ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Applications
No.450, 451 and 452 of 2016

Collector of Customs
Versus
Allied Engineering & Service Ltd.

Date	Order with signature of Judge

1. For orders on CMA 2557/16
2. For hearing of main case.
3. For orders on CMA 2558/16

Dated: 30.08.2021

Mr. Khalid Rajpar for applicant.

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These Special Customs Reference Applications are pending since 2016 and even notices have not been issued. The proposed question arising out of the impugned order could possibly be, whether Tribunal erred in not considering 15 days extension granted by the Collector upto 07.03.2013 and also further 60 days' time extension for finalization of provisional release under section 81 of the Customs Act? and whether belated finalization under section 81 of the ibid Act would cover the subject of final assessment?

Brief facts of the case are that the respondents imported a consignment of one unit Diesel Generating Set having declared capacity of 1102 KVA from Geneva and filed goods declaration for home consumption through authorized clearing agent. At the time of clearance under the relevant PCT heading, customs duty at the rate of Zero percent was sought. The documents submitted at the time of clearance scrutinized and it was found that the goods having capacity of 1100 KVA were classifiable under different headings attracting customs duties at the rate of 15%. As such, difference in power rating was only 2 KVA. The

importer was then asked to produce catalogue so that actual power rating could be verified, which, on production, showed its capacity as 1102 KV whereas the running capacity was not given in the catalogue. The goods were thus released provisionally on an application of the importer/respondent dated 30.08.2012 on which the goods were released against bank guarantee.

Show-cause was then followed as to why goods may not be finalized under PCT Heading 8502.1310 attracting customs duty at the rate of 15% under section 81(2) of the Customs Act, 1969. The show-cause notice was issued on 08.03.2013.

As far as finalization of the provisional assessment in time is concerned, the provisional assessments were made on 07.09.2012 and it was required to be finalized within the time frame given under section 81(2) of the Customs Act i.e. six months. This finalization ought to have been completed by 06.03.2013 (incorrectly stated 07.03.2013) as the law requires finalization within six months. The final assessment was made on 15.05.2013. Reliance of the learned counsel for the applicant was placed on the note of Additional Director of Customs which forwarded a summary for the approval of the extension. Allegedly the time was extended on 20.03.2013 by 60 days. By the time the purported summary was granted, on 20.03.2013, six months' time had already lapsed. The fact of the matter is that the time for finalization had already lapsed. Even if 60 days' time is counted from the date when time lapsed i.e. 06.03.2013, it should not have gone beyond 06.05.2013 whereas final assessment was made on 15.05.2013.

On the above, we are fortified with the observation of Hon'ble Supreme Court in the case of Collector of Customs Lahore v. Fazal Ilahi & Sons reported as 2015 SCMR 1488, which is reproduced as under:-

"7. Subsection (4) of section 81 of the Act provides that if the final assessment is not completed within the period specified therein, then the provisional assessment shall become final. The same has been provided as a safeguard to the benefit of the assessee/importer/exporter to save them from unnecessary harassment by Customs authorities by unnecessarily delaying their cases for an indefinite period on the pretext of, making a final assessment. But in the instant case, the Customs authorities after making a provisional assessment did not proceed in the matter for the determination of final assessment which is apparent from the fact that neither a notice of demand to prove any document from the respondent has been sought nor any corroboration or clarification had been sought, which were to be made under section 25(4) of the Act nor any order under rule-109 of the Customs Rules, 2001 has been passed to determine the custom value of the imported goods, in the absence whereof the appellant could not be afforded a clean chit to use section 81(4) as a tool to delay the making of final assessment upon proper assessment of the value by affording the assessee proper opportunity of contesting the same, thus, depriving him of fair trial, therefore, in the above facts and circumstances of the case to consider the provisional assessment as a final assessment cannot be justified.

8. In the above perspective, keeping in view the lapses and defaults on the part of the appellants, the High Court has rightly come to the conclusion that the importer cannot be penalized for the default caused by the departmental authorities….."

No interference as such is required. The questions as proposed by the applicant are not arising out of the judgment and those proposed at the time of arguments and reproduced at first page are answered in negative, against the applicant and in favour of respondent. Consequently these Special Customs Reference Applications are dismissed along with listed applications.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-I, Karachi, as required by section 47(5) of Sales Tax Act, 1990.

Judge

Judge