

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.D-3682 of 2016

Date Order with signature of Judge

Priority

1. For hearing of CMA No.18365 of 2016
2. For hearing of main case

01.10.2021.

Mr. Ahmed Ali Hussain, Advocate for the petitioner
Mr. Kafeel Ahmed Abbasi, DAG

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Muhammad Shafi Siddiqui J.- This matter was heard at length on 23.9.2021 and order was to be announced during course of the day, however, in view of the fact that a number of cases involving identical issues were disposed of on 04.05.2015 in the leading CP No.D-3816 of 2013, that concern with the classification dispute of the Alloy Steel and which were set at rest with the observation that if it contains more than 0.0008% boron as inherent part of steel, would qualify as Alloy Steel and which consequently could not attract payment of duties and taxes, this matter was re-heard today. The conclusion drawn, of course, was subject to test reports of the consignments of Hot Rolled Steel Sheets.

The subject consignments in this case, however, were released on furnishing bank guarantees, subsequent to the disposal of above petition. The salient features of the order that disposes of the controversy are as under :

1. *All the consignments of the Hot Rolled Steel Sheets in Coils the laboratory test report whereof reflect that it contain more than 0.0008% boron as inherent part of the steel would qualify as Alloy steel, which would not attract payment of any duties. The respondents after examining this aspect in the light of test reports would issue letters to the respective importers whose consignments of Hot Rolled Steel Sheets in Coils contain more than 0.0008% of Boron for release of the bank guarantees, pay-orders, cheques, or cash deposited with the Nazir of this court against release of consignments.*

2. *In case the respondents are of the view that boron is not inherent part of the Hot Rolled Steel Sheets in Coils and is sprayed to avoid payment of duties, they would be at liberty to get the consignment re-examined from M/s. A.Q. Khan Research Laboratory (KRL). However, not more than four samples of one imported having any number of consignments would be set at the cost of the importer.*
3. *The cases in respect of those consignments which are sent for re-testing would be finally decided within a period of 90 days and of those cases in which samples are not re-sent would be decided within a period of 60 days.*

In the instant matter, the petitioner has imported alloy steel products under Free Trade Agreement between Government of China and Government of Pakistan by virtue of SRO No.659(I)/2007 dated 30.06.2007. By virtue of taking benefit of such SRO the goods were imported and Goods Declaration under section 79 of the Customs Act, 1969 was filed by claiming and declaring goods under HS Code 7225.3000 fetching duties/taxes at the rate of Zero Percent whereas to the contrary respondent No.2 assessed the goods at higher rate of customs duty.

The goods were provisionally assessed on 21.05.2015 and the same were released on securing differential amount. The goods provisionally assessed and released under section 81 of Customs Act, 1969 has a procedure and mechanism to follow.

Incidentally the consignments of the petitioner were imported subsequent to the order dated 4.5.2015 and the goods declaration were filed on 21.5.2015 and hence there was an independent provisional release to be followed by final determination.

The Petitioner, on receipt of a notice dated 30.05.2016 for re-validation of the bank guarantee, has filed this petition on the strength that the customs officials have lost such recourse as the time for final

determination has lapsed and in fact it was never finally assessed or determined. It appears that despite lapse of five years even the comments have not been filed by the respondent department.

Apparently this re-validation notice of bank guarantee was issued after a year of provisional assessment and unless final assessment or determination is made and placed for consideration, this re-validation notice of bank guarantee would be of no consequence i.e. even if it is re-validated there cannot be a question of its (bank guarantee's) encashment on account of lapse of time for determining the duties and taxes finally in terms of Section 81 of Customs Act, 1969, as it prevailed at the relevant time. There is no cavil to such proposition, as conceded by respondents' counsel.

However, it is claimed by the respondents' counsel that it was not a provisional assessment rather a final assessment when goods were released. We are not convinced with this submission. Had it been a case of final determination or final assessment, there was no occasion of releasing of consignment on securing differential amount through bank guarantee. The department should have asked for entire amount as being determined finally. This being the core issue, no satisfactory explanation was forwarded by respondent's counsel for not complying with the requirements of Section 81 of the Customs Act, 1969. Hence, instant petition is allowed and the notice dated 30.05.2016 issued by the respondent for re-validation of the bank guarantee is declared to be of no effect.

The instant petition to the extent of above terms is allowed.

JUDGE

JUDGE