

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-3243 of 2025

[M/S PSRM (Pvt) Limited v. Federation of Pakistan and others]

Before.

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner : M/S PSRM (Pvt) Ltd.
through Mr Adeel Awan Advocate.
Respondents 1 to 3 : Collectorate of Customs Karachi
through Mr M. Akbar Khan,
Assistant Attorney General for Pakistan
Date of Hearing : 17.07.2025.
Date of Short Order: 17.07.2025.

J U D G M E N T

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

- i. Declare that the impugned Notice No SI/MISC/83/2025 – DC(S) dated 08.07.2025 for Recovery and Enforcement of Security Bank Guarantee directly from the Respondent No 4 proforma respondent is illegal, arbitrary and without authority during the period of limitation for challenging the impugned Assessment Order dated 08.07.2025 before the Respondent No 3 appellate authority, hence not sustainable under the law;***
- ii. Restrain the Respondent No 2 Collectorate from taking coercive and forceful measures, in any manner, whatsoever for the recovery and enforcement of security Bank Guarantee, in pursuance of the impugned notice dated 08.07.2025, against which, the statutory remedy has been availed by the Petitioner and its appeal is pending before the Respondent No 3 appellate authority i.e the Collector of Customs (Appeals) Karachi.***

2. The facts succinctly stated, leading to file the instant petition are that the Petitioner is a company duly incorporated for establishment of an industrial unit for manufacturing of Steel Products i.e Steel Rebars of different specifications. The Petitioner is a part of Green Field Industry and pursuant to amendments in Entry No 33 Part I of the Fifth Schedule of the Customs Act 1969 (TCA), in entry No 150 of Part I of Sixth Schedule the Sales Tax Act 1990 (STA) and in Clause 126 – O of Part I of the Income Tax Ordinance 2001 (ITO) qualified for exemption in the Customs Duty, Sales Tax and Income Tax on import of Plant & Machinery under the respective laws. That Petitioner imported a consignment of Partial Shipment of Double Girder Overhead Cranes with all accessories vide G.D No KAPE – EL – 222775 dated 13.06.2022 which arrived at Karachi Port. Petitioner claimed exemption from payment of duty, tax and other charges and pursuant to SRO No 887(I)/2020 dated 18.09.2020 through a declaration under section 79 of TCA. Claim of the Petitioner was declined, Petitioner was asked for clearance of consignment by payment of customs duty. Petitioner aggrieved of reassessment filed Petition No D 1822 of 2022 before this Court, which was disposed of vide order dated 29.03.2022 with directions to Customs to release the consignment of petitioner subject to deposit of security in the shape of Bank Guarantee equal to the amount provisionally determined. Petitioner secured the provisionally determined amount of duty and tax through Bank Guarantee dated 17.06.2022 amounting to Rupees 82,00,000, pursuant thereto, the imported

consignment was released. The Petition filed by the Petitioner was dismissed by a Learned Division Bench of this Court vide order dated 24.09.2024, however it contained directions to Customs Authorities to pass appropriate assessment order in respect of the consignment.. The Collector of Customs Appraisement heard the case and vide orders dated 08.07.2025 declined the claim of Petitioner for exemption of Duty, Tax and other charges. The Petitioner filed an appeal under section 193 of TCA before Appellate Authority, which is yet to meet its fate. Respondent No 2 through notice dated 08.07.2025 (the impugned notice) has sought encashment of the Bank Guarantee, hence this Petition.

3. Mr Adeel Awan Learned Counsel for the Petitioner contended that the notice dated 08.07.2025 issued by the Respondent No 2 for encashment of the Bank Guarantee was arbitrary, illegal, without any lawful authority. The Respondent No 2 acted in excess of authority, as the amount secured by the Petitioner cannot be enforced for encashment. Respondent No 2 lacked powers to issue the impugned notice dated 08.07.2025 during the pendency of appeal filed by the Petitioner under section 193 of TCA against the final assessment order which was pending adjudication before Respondent No 3. The Respondent No 4 would release the secured amount which will cause huge financial implications for the Petitioner. He prayed for setting aside the impugned notice.

