

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1121 of 2013

Date	Order with signature of Judge
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FOR ORDERS ON CMA NOS:

1. 9516 of 2013 (If granted)
2. 9517 of 2013 (U/O 39 R 1&2 CPC)

09/09/2013:

Khawaja Shamsul Islam, Advocate for the plaintiff.

1. Granted.
2. The plaintiff through this suit has impugned the orders of valuation dated 23.7.2013 and finalization of value dated 23.8.2012 whereby a sum of Rs.143.20 million has been assessed under Section 81 of the Customs Act in respect of motorcycle parts imported by the plaintiff for the years 2009-2010.

A brief history of the claim of defendants with respect to the custom duty is based on the 23 bills of entry, detailed in Para 5 of the plaint. According to learned counsel for the plaintiff the entire amount as assessed and finalized by Defendant No.4 through impugned order is already secured as reflected in GD # 240/assessment sheets, available at page 45 and onwards of the file and several indemnity bonds already filed. Learned counsel is unable to show in figure from documents that exact amount has been secured or not. He is directed to file a statement of account of indemnity bonds and cheque numbers through which the demand raised by Defendant No.4 is secured and in case if this amount is not covering the exact figure given in the impugned Annexure 'D/1' of the plaint, the plaintiff shall furnish a tangible security of the differential amount with the Nazir of this Court within twenty four hours to the satisfaction of the defendants regarding the security documents.

Learned counsel has shown from the record that the arbitrary assessment made during last four years regarding the consignment as stated in para 5 of the plaint, has been suspended

by different forums including the order passed by FTO and even by this Court in C.P. No.D-1408 of 2011 which was disposed of on 24.10.2012 with direction to the respondents to decide the issue of valuation afresh after providing an opportunity of hearing to the petitioner who is plaintiff in this case and to pass appropriate orders in accordance with law preferably within a period of two months. However, the valuation has been determined by impugned order after almost eleven months. The learned counsel further urged that Defendant No.4 in finalizing the valuation has violated several provisions of law as well as orders passed by the FTO. It is contended by learned counsel that in passing the impugned order the Defendant No.4 has relied upon the Ruling No.307 dated 26.3.2011 which has been set aside by the FTO as well as his own Collector/Defendant No.3. The immediate threat to the plaintiff is that the Defendant No.4 has threatened to encash the security available with him since 2009 under Section 81 of the Customs Act, 1969, and may use the other coercive methods provided under Section 202 of the Customs Act, 1969. In these circumstances since the duty claimed by Defendant No.4 appears to have been covered or secured, the plaintiff has made out a prima facie case, the defendants are directed not to encash the security of the plaintiff or apply any coercive methods to recover the impugned amount of duty till next date of hearing. It is, however, clarified that this order is subject to furnishing the statement of accounts already secured by the defendants through indemnity bonds and post dated cheques and if the entire amount is not secured as reflected in documents annexed with the plaint the plaintiff has to furnish security of the differential amount within twenty four hours, otherwise the interim order shall not be effected.

To come-up again on 12.09.2013.

JUDGE

S. Akhtar