

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-3286 of 2025

*[Nisar Ahmed Managing Partner Master Pipe v. Federation of Pakistan and others]*

**Before.**

**Mr. Justice Zulfiqar Ali Sangi**

**Mr. Justice Nisar Ahmed Bhanbhro**

Petitioners : Nisar Ahmed Managing Partner M/S Master Pipe  
through Mr Ghulam Nabi Shar Advocate.  
Respondents 1 to 3 : Sardar Zaffar Ahmed, Advocate  
Date of Hearing : 16.07.2025.  
Date of Short Order: 16.07.2025.

## **J U D G M E N T**

**Nisar Ahmed Bhanbhro, J.** Through the instant petition, the petitioner has claimed the following relief.

- i. *Direct the respondents to immediately release the consignment of the petitioner provisionally.*
- ii. *Direct the Respondents to act strictly in accordance with law and precedence to examine, assess, analyze and adjudicate the goods of the petitioner.*
- iii. *Direct the respondent to issue delay /detention certificate for the consignment withheld by the respondents.*

2. On Notices, Mr Sardar Zaffar Ahmed, shown his appearance and sought permission to file his vakaltnama on behalf of Respondents No 2 and 3 in office, Order accordingly.

3. At the very outset, Learned Counsel for the Petitioner offered to deposit all the admitted and disputed taxes, duties and other charges leviable on the imported goods if provisionally determined by the Customs Department, against the release of consignment subject to adjustment through final determination. Learned Counsel for the Respondents refused to accept such an offer and insisted to proceed with the petition on merits.

4. Mr. Ghulam Nabi Shar Learned Counsel for the Petitioner contended that the Petitioner managing partner of M/S Master Pipes (hereinafter referred as to Company), a business concern dealing with import of Iron and Steel Products. The Company imported 154.870 Metric Ton of Secondary Quality Steel Coils in 6X20STC Containers vide commercial invoice number MO/EXP/2111 dated 13.03.2025 which arrived at Karachi Port on 08.04.2025. He contended that the Petitioner filed declaration as required under section 79 of the Customs Act 1969 (the Act). That the Customs department issued assessment alert and examination of the goods was made. The declaration filed by the Petitioner was allegedly found incorrect, therefore, Company was given show cause notice vide office letter dated 04.07.2025 for incorrect declaration. In reply to show cause notice company filed an application to conduct lab test of the material, which request was acceded by the Respondent No 2 and samples were sent for chemical examination. He contended that pending adjudication of the final determination of the duty and taxes etc and the actual quantity of imported goods, the detained consignment may be released provisionally. He contended that Company was not at fault and due to non-release of goods huge loss has incurred as in the intervening period Company failed to fulfill its business commitment in the market. He prayed for allowing of this Petition with costs.

5. Mr Sardar Zaffar Ahmed Learned Counsel for the Respondents No 2 & 3 contended that the Petition was not maintainable as the Petitioner has failed to avail the alternate remedy available to him under the Act by filing an application or appeal to the Customs Authority. He contended that the Petition is filed at premature as his liability is under adjudication. He prayed for dismissal of the Petition.

6. Heard Arguments, Perused material available on record.

7. It is the case of the Petitioner that the Company imported Secondary Quality Steel Sheets which arrived Karachi Port on 08.04.2025. Company filed declaration for assessment of duty before the authorized officer. On examination by the Customs Officer the declaration by the Company was found incorrect. Company was issued show cause notice that during course of assessment by the Customs Staff it was observed that Hot Rolled Steel Sheet in Coil weighed 46542 Kg and Cold Rolled Steel Sheet in Coil 108598 Kg as against the declared weight of 85179 Kg, the Company attempted to pay less duty by declaring more quantity of Hot Rolled Steel, the goods actually were the cold rolled steel sheet. The offending value of the goods was shown as Rs 3546359 which involved taxes and duties to the tune of Rs 20,45,243. In reply to show cause notice Company requested for chemical analysis of the material. The Respondent No 2 acceded to the request of Company and sent samples for analysis. Pending chemical or laboratory analysis of the samples for the actual identification of goods, the petitioner seeks release of goods on payment of provisionally determined liability, such a request did not find favor with the Respondents No 2 and 3.