4. Mr. M. Akbar Khan Learned Assistant Attorney General for Pakistan opposed the grant of this Petition and contended that the imported goods of the Petitioner were not covered under Green Industry package and exemption of duty and tax was not available for the goods imported by the Petitioner. Respondent No 2 has not committed any illegality or irregularity by seeking enforcement of Bank Guarantee for recovery of Government dues. The Petitioner had secured the amount through Bank Guarantee under provisional determination of liability, which stands the same under final adjudication. The claim of the Petitioner for exemption from payment of duty, tax and other charges has been declined through a well-reasoned order, Petitioner is under obligation to pay the liability which was secured through Bank Guarantee. He prayed for dismissal of the Petition.

5. Heard Arguments, Perused material available on record.

6. Case of the Petitioner is that the goods imported by the Company were covered under the exemption class for payment of duty, tax and other charges. Petitioner claimed that duty, tax and other taxes were not leviable on the imported goods and sought release of the goods through green channel. The Federal Government under section 39 of TCA may exempt the payment of customs duty whenever circumstances so existed to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests etc. subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under TCA. For academic purposes the section 39 of TCA is reproduced below:

39. General power to exempt from customs-duties.- (1) *The Federal Government, whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests in situations arising out of abnormal fluctuation in international commodity prices, implementation of bilateral and multilateral agreements, and to any international*

financial institution or foreign government-owned financial institution operating under a memorandum of understanding an agreement or any other arrangement with the Government of Pakistan or to implement an agreement of the Government of Pakistan with any entity, subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under this Act.

(2) A notification issued under sub-section (1) shall be effective from the day specified therein, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.

(3) Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or court, no person shall, in the absence of a notification by the Federal Government published in the official Gazette expressly granting and affirming exemption from customs duty, be entitled to or have any right to any such exemption from or refund of customs duty on the basis of the doctrine of promissory estoppel or on account of any correspondence or admission or promise or commitment or concessionary order made or understanding given whether in writing or otherwise, by any government department or authority.

(4) The Federal Government shall place before the National Assembly all notifications issued under this section in a financial year.

(5) Any notification issued under sub-section (1) after the commencement of the Finance Act, 2015 shall, if not earlier rescinded, stand rescinded on the expiry of the financial year in which it was issued

Provided that all such notifications, except those earlier rescinded, shall be deemed to have been in force with effect from first day of July, 2016 and shall continue to be in force till thirtieth day of June, 2018, if not earlier rescinded:

Provided further that all notifications issued on or after the first day of July, 2016, and placed before the National Assembly as required under sub-section (4) shall continue to be in force till thirtieth day of June, 2024, if not earlier rescinded by the Federal Government or the National Assembly.

7. On arrival of the imported goods at port Petitioner filed a declaration under section 79 claiming the exemption of Customs duty, tax and other charges. Pursuant to the declaration filed by Petitioner, the goods were examined by the Officer of Customs authorised in that behalf. During examination it was found that the imported goods were not covered by the SRO issued by Federal Government benefitting industrial concerns for exemption of duty, tax and other charges. Claim of the Petitioner was dealt by the Officers of the Customs accordingly, and Petitioner was informed of payment of tax, duty and other charges leviable under the law for clearance of goods as envisaged under section 80 of

TCA. Petitioner was required to challenge the reassessment order of officer of customs declining his claim for exemption from customs duty by way of an appeal but he did not, thus the reassessment of the imported goods attained finality. Section 193 of TCA in such a situation provides remedy of appeal, which reads as under:

193 Appeals to Collector (Appeals). (1) Any person including an officer of Customs aggrieved by any decision or order passed under sections 33, 79, 80, 131, 179 and 195 by an officer of Customs below the rank of Additional Collector may prefer appeal to the Collector (Appeals) within thirty days of the date of communication to him of such decision or order:

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Collector (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(2) An appeal under this section shall be in such form and shall be verified in such manner as may be prescribed by rules made in this behalf.

(3) An appeal made under this Act shall be accompanied by a fee of one thousand rupees to be paid in the manner that may be prescribed by the Board.

