

# IN THE HIGH COURT OF SINDH, KARACHI

*Const. Petition No. D – 2863 of 2018*

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.  
MR. JUSTICE ZULFIQAR AHMED KHAN

*M/s. Pakistan Steel Imports Company*

*Vs.*

*Federation of Pakistan & others*

*Petitioner:* through Mr. Imran Iqbal Khan, advocate

*Respondents:* through Mr. Kashif Nazeer, advocate  
*and Ms. Lubna Pervaiz, Deputy Attorney General*

*Date of Hearing:* 14.01.2019.

*Date of Order:* 14.01.2019.

## ORDER

**Aqeel Ahmed Abbasi, J:** Through instant petition, the petitioner has sought declaration to the effect that the period of warehouse in respect of subject consignment of the petitioner may be extended and the respondents may be directed to declare the goods as damaged under Section 108 of the Customs Act, 1969, whereas, it has been further prayed that the notice issued under Section 112 of the Customs Act, 1969, by the respondent No.4 may be declared illegal and without lawful authority.

2. Briefly the facts as stated in the memo of petition are that petitioner imported secondary quality steel sheets and filed goods declaration before

the Customs Authorities, whereas, on arrival of goods, the petitioner filed into bond G.Ds of the aforesaid consignment for clearance purpose with the request to shift the goods under public warehouse licence No.KAPW-PB-2-2015. According to petitioner, goods were cleared into bond for the purpose of safe storage after payment of duty and taxes. However, petitioner could not clear all the goods from the said public warehouse due to low prices of iron and steel products in the international market. The petitioner waited for the improvement of the market, which came down because of various factors including change of rate of duty and issuance of Valuation Ruling No.717/2015, which according to petitioner, brought down the duties and taxes on new fresh imports on one hand and blocked the sale of overstayed goods on the other hand. However, according to petitioner, due to such overstay the consignment of the petitioner deteriorated and damaged, therefore, petitioner has filed an application under Section 108 of the Customs Act, 1969, on 28.08.2017, however, did not receive any response, petitioner sent reminder letter dated 23.09.2017 to the Customs Authorities in response to which vide letter dated 29.09.2017 respondents were declined such request of the petitioner. Whereafter, petitioner made a representation to the Chief Collector of Customs vide letter dated 23.09.2017, however, no response was received, whereas, respondent No.4 initiated auction proceedings in respect of consignment of petitioner while issuing detention Notices under Section 112 of the Customs Act, 1969, dated 10.03.2018, 12.03.2018, 14.03.2018 and 27.03.2018, which have been impugned through instant petition.

3. It has been contended by the learned counsel for the petitioner that though the goods imported by the petitioner were released and transferred to into-bond warehouse could not be cleared on account of unavoidable circumstances and overstayed beyond the prescribed time provided under

Section 98 of the Customs Act, 1969, however, respondents were under legal obligation to allow re-assessment of overstayed goods under Section 108 of the Customs Act, 1969, at the current value of such goods keeping in view the lower prices prevailing in the local as well as in the international market of steel products. Per learned counsel, respondents were not justified to decline re-assessment of the subject goods under Section 108 and issue notice under Section 112 of the Customs Act, 1969, while putting the overstayed consignment of the petitioner in the warehouse to auction on the ground that since prescribed period for the stay of such consignment in the into-bond has already expired, therefore, such request cannot be acceded. It has been prayed that the impugned notices may be declined to be illegal and respondents may be directed to make re-assessment of the goods under Section 108 of the Customs Act, 1969.

4. Conversely, learned counsel for the respondent and the learned DAG have opposed such contention of the learned counsel for the petitioners and submitted that disputed facts have been agitated through instant petition, whereas, petitioners deliberately did not cleared the good from Customs Bonded Warehouse for a period of about more than two years', therefore, impugned Notices issued under Section 112 of the Customs Act, 1969 are neither erroneous, nor illegal. It has been prayed that instant petition may be dismissed alongwith listed application.

5. We have heard the learned counsel for the parties, perused the record with their assistance and have also the relevant provisions of law, including Sections 98, 108 & 112 of the Customs Act, 1969. Admittedly, steel products imported by the petitioners through various goods declarations. Petitioners filed into bond GDs for clearance purposes and requested the Customs Authorities to shift the goods under Public Bonded

Warehouse License No.KAPW-PB-2-2015. Thereafter, the goods were accordingly cleared into bond for storage purposes and further clearance by the petitioners in accordance with law within the stipulated period as provided under Section 98 of the Customs Act, 1969. However, petitioners did not clear the consignment from the Customs Bonded Warehouse and admittedly, such goods remained lying in the Customs Bonded Warehouse beyond the prescribed period i.e. six months' from the date of their admission into the Warehouse. Accordingly, Notices under Section 112 of the Customs Act, 1969 were issued by the respondents, whereby, petitioners have been confronted that since you have failed to ex-bond the goods from Customs Bonded Warehouse within the prescribed time period under Section 98 of the Customs Act, 1969, leviable duty and taxes should not be recovered, while invoking the provision of Section 112 of the Customs Act, 1969. Reply of such Notices has been submitted by the petitioners, wherein, different grounds relating to financial crunch faced by the petitioner due to decline in the prices of steel products during overstayed period of the consignment of the petitioners in the Customs Bonded Warehouse have been raised. However, it appears that no reasonable explanation has been offered by the petitioners, who have failed to clear the goods from the Customs Bonded Warehouse within the prescribed time period of six months'. Similarly, the request of the petitioners for re-assessment in terms of Section 108 of the Customs Act, 1969, also appears to be misconceived for the reason that such provisions can be invoked, if any goods upon which duties are levied ad-valorem or otherwise are damaged or deteriorated due to unavoidable accident or cause after they have been entered for warehousing and assessed under Section 80 and before they are cleared for home-consumption, their value in the damaged or deteriorated stage may be appraised according to either of the methods provided in sub-section (2) of Section 27, if the

owner so desires, whereas, in the instant case, admittedly, the goods have not been cleared by the petitioner in view of some financial expediency, whereas, it is not a case where the goods are damaged or deteriorated due to some unavoidable accident or cause. Moreover, in the garb of re-assessment proceedings, the petitioners intend to get the consignment cleared in much lesser price as prevailing at the time of import.

6. Accordingly, we do not find any substance in the instant petition, which was dismissed vide our short order dated 14.01.2019 and above are the reasons for such short order. However, it may be clarified that in case of auction of the subject goods lying in the Customs Bonded Warehouse, petitioners will be at liberty to participate and also entitled to the auction proceeds in accordance with law. It may be, however, observed that no penal proceedings may be initiated against the petitioners as the petitioners' request for re-assessment was neither accepted, nor denied by the Customs Authorities by passing an appropriated order in accordance with law.

***JUDGE***

***JUDGE***