8. The Customs Department deals with the clearance of imported items, arriving at the port. The provisions of the Act and rules framed thereunder lay down a procedure for discharge of cargo or release of the imported goods. Chapter IX & X (Sections 73 – 83 B) of the Act provide a procedure for the discharge and release of the imported goods. Under Section 79 of the Act, the owner of the imported goods is under an obligation to make entry of the imported goods for home consumption, warehousing, transshipment or any other approved purpose within a period of ten days of the arrival of the shipment and shall file correct declaration of goods for payment and assessment of duty, taxes and other charges thereon. For sake of convenience section 79 of the Act is reproduced below:

**79. Declaration and assessment for home consumption or warehousing**

**or transshipment:** (1) *The owner of any imported goods shall make entry of such goods for home consumption or warehousing [or transshipment] or for any other approved purposes, within ten days of the arrival of the goods, by,*

*(a) filing a true declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribe;*

*(aa) the documents mandatory for assessment of the goods shall be uploaded by the importer or his agent with the goods declaration, as may be prescribed by the Board; and*

*(b) assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user of the Customs Computerized System: Provided that if, in case of used goods, before filing of goods declaration, the owner makes a request to an officer of customs not below the rank of an Additional Collector that he is unable, for want of full information, to make a correct and complete declaration of the goods, then such officer subject*

*to such conditions as he may deem fit, may permit the owner to examine the goods and thereafter make entry of such goods by filing a goods declaration after having assessed and paid his liabilities of duties, taxes and other charges:*

*Provided further that no goods declaration shall be filed prior to ten days of the expected time of arrival of the vessel:*

*Provided further also that in case of land customs station at border, the owner of any imported goods shall file Goods Declaration (GD) for home consumption or warehousing or transshipment or any 74 other approved purposes, within three days of arrival of goods at the border Customs station.*

*Explanation.- For the purposes of this clause, the assessment and paying of duty, taxes and other charges in respect of transshipment shall be at the port of destination.*

*(2) If an officer, not below the rank of Additional Collector of Customs, is satisfied that the rate of customs duty is not adversely affected and that there was no intention to defraud, he may, in exceptional circumstances and for reasons to be recorded in writing, permit, substitution of a goods declaration for home consumption for a goods declaration for warehousing or vice versa.*

*(3) An officer of Customs, not below the rank of Assistant Collector of Customs, may in case of goods requiring immediate release allow release thereof prior to presentation of a goods declaration subject to such conditions and restrictions as may be prescribed by the Board.*

9. On receiving the assessment of imported goods from the owner, an officer of the customs shall examine the declaration so filed and shall satisfy himself regarding its correctness. For the purposes of satisfaction, the officer of the Customs may check the goods. If during examination, it is found that any information furnished in the declaration is not correct, besides taking any other action permissible under the Act, the customs officer shall reassess the duty, taxes and other charges levied thereon after giving an opportunity of hearing to the importer as encoded in section 80 of the Act, which is reproduced below for the sake of convenience.

**80. Checking of goods declaration by the Customs.** *(1) On the receipt of goods declaration under section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.*

*(2) An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;*

*(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty, taxes and other charges levied thereon:*

*Provided that in case of reassessment, a notice shall be served to the importer through Customs Computerized System and opportunity of hearing shall be provided, if he so desires.*

*(4) In case of the Customs Computerized System, goods may be examined and assessed only on the basis of computerized selectivity criteria:*

*Provided further that in case of clearance of goods declaration through green channel, the goods may be examined with the prior approval of the Collector of Customs.*

*(5) The Collector may, however, either condone the examination or defer the examination of imported goods or class of goods and cause it to be performed at a designated place as he deems fit and proper either on the request of the importer or otherwise.*

10. The Customs Officer, if is of the opinion, that reassessment is not possible for want of chemical examination or other test of the goods for a further inquiry. In that case an Officer not below the rank of Assistant Collector of Customs may order that the duty, taxes and other charges payable on such goods may be determined provisionally. If the goods are released on the basis of provisional determination of liability, the final determination shall be made within 90 days thereof except in the cases where valuation ruling issued under section 25 A of the Act is in the field. After final determination of the duty, tax, and other charges the provisional assessment shall be adjusted, as provided under section 81 of the Act, which is reproduced below for the purpose of reference.

**81. Provisional determination of liability.-** *(1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79 or 131, for reasons that the goods require chemical or other test or a further inquiry, an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally:*

*Provided that the importer, save in the case of goods entered for warehousing, pays such additional amount on the basis of provisional assessment or furnishes bank guarantee or pay order of a scheduled bank along with an indemnity bond for the payment thereof as the said officer deems sufficient to meet the likely differential between the final determination of duty, taxes and other charges over the amount determined provisionally: Provided further that there shall be no provisional assessment under this section if no differential amount of duty and taxes and other charges is paid or secured against bank guarantee or pay order*

*Provided further that no provisional determination of value shall be allowed in those cases where a Valuation Ruling (VR), issued under section 25A, is in field, irrespective of the fact whether any review or revision against such Valuation Ruling is pending in terms of section 25D or relevant rules, as the case may be.*

