

IN THE HIGH COURT OF SINDH, KARACHI

Present

Muhammad Shafi Siddiqui, J

Agha Faisal, J

CP No.D-5674 of 2020

[M/s Spectrum Enterprises v. Federation of Pakistan & Others]

For the Petitioner	Sardar Muhammad Ishaque, Advocate
For Respondent No.1	Mr. Kafeel Ahmed Abbasi, DAG a/w Mr. Hussain Vohra, Asstt. Attorney General
For Respondents No.2 to 4	Mr. Mohabbat Hussain Awan Advocate a/w Mohib Khan, Asstt. Collector, MCC Port Qasim
Date of hearing	<u>02.09.2021.</u>
Date of order	<u>02.09.2021.</u>

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ORDER

Muhammad Shafi Siddiqui J.- The petitioner imported two consignments and filed good declaration under section 79 (1) of the Customs Act 1969. The declaration was objected by the respondents and consequently under Section 81 of the Customs Act 1969, the goods were provisionally released after securing the differential amount of duties and taxes. Provisional release was made on 03.08.2019 under Section 81 ibid.

The petitioner has now filed this petition for the release of the security as the respondents have failed in final determination within the time prescribed under sub-section 2 of Section 81 of the Customs Act 1969. The release is objected on the count that the explanation provided under Section 81 provides that the provisional assessment means the amount of duties and taxes paid or secured by bank guarantee or pay orders.¹

¹ Substituted for the words "post-dated cheque" by the Finance Act, 2013 (XXIJ of 2013), assented on 29th June, 2013, reported as PTCL 2013 BS. 382.

Although in this petition some ancillary or additional reliefs have also been claimed but when inquired about it, learned counsel conceded to such extent and limited his case to the extent of release of the security provided to the customs authorities under Section 81 of the Customs Act 1969.

We have heard learned counsel and perused the available record.

Spirit of Section 81 provides that when it is not possible for the officer of the customs to reach to the correctness of the assessment of the goods declared by the importer under Section 79 of the Customs Act 1969 for any statutory reason, the officer not below the rank of Assistant Collector Customs may order that the duty and taxes or other charges payable on such goods be `**determined**` provisionally.

1st proviso of Section 81 provides that in case the goods are being entered for warehousing, the additional amount either be paid on the basis of provisional assessment or bank guarantee be furnished or pay order of the like amount of a scheduled bank alongwith an indemnity bond for the payment as the officer deems sufficient to meet the possible differential amount between the final determination of duty, taxes and other charges and the amount determined provisionally.

2nd proviso provides that there shall be no provisional assessment, for the purpose of release apparently under this section if no differential amount of duty and taxes and other charges are paid or secured against the bank guarantee or pay orders.

Sub-section 2 of Section 81 caters for a situation when the goods are allowed to be cleared or delivered on the basis of **provisional determination**, the amount of duty, taxes and charges correctly payable to those goods **shall be determined within six months from the date of provisional determination**. The time is further extendable provided the officer concerned may in the circumstances of exceptional nature and

after recording such situation extends period of **final determination**, which shall in no case exceeds ninety days.² Proviso to sub-section 2 provides the calculating mechanism of the period prescribed in sub-section 2 of Section 81. Sub-section 3 of Section 81 provides the mechanism 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 difference between the two amounts shall be paid forthwith to or by the importer as the case may be.

Sub-section 4 of Section 81 provides if the **final determination** is not completed within the period specified under sub-section 2, the **provisional determination** shall in the absence of any new evidence, be deemed to be the final determination. Reliance of the respondent on the explanation after sub-section 4 would turn nothing as it only provides a meaning of the provisional assessment which factor is missing as provisional and final determination are core factors.

Indeed the "Explanation" in