8. Petitioner challenged the reassessment of duty by filing Constitution Petition No 1822 of 2022 before this Court, wherein Petitioner, agreed to get clearance of the consignment by securing the amount provisionally assessed by the Customs Authorities. Learned Division Bench of this Court as an interim measure by order dated 29.03.2022 directed the Customs Officials to provisionally release the imported goods by securing the amount of tax and duty through pay order or bank guarantee. Pursuant to Court orders the provisional assessment of tax, duty and other charges leviable on the goods was done and an amount of Rs 82,00,000 was determined. Petitioner secured the assessed amount through Bank Guarantee and consignment of the Petitioner was released by exercising powers under section 81 of TCA. For the clearance of goods through provisional assessment, an Officer of the Customs not below the rank of Assistant Collector is authorized to release the consignment by assessing and securing the provisionally determined amount. If the goods are released on the basis of provisional assessment, the customs authorities are required to make final assessment within a period of 90 days thereof, except in the cases where valuation ruling issued under section 25 A of TCA is in the field. After final determination of duty, tax, and other charges paid under the provisional assessment shall be adjusted. If the final assessment is not done within a period of 90 days the provisional assessment shall attain finality and Customs Authorities would be precluded from making any further claim. Petitioner did not dispute the provisional assessment, had there been any miscalculation of the duty Petitioner would have challenged the provisional assessment before the appellate forum in terms of section 193 of TCA but it did not happen. By operation of law, the provisional determination of amount so made attained finality on lapse of 90 days as enunciated under sub section 4 of section 81 of TCA. as such the Customs Authorities become entitled to make adjustment of secured amount. For the sake of reference section 81 of TCA is reproduced below:

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.

9. In the case of Federation of Pakistan through Secretary Revenue Division/Chairman, Federal Board of Revenue, Islamabad and others versus SUS Motors (PVT.) LTD. and others reported in 2023 S C M R 1421 Supreme Court of Pakistan has held as under:

'7. Subsection (4) of section 81 of the Act provides that if the final assessment is not completed within the period specified therein, then the provisional assessment shall become final. The same has been provided as a safeguard to the benefit of the assessee/importer/exporter to save them from unnecessary harassment by Customs authorities by unnecessarily delaying their cases for an indefinite period on the pretext of, making a final assessment.' The aforesaid observation/interpretation by this Court has been the consistent view of the High Courts too. In the case of Collector of Customs v. Auto Mobile Corporation of Pakistan a Division Bench of the High Court of Sindh had correctly noted the scope and object of section 81, as under:

'Subsection (2) to section 81 of the Act of 1969 provides the period during which such provisional assessment is to be finalized by the Assessing Authority while the proviso to subsection (2) empowers the Collector of Customs to extend the period of final assessment up to 90 days under circumstances of exceptional nature after recording such circumstances. Subsection (3) to section 81 provides that on completion of assessment, the concerned Assessing Officer shall order that the amount already paid or guaranteed be adjusted against the amount payable on the basis of final assessment and the difference between the two amounts, if any, shall be paid forthwith to or by importer or exporter as the case may be. Further, subsection (4) to section 81 provides that if the final assessment is not completed within the specified given under subsection (2) to section 81 then provisional assessment shall become final. In other words, subsection (4) to section 81 is a penal provision incorporated in the scheme for the benefit of the assessee/importers/exporters to save them from unnecessary harassment by the Customs Authorities by way of lingering on their cases for indefinite period on the pretext of finalizing the assessment.'

And further that:

'In other words, when no final assessment is made in terms of subsection (2) to section 81, the provisional assessment will become final on declared value of goods by the assessee, and disbursement of additional amount or guarantee furnished by the importer/ exporter, in terms of subsection (3) to section 81, will be regulated on such premises.'

10. Scanning of the record further revealed that Petitioner remained silent till the disposal of Petition No 1882 of 2022 by order dated 24.09.2024, wherein the Petition was dismissed, however, Officers of Customs were directed to pass appropriate final assessment orders in respect of the consignment imported by the Petitioner. Pursuant to the orders passed by this Court, the matter was fixed for hearing by Respondent No 2 on 17.10.2024 and 19.05.2025. The notice of hearing was given to the Petitioner; however, he chose to remain absent. The case of the Petitioner was examined by the Respondent No 2 and decided on merits vide order dated 08.07.2025, wherein Petitioner was found not entitled for the relief of exemption of Tax and Duty. The Operative part of the order dated 08.07.2025 reads as under:

"In Compliance of the judgment in CP No D 1882 of 2022, hearing was fixed on 17.10.2024, neither the Petitioner nor their authorized representative appeared for hearing. Hearing was again re-fixed for 19.05.2025. No one appeared to represent the case. From the above narration it is revealed that the importer has nothing in his support to defend the case. Scrutiny of the documents and descriptions revealed that the subject item is classified under PCT heading 8428.1110 based on weight criteria as the appropriate PCT of the cranes not exceeding 400 MT is 8426.1110 chargeable to customs duty @ 5 % (with FTA) and Sales Tax @ 17 % etc instead of claimed PCT 8426.1190 0 % duty and taxes.

