act, 1969 (hereinafter referred to as the "**Act of 1969**").

2. The facts, in brief, are that the Petitioner Company was granted license on 14.03.2016 under section 13 of the Act of 1969. The Collector of Customs issued show cause notice, dated 03.04.2017 on the sole ground that the Petitioner Company had not utilized its license for a period of one year as required under rule

344 of the Customs Rules, 2001 (hereinafter referred to as the "**Rules of 2001**"). After affording opportunity of hearing to the authorized representative of the Petitioner Company, the Collector of Customs passed Order in Original no. 02/2018, dated 09.02.2018.

3. The learned counsel for the Petitioner Company has contended that the impugned order suffers from misreading and non reading; the Collector of Customs did not apply an independent mind because the Petitioner Company had placed an order and goods declaration regarding two consignments were filed on 07.07.2017.

4. The learned counsel who has appeared on behalf of the respondent Department was asked whether before passing of the impugned order, the Collector of Customs had inquired as to when the Petitioner Company had placed its order or had entered into negotiations for import of two consignments, which were in bonded in July 2017. The learned counsel, despite his able assistance, was not able to persuade this Court that this crucial factor was taken into consideration by the Collector of Customs while passing of the impugned order.

5. It is noted that rule 344 of the Rules of 2001, inter alia, provides that a license could be cancelled by the Collector if the latter is satisfied that it was not utilized during the last twelve months. The expression

'non utilization' is not restricted to the actual import of goods nor to the act of in bonding. The expression has a wider scope because several acts have to be performed before arrival/import of goods in the country. Such acts would, therefore, be relevant for the purposes of the expression "non utilization" of license. The possibility of placing an order and delay in import of goods due to the acts or omissions of the seller cannot be ruled out. It is noted that rule 344 confers a discretion on the Collector. Its exercise can lead to cancellation of a license on the sole ground of "non utilization". This discretion has to be exercised with utmost care and in accordance with the settled principles.

6. For the above reasons, this Court is satisfied that the Collector of Customs had neither taken the relevant matters into consideration nor the expression "non utilization" used in rule 344 of the Rules of 2001 was correctly interpreted. Consequently, this petition is allowed and the impugned Order-in-Original no. 02/2018, dated 09.02.2018 is hereby set aside. The show cause notice shall be treated as pending before the learned Collector of Customs. The latter after affording a reasonable opportunity to an authorized representative of the Petitioner Company, is expected to decide the show cause notice afresh.

CHIEF JUSTICE