

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. 750 to 755 of 2015

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant: Collector of Customs, MCC,
PMBQ, Karachi
Through Mr. Aamir Raza,
Advocate.

Respondent: M/s. MIA Corporation &
another.

Date of hearing: 04.02.2025.

Date of Judgment: 04.02.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant has impugned a common Judgment dated 11.02.2015 passed in Customs Appeal Nos.K-108 to 113 of 2007 by the Customs Appellate Tribunal, Bench-I, Karachi, proposing *various* questions of law, however, the only relevant question is that *whether the Tribunal was justified in holding that once an assessment has been made provisionally under Section 81 of the Customs Act, 1969, no further notice can be issued under Section 32 ibid?*

2. Heard learned Counsel for the Applicant and perused the record. Insofar as Respondent is concerned, they stand duly served and a Counsel has filed Vakalatnama; but has been called absent repeatedly; therefore these matters cannot be kept pending any more. The precise question involved in these matters and decided by the Tribunal in favour of the Respondent is that once assessment has been made under Section 81 of the Customs Act, 1969 provisionally, then after finalization of assessment, either by virtue of lapse of time or otherwise, can a fresh notice under Section 32 of the Customs Act, 1969 be issued or not. Initially this question was decided in

favour of the importers by various judgments of this Court¹ reported as However, the said opinion of learned Divisional Benches of this Court has not been overruled in **MIA Corporation**² (in another identical case of the same Respondent) and the relevant finding is as under:-

“4. We have heard the learned counsel for the parties at length. The learned counsel for the appellant has argued that the High Court has misconstrued the scheme of the Act of 1969 and did not decide the case on merits to ascertain whether proceedings under section 32 of the Act of 1969 were justified. The High Court has upheld the judgment of the Tribunal on the sole ground that once the provisional assessment made under section 81 attains finality then the proceedings under section 32 are barred and cannot be resorted to for the purposes of recovery of the escaped duty and taxes. This interpretation is not based on the correct appreciation of the scheme of the Act of 1969, particularly the distinct stages contemplated there under. The Act of 1969 is a self-contained comprehensive statute, governing all matters relating to the import and export of goods, including levy and charge of duties/taxes, its assessment, recovery etc. The scheme of the Act of 1969 is broadly based on three stages, levy and charge of duty, assessment thereof at the time of import or export, as the case may be and recovery of duty, taxes and charge that has not been levied or has been short levied or has been erroneously refunded. The latter stage is manifestly distinct from the completion of assessment under section 80 or 81, as the case may be. The provisions of the Act of 1969 are broadly divided into charging, machinery and procedural provisions. The levy and charge of customs duties or additional customs duties are governed under sections 18 and 18A of the Act of 1969. Chapter IX contains provisions relating to discharge of cargo and entry inwards of the imported goods. Section 79 prescribes the procedure and requirements to be fulfilled in connection with the assessment of goods for home consumption, warehousing or any other approved purpose. After the requirements have been fulfilled, the assessment is ordinarily made and completed under section 80 of the Act of 1969. Section 81 is an exception to the ordinary mode of assessment under section 80. It empowers an officer of customs to provisionally determine the liability where it is not possible for the latter during the checking of the goods declaration to satisfy himself/herself as to the correctness of the assessment of goods made by the importer under section 79 for reasons that the goods require chemical or other test or a further inquiry. The differential amount is secured by security furnished by the importer of the goods. If the final determination is not made within the time specified under subsection (2) then the provisional assessment becomes final. The finality is relatable to the assessment and does not affect or bar the subsequent proceedings in connection with recovery of duty, taxes or charge not levied or short levied. Section 81 empowers the officer of customs to provisionally assess the goods if the assessment is not possible under section 80 for reasons explicitly described in the former provision. Section 81 does not create a right in favor of the importer except that if the final determination is not made within the specified time then the assessment becomes final. The finality of the assessment under section 81 renders it at par with an assessment made under section 80. The finality of assessment under section 81 makes the provisional assessment final and not the

¹ M/s. Hassan Trading Company through Manzoor Hussain vs. Central Board of Revenue (2004 PTD 1979) and Abdul Hassan Ayuob vs. Assistant Collector of Customs (PLD 1990 Karachi 378).

² Collector of Customs Port Muhammad Bin Qasim, Karachi vs. Messrs MIA Corporation (PVT.) LTD. Islamabad (2023 PTD 1797)

declaration made by the importer under section 79. The assessment made under section 80 does not bar subsequent proceedings in connection with the offence under section 32 of the Act of 1969. Would the proceedings be barred under section 32 if the provisional assessment becomes final under section 81? The answer is in the negative and this is implicit from a combined reading of section 32. Section 32 is a penal section and describes, under clauses a to c, the acts that would constitute as an offence if done in connection with any matter of customs knowing or having reasons to believe that they are false in any material particular. Subsections (2), (3) and (4) provide for the mechanism and machinery for recovering the duty, taxes or charge not levied, or short levied or erroneously refunded within the period specified in each eventuality. The expression 'relevant date' has been defined under subsection (5) of section 32 and clause (b) thereof expressly provides that the expression in case of section 81 means 'date of adjustment of duty after its final assessment'. The finality of provisional assessment in terms of section 81(4) or otherwise would be covered under the expression final assessment used by the legislature in clause (b) of section 32(5). The finality of assessment, whether under section 80 or section 81, as the case may be, does not preclude invocation of the offence under section 32, nor proceedings for recovery of duty, taxes or charge that has not been levied, short levied or erroneously refunded within the prescribed time from the relevant date. The finality of assessment under section 80 or section 81, as the case may be, is distinct from the offence described under section 32 and does not bar the proceedings thereunder, provided they are within the limitation period explicitly specified in the case of each eventuality separately. The High Court has not correctly appreciated the scheme of the Act of 1969 and the distinction between an assessment made under section 80 and section 81, as the case may be, and the offence and the mechanism described under section 32 *ibid*. The High Court, by interpreting finality of provisional assessment under section 81 as a bar against proceedings under section 32 has read into the fiscal statute, i.e. the Act of 1969, something not intended nor provided by the legislature. It is a settled principle of interpretation of a fiscal statute that tax and equity are strangers. We, therefore, hold that the finality assessment under section 80 or the provisional assessment under section 81 does not operate as a bar against proceedings relating to the offence described under section 32 of the Act of 1969 nor relating to the recovery of duty, taxes or charge not levied, short levied or erroneously refunded, provided they are within the limitation period prescribed in the case of each eventuality respectively.”

3. In view of the above pronouncement of the Hon'ble Supreme Court, the question is answered against the Respondent and in favour of the Applicant; and as a consequence thereof, the impugned Judgment stands set-aside. These Reference Applications are **allowed**. Let a copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place a copy of this order in all connected SCRAs.

JUDGE

JUDGE

Qurban/PA*