

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-4649 / 2024

(Haji Abdul Raziq Khan & Brothers V. Collector of Customs & Others)

Date

Order with signature of Judge

Present:-

Mr. Justice Adnan Iqbal Chaudhry.

Mr. Justice Muhammad Jaffer Raza.

PRIORITY

- 1) For hearing of Misc. No. 20616/2024.
- 2) For hearing of main case.

Date of hearing : 09.10.2025

Date of announcement : 22.10.2025

Haji Abdul Raziq Khan, Petitioner in person.

Mr. Pervaiz Ahmed Memon, Advocate for Respondent.

Muhammad Jaffer Raza, J. The Petitioner appearing in person is an importer of used Auto Parts. Brief facts leading up to the instant petition are that during the assessment of the consignments imported¹ by the Petitioner, the same were withheld on the alleged charge of mis-declaration in description and value of goods, as examination of the goods revealed that some goods in the lot, though importable, were not used auto parts. Thereafter, the Petitioner was issued Show Cause Notice, which eventually, culminated in passing of order-in-originals dated 06.11.2021 and 04.11.2021 respectively under section 179 of the Customs Act, 1969 ("**Act**"), whereby the goods were held liable to confiscation, however, the Petitioner was given option under section 181 of the Act to pay fine in lieu of confiscation.² Thereafter, the Petitioner preferred Appeals under Section 194-A of the Act before the Customs Appellate

¹ GD Nos. HCSI-18 dated 02.08.2021 and HCSI-21 dated 10.08.2021

² ONO No. 1718575/2021 and ONO No. 1718085/2021

Tribunal (**“Tribunal”**)³. The Tribunal vide Judgment dated 19.02.2022 held that misdeclaration was not established as the Petitioner had uploaded invoices and packing list of all goods with the Goods Declaration (**“GD”**). Therefore, excepting the redemption fine, the Tribunal set-aside the orders-in-original. As regards the duty and taxes assessed by the department, the Tribunal, relying on Section 81⁴ of the Act, held as under: -

*“The respondent Collectorate is accordingly directed to consider favorably request of the appellant for release of impugned goods provisionally under Section 81 of Customs Act, 1969 by securing the differential amount of duty and taxes through Bank Guarantee or Pay Order. The provisional determination under Section 81 of Customs Act, 1969 is necessitated in the instant case as the appellant importer is not satisfied with the value assessed by the Collectorate”.*⁵

³ Customs Appeals Nos. H-7662/2021 and H-7663/2021

⁴ [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 5a[or pay order] [Omitted] 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) 30[or a Publication Valuation Ruling (PVR)], issued under section 25A, is in field, irrespective of the fact whether any review or revision against such Valuation Ruling 30[or a Publication Valuation Ruling (PVR)] 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 28[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 28[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 subsection (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination. 13

[(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.]

2. Thereafter, in compliance of the Judgment of the Tribunal, Respondent No. 1 vide Letters dated 04.04.2022, provisionally assessed the goods of the Petitioner and required the Petitioner to furnish Pay Orders for the differential amount of duty and taxes. In compliance with the noted letters, the Petitioner furnished Pay Orders⁶ and upon furnishing of the same, the consignments were duly released to the Petitioner.

3. It was contended by the Petitioner, relying on Section 81(2) of the Act, that Respondent No.3 was obligated to finalize the provisional determination within a period of 90 days and only in exceptional circumstances could the noted period be extended by 30 days. It was argued by the Petitioner, that no final determination can be passed beyond the maximum stipulated period of 120 days. Thereafter, our attention was invited to Section 81 (4) of the Act, which according to the Petitioner, envisages a situation in which no final determination is made after the lapse of the statutory period as mentioned above. It is the case of the Petitioner, that after the expiry of the statutory period, the provisional determination became final, and no further determination could be made. The Petitioner is aggrieved, as the Respondents according to him, are not releasing the securities which were furnished by the Petitioner pursuant to the provisional determination and therefore, has filed the instant petition.

4. Conversely, learned Counsel appearing for the Respondent department has argued that the provisional determination was not done under Section 81 of the Act but was only done in compliance of the orders of the Tribunal. He has further argued that the limitation period prescribed in the noted provision will not apply to the instant case as the same does not apply to assessments conducted upon orders of the Tribunal. In the light of the above, he prayed for dismissal of the instant Petition and also invited our attention to notice

⁶ Pay order Number 08839768 amounting to Rs.1,184,587 Pay order number 08839769 amounting to Rs.2,112,405 both dated 07.04.2022.

dated 23.09.2024, in which the date was given to the Petitioner for finalizing the provisional determination.