*(2) Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within [ninety days] of the date of provisional determination:*

*Provided that the Collector of Customs or, as the case may be, Director of Valuation, may in circumstances of exceptional nature and after recording such circumstances, extend the period for final determination which shall in no case exceed thirty days*

*Provided further that any period, during which the proceedings are adjourned on account of a stay order or for want of clarification from the Board or the time taken through adjournment by the importer, shall be excluded for the computation of aforesaid periods.*

*(3) On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of*

*final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.*

*(4). If the final determination is not made with the period specified in sub section (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination.*

*(5) On completion of final determination under sub-section (3) or (4), the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be.*

*Explanation.- Provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or pay order.*

11. The Officer of Customs is not bound to accept the declaration of goods made by the importer, but the importer is under an obligation to accept the assessment of tax, duty and other charges provisionally determined by the officer of Customs. In any case, the owner of the imported goods is under an obligation to remove the goods from the port within a period of fifteen days after its unloading or filing of declaration, such time may be extended by the authorized customs officer for further five days. The importer has to deposit the amount of provisionally determined liability through Bank Guarantee or Pay Order as the case may be. In case the importer fails to deposit the provisionally determined amount and fails to clear the goods from the port within specified time, the imported goods shall be stationed in a warehouse and after due notice be auctioned, notwithstanding the fact that any appeal under section 179, 193 or 196 of the Act might be pending, as enunciated under section 82 of the Act, which is reproduced below for academic purposes.

**82. Procedure in case of goods not cleared or warehoused or transshipped or exported or removed from the port within fifteen days after unloading or filing of declaration.-** *If any goods are not cleared for home-consumption or warehoused or transshipped or are not loaded on the conveyance for export or removed from the port area within fifteen days of their arrival at a customs station or within such extended period not exceeding five days, an officer not below the rank of Assistant Collector may allow, and such goods may, after the due notice given to the owner if his address could be ascertained, or after due notice to the carrier, shipping or customs agent, custodian of the goods, as the case may be, if his address could not be ascertained, may be sold in auction or taken into custody by Customs and removed from the port to a Customs warehouse for auction under the order of the Assistant Collector notwithstanding the fact that adjudication of the case under section 179, or an appeal under section 193, or 196, or a proceeding in any court is pending:*

*Provided that-*

- (a) animals and perishable and hazardous goods may, with the permission of the appropriate officer, be sold or destroyed at any time;*
- (b) arms, ammunition or military stores may be sold or otherwise disposed of at such time and place and in such manner as the Board may, with the approval of the Federal Government, direct;*
- (c) in cases where goods are sold pending adjudication, appeal or decision of the court, the proceeds of sale shall be kept in deposit and if on such adjudication, or as the case may be, in such appeal or the decision of the court, the goods sold are found not to have been liable to confiscation, the entire sale proceeds, after necessary deduction of duties, taxes transportation and other charges or duties as provided in section 201, shall be handed over to the owner:*

*Provided that Collector of Customs may direct the importer or in case importer is not traceable, the shipping line to re-export out of Pakistan any goods, banned or restricted through a notification issue by the Federal Government, if the same are not cleared or auctioned within sixty days of the date of their arrival;*

*Provided further that where Customs removes such goods from the premises of the custodian for disposal, the charges due to the custodian shall be paid subsequently from the sale proceeds of the goods in the manner as provided under section 201:*

*Provided also that nothing in this section shall authorize removal for home consumption of any dutiable goods without payment of customs duties thereon.*

12. In the case of the Petitioner, surprisingly neither the provisional assessment has been made nor the goods are being released. The Company intends to clear the goods, and ready to deposit the amount of duty, tax and other charges levied thereon if assessed provisionally. The goods of the Company arrived at port on 08.04.2025, the Company filed its declaration in time, which has not been disputed by the Customs Department, however on reassessment, the declaration filed by the Company was found incorrect and it was observed that the Company had mentioned less quantity of cold rolled steel sheets (second quality) to avoid payment of 27 per cent duty. In such circumstances, it was incumbent upon the customs officer to make a provisional determination of duty, tax or other charges leviable on the basis of reassessment made by the officer of the Customs after giving an opportunity of hearing to the Company. In case the Company refused to accept the assessment made by the Officer of Customs and failed to pay the provisionally determined amount in the shape of bank guarantee or pay order, the authorized officer could send the goods to warehouse and order for its auction. When confronted to this situation, Learned Counsel representing the customs department frankly conceded that even after the lapse of three months' time the duty, tax and other charges that are leviable on the imported goods have not been determined and department was waiting for the report of Chemical Laboratory. It is again shocking that the Respondent No 2 has directed for lab test of the samples on 04.07.2025 that too on the application filed by the Company representative and samples have been taken on 08.07.2025 and sent to laboratory on 10.07.2025. This is nothing but a case of sheer inefficiency and negligence on the part of the officers of the customs department, they have failed to discharge their duties as ordained under chapter IX of the Act.

