

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-4083 /2011

Date	Order with signature of Judge
------	-------------------------------

- 1) For katcha peshi.
- 2) For hearing of Misc. No. 19175/2011.

19.8.2015.

Mr. Khalid Javed Khan Advocate for the Petitioners.
Mr. Shaikh Liaquat Hussain Standing Counsel.
Mr. Khliad Mehmood Dhoon Advocate for the Respondent No. 3.
Mr. Ilyas Ahsan Appraising Officer Legal.

Through instant petition, the petitioners seek a declaration that in terms of Section 81 of the Customs Act, 1969 the Value declared by the petitioners at the time of import has attained finality in terms of Section 81(4) of the Customs Act, 1969. It has been further prayed that Show Cause Notices dated 12.1.2011 and 3.3.2011; are illegal, unlawful, without jurisdiction and may be set aside.

Learned Counsel for the petitioners contends that 5 consignments as detailed in Para 7 of the petition, were imported and the value declared by the petitioners was not accepted and thereafter the consignments were released provisionally under Section 81 of the Customs Act, 1969, after furnishing security in the shape of Pay Order / Bank Guarantee for the disputed amount of duty and taxes. Learned Counsel further submits that though, no finalization was done in accordance with Section 81 of the Act ibid however, two Show Cause Notices dated 12.1.2011 and 3.3.2011 were issued to the petitioners under Section 32 of the Customs Act, 1969 for alleged mis-declaration of value. Per learned Counsel since the assessment proceedings were not finalized within the period provided under Section 81(2) of the Customs Act, 1969 the value declared by the petitioners has thus become final and the Pay Order / Bank Guarantee furnished by the petitioners are to be released. Learned Counsel further submits that in view of the judgment of this Court in the caves of *M/S Abdul Aziz Ayoob Vs. Assistant Collector of Customs and 3 others (PLD 1990 Karachi 378)* no Show Cause Notice can be issued in

terms of section 32 of the Customs Act, once an assessment has been made in terms of Section 81 of the Act *ibid*. Learned Counsel has also relied upon the case *M/s Hassan Trading Company through Manzoor Hussain Vs. Central Board of Revenue, Government of Pakistan, Islamabad through Chairman and 2 others (2004 PTD 1979)* and *Sus Motors (Pvt.) Ltd. Karachi Vs. Federation of Pakistan through Secretary Revenue Division /Chairman, Islamabad and 2 others (2011 PTD 235)*.

On the other hand, Counsel for the respondents duly assisted by the departmental representative, contends that the assessment(s) in question were never made under Section 81 of the Customs Act, 1969 as the respondents had prepared contravention reports for mis-declaration of value, whereafter, the petitioners had approached FBR / Member Customs on whose directions the consignments were released to accommodate the petitioners and therefore, the legal ground taken on behalf of the petitioners in respect of finalization of the declared value in terms of Section 81(4) of the Customs Act, 1969 is misconceived.

On perusal of the record, it appears that the value declared by the petitioners through GD No. CRN I-HC-1653977 dated 28.12.2010 was enhanced on the basis of prices obtained through some company in China and on agitation by the petitioners, the then Member Customs FBR, had issued certain verbal orders to the Respondent Collectorate to release such goods on securing the differential amount in the form of Pay Order and thereafter the case was sent for adjudication through a contravention report. It further appears that thereafter, subsequent consignments were also released on the same pattern and respondent No. 2 vide letter dated 17.9.2011 (Page 135 annexure H/1) addressed to FBR, informed that respondent No. 2 agrees with the representation of the petitioners, that the cases be forwarded to Directorate General of Customs Valuation for determination of value under Section 25(A) of the Customs Act, 1969. It further appears from the record that the Goods Declaration(s) annexed by the petitioners do not reflect that the assessments were made provisionally under Section 81 of the Customs Act, 1969 as the column of "*Customs Clearance Status*" on all the Goods Declaration(s) [available at page 37 onwards] reflects the status as "*Released*". Even otherwise letter dated 17.9.2011, reflects that the consignments were released on the verbal directions of

Member, (Customs), FBR, whereas, Section 81 provides that it is only the officer of Customs as defined in Section 2(o) read with Section 3 of the Customs Act, 1969, who can exercise powers under Section 81 and therefore, in our candid view the assessments under question, cannot be held to be made under Section 81 of the Customs Act, 1969 by the Respondent Collectorate *stricto sensu*. In fact the orders of Member Customs appears to have been implemented by the filed Collectorate pursuant to the provisions of Section 223 of the Customs Act, 1969, therefore, the legal proposition as pleaded on behalf of the petitioners with regard to deemed finalization of declared value by the efflux of time as contemplated under Section 81(2) of the Customs Act, 1969 is not attracted in the instant case and is misconceived.

Insofar as the status of Show Cause Notices and any orders passed thereon are concerned, since the respondent No. 2 itself vide letter dated 17.9.2011 as referred to hereinabove, has agreed that the matter be referred to the Director General Valuation for determining the value under Section 25(A) of the Customs Act, we are of the view that in such a situation, no occasion arises for issuance of a Show Cause Notice under Section 32 of the Customs Act, 1969, for alleged under valuation, as the department itself appears to be unable to adjudicate the same on the basis of any concrete direct evidence and has rather relied upon the assistance of the Valuation Department. Therefore, we hold that the two Show Cause Notices dated 12.1.2011 and 3.3.2011 and orders passed thereon, if any, are of no legal consequence and are hereby set aside. Whereas the Directorate of Valuation may decide the aspect of valuation in accordance with law as referred to by respondent No. 2 vide its letter dated 17.9.2011, preferably within a period of 45 days from today after affording opportunity of being heard to the petitioners and shall pass a speaking order in accordance with law.

Petition stands disposed of in the above terms.

JUDGE

JUDGE