5. We have heard the Petitioner in person and the learned Counsel appearing for Respondent department at length. The contention of the department has already been noted in the aforementioned paragraph. The noted submission fails to appreciate the intent of the Tribunal's order. Relevant excerpts of the Tribunal's order reproduced above, reflect that while setting-aside the orders-in-original, the Tribunal had remanded the matter to the department to determine afresh the value of goods for assessing duty and taxes. Till such time the department was asked to exercise discretion under Section 81 of the Act to make a provisional determination of the goods for release. The letter following the judgment of the Tribunal, issued by Respondent No.3, dated 04.04.2022, also cited Section 81 of the Act in making provisional determination. Therefore, the argument advanced by the learned counsel regarding inapplicability of Section 81 has no force.

6. The next question before us is whether the time period prescribed for determination under Section 81(2) is definitive and whether the provisional assessment is to be treated as final after the lapse of the noted period. Both limbs of the question shall be adjudicated in the succeeding paragraphs.

7. Bare perusal of Section 81(2) of the Act reveals that the period prescribed for finalization of the provisional determination is 90 days from the date of the said determination. The proviso to the noted section provides room for a further extension of 30 days in circumstances of "*exceptional nature*". Therefore, it can safely be deduced that even in circumstances of "*exceptional nature*" the maximum stipulated time period is 120 days in which the provisional determination is to be finalized. We agree with the contention of the Petitioner that the maximum period of 120 days is to be interpreted strictly, as not meeting the given timeline entails consequences provided under

Section 81(4). Bare perusal of the noted section reveals that failing to abide by the timeline prescribed in subsection (2), the provisional determination is to be treated as final. The issue pertaining to the inflexibility of the noted timeline has come up for adjudication in several cases⁷. The Hon’ble Supreme Court in the case of MIA Corporation whilst expounding on the scheme of the Act, held as under: -

“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 declaration made by the importer under section 79. (Emphasis added)

8. The rigidity accorded to the noted timeline in subsection (2) and the consequences enshrined under subsection (4) of section 81 of the Act have been interpreted by the Hon’ble Supreme Court in the case of SUS Motors as “penal” provisions which have been incorporated in the Act to save importers, exporters and assesseees from “unnecessary harassment by the Customs Authorities by

⁷ Collector of Customs Port Muhammad Bin Qasim, Karachi versus Messers MIA Corporation (Pvt) Ltd. Islamabad reported at **2023 PTD 1797**.

Sikandar & Co. versus Federation of Pakistan reported at **2024 PTD 188**.

Federation of Pakistan versus SUS Motors (Pvt) Limited reported at **2023 SCMR 1421**.

Collector of Customs versus Z.A. Industries reported at **2022 PTD 1918**.

way of lingering on their cases for indefinite period on the pretext of finalizing the assessment.”⁸

9. It is evident from the letter issued by Respondent No.3 dated 04.04.2022, in compliance of the judgment of the Tribunal, that the provisional determination was made no later than 04.04.2022, when the Petitioner was directed to furnish the differential amount of duties and taxes as per the assessment sheet enclosed with the noted letter. No final determination was made by the Respondents within the maximum stipulated period of 120 days. In fact, the first notice issued to the Petitioner for finalizing the provisional assessment was issued on 23.09.2024 after this petition was filed. The existence of exceptional circumstances for present purposes is superfluous for the reason that even if such circumstances existed, the maximum period as noted above expired after a lapse of 120 days. Further, the second proviso of subsection (2) is inapplicable to the facts of the instant case as no stay was operational prior to this petition and neither of the circumstances enumerated under the noted proviso were agitated by the counsel appearing for the Respondent. Therefore, we hold that the “hearing notice” for final determination issued to the Petitioner on 23.09.2024 (well beyond the maximum stipulated period) is of no consequence as the provisional determination made earlier, stood finalized after the expiration of 120 days starting from 04.04.2022. However, as enunciated by the Hon’ble Supreme Court in MLA Corporation, the finality of the provisional assessment by virtue of section 81 of the Act, does not preclude the department from initiation of proceedings under Section 32 the Act.

10. In light of what has been held above, we hold that the provisional determination made on 04.04.2022 shall be treated as **final determination** under Section 81(4) of the Act. Consequently, the Petition is **allowed** as

⁸ Collector of Customs v. Auto Mobile Corporation of Pakistan reported at **2005 PTD 2116**. The noted judgment was cited with approval in the case of SUS Motors.

prayed. The Respondent is further directed to return the noted Pay Orders to the Petitioner without fail. There is no order as to cost.

J U D G E

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Arshad/