13. Scanning of the record further revealed that on 11.07.2025, the Company through its authorized agent/ Legal Advisor filed a representation with Respondent No 3, requesting for the release of goods based on a provisional assessment, but the said request even remained unheeded till today as no order for provisional assessment has been passed on the application of Company. It is crystal clear from record that at no point of time, the Company refused to make payment of duty, tax and other charges leviable on the goods but the consignment remained detained at the port due to the acts of negligence on the part of the officers dealing with the consignment. The Customs Department was under an obligation to make provisional assessment of tax, duty, and other charges within a period of fifteen days of the unloading of the imported goods but they failed to discharge their duties in accordance with law, causing loss to the Company for which the Petitioner may sue the responsible officers before the appropriate forum if so advised.

14. Learned Counsel representing Customs Department was again given a proposal that goods may be released provisionally subject to payment of assessed duty, tax, fine, penalty

or any other charge leviable but he again refused to accept such proposal on the flimsy ground that if in the final determination, the amount becomes more than the provisionally assessed amount, than the department would not be in a position to recover the outstanding dues. This contention of the Learned Counsel for the Petitioner is without any force. Section 202 of the Act, empowers the Customs Department to recover the unpaid amount by deducting the same from the money which may be under the control of Customs or Inland Revenue Departments and even the failure to pay the dues may result in arrest of the defaulter. Customs Department subject to certain legal limitations has been conferred unfettered powers to recover unpaid dues. In presence of the statutory provisions for recovery of Government dues articulated under the Act, the apprehension of the Customs Department appeared to be nothing but to cover up inefficiency and illegal acts done in the instant matter, which cannot be overlooked or ignored.

15. Lawful trade and business are the fundamental rights of every citizen; such trade and business may be subject to regulation through legislation. The Customs Act 1969 also regulates the charges on import and export of goods. The Customs Departments is saddled with a sacred duty to collect taxes and duties and help in curbing the illegal foreign trade which results in loss to the national exchequer. It is incumbent upon the officers of Customs Department to adhere themselves to the provisions of the Act, while dealing with the imported goods as unnecessary delays in release of the imported consignment may result in financial loss to the importer companies. It has been observed that due to the red tapism in the Customs Department, the imported goods remain detained at the port for a considerable period of time and owner of imported goods loses interest in its clearance as by passage of time the imported items lose worth or deteriorate due to severe weather conditions. due to non-adherence of law by the Customs Department, the importers approach High Court seeking clearance of goods subject to the deposit of the provisionally determined amount. This court has been clogged with such unnecessary litigation, as it is the duty of the Customs Department to release the goods, if on determination of provisional liability, the importer is ready to secure the amount through Bank Guarantee or Pay Order. The goods of the Petitioner are lying at the port since last more than three months and are not released on account of the failure of the officer of the Customs to act promptly as required under the law. The non release of the goods on the part of officers of Customs offended the fundamental rights of the Petitioner. In any case the detention of imported goods of the Petitioner for such a long time without determination of the liability was without any lawful authority. We are restraining ourselves from passing any adverse order against the officers of the Customs Department but warn them to remain careful in future and adhere their duties strictly in accordance with the provisions of the Act and the rules framed thereunder. This Court being the custodian of the fundamental rights is cast a duty to safeguard the rights of individuals and come to rescue if found that the authority discharging its functions in connection with the affairs of the Federation or Province is involved in impeding such rights to go the person to whom it belonged.

16. Sequel to the above discussion, We are of the considered view that Petitioner has made out a case for indulgence of this Court under its writ jurisdiction, as the action on the part of the Customs Officials of failing to make provisional determination of tax, duty etc. and release of consignment are contrary to law. We therefore allow this petition and direct the Respondents No 2 and 3 to make a provisional determination of tax, duty or any other charge leviable on the goods imported by the Company and inform the Petitioner of such assessment within a period of ten days from the receipt of this order. In case the Petitioner pays the provisionally determined amount through Bank Guarantee or Pay Order, the goods shall be released immediately. The amount so deposited shall be adjustable in the final

determination. It is clarified that this order shall not debar the customs department from taking any action against the Petitioner if found guilty of any violation of law.

The Petition stands disposed of in the above terms.

JUDGE

JUDGE