11. Petitioner preferred an appeal under section 193 of TCA against the order dated 08.07.2025 passed by Respondent No 2. Petitioner in the instant *lis* asserted that Respondent No 2 cannot issue an enforcement order for encashment of security pending appeal before Respondent No 3. The contention of the Petitioner did not survive, as mere filing of an appeal will not operate as stay against the order under challenge. It is very surprising that the Petitioner has challenged the final order of assessment passed by the

Collector of Customs Appraisement by preferring an appeal under section 193 of TCA before Collector of Customs Appeal. Bare reading of section 193 of TCA makes it abundantly clear that an appeal lies before Collector of Customs Appeals, (the Respondent No 3 in the instant petition) against an order passed by an officer of Customs below the rank of Additional Collector. In other cases, the appeal lies before Appellate Tribunal provided under section 194 A of TCA. Admittedly order dated 08.07.2025 has been passed by Collector of Customs for which an appeal cannot be filed before Respondent No 3.

12. Lastly, to examine the contention of Petitioner that the Respondent No 2 lacked authority to seek enforcement for encashment of Bank Guarantee. Tax, Duty and other charges payable on the export and import and export of goods come within the definition of government dues. The legislature in its own wisdom has conferred unfettered powers to the Officers of Customs subject to legal limitations to recover the government dues. To enforce recovery of government dues, the officer of customs by invoking the powers conferred under section 202 of TCA can take coercive measures, which may result in the arrest of defaulters. Petitioner had submitted security in the shape of Bank Guarantee for provisional release of imported consignment. The Petitioner claimed exemption of duty, tax and other charges on the imported consignment in terms of the SRO dated 18.09.2020 issued by the Government of Pakistan but failed to demonstrate that the imported goods fell under the exemption clause contained in the said SRO. Since the case of Petitioner is pending adjudication before a forum, therefore, we restrain ourselves to render any deliberations, as it may prejudice the case of either side. Under provisional assessment which attained finality an amount of Rs 82,00,000 was payable by the Petitioner in terms of tax, duty and other charges levied under TCA. Petitioner had secured the liability through a Bank Guarantee, once the assessment became final Customs Authorities were empowered to recover the amount in accordance with the procedure laid down under section 202 of TCA, for the ease of reference same is reproduced hereunder:

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, or Inland Revenue to deduct such amount from any money owing to such person which may be under the control of the Customs, or Inland Revenue authorities; or*
- (b) *if it cannot be so recovered, may recover, or may require any other officer of Customs, or Inland Revenue to recover, such amount by detaining and selling any goods belonging to such person which are under the control of the Customs, or Inland Revenue 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.

(2)

13. From the perusal of the above provisions of law it is crystal clear that an officer of the customs can deduct the amount executed in the shape of Bond, Guarantee against the payment of duty, tax or other charges. Petitioner furnished security in the shape of Bank

Guarantee through Respondent No 4. The officer of Customs can deduct such amount of tax, duty, or charges overdue against the Petitioner within the meaning and scope of section 202 of TCA. The Respondent No 2 while exercising the powers conferred under section 202 of TCA sought the encashment of Bank Guarantee which in our view did not suffer from any illegality. Petitioner at no point of time disputed the assessment of tax, duty and other charges but he claimed benefit of a notification issued by Government of Pakistan for exemption in customs duty. The Petitioner may challenge the order passed by Respondent No 2 declining the benefit of exemption of duty and tax before appropriate forum, needless to say if Petitioner succeeded in its claim of exemption of tax and duty, the amount withdrawn by the Customs from the accounts of Petitioner or through Bank Guarantee would be refundable.

14. Sequel to the above discussion and reasons recorded hereinabove, We are of the considered view that impugned action on the part of Respondent No 2 for recovery of Government dues through notice dated 08.07.2025 did not suffer from any illegality, or perversity calling for interference of this Court under its writ jurisdiction. This Petition being devoid of merits, therefore, fails and the same is hereby dismissed along with pending applications with no order as to the costs.

JUDGE

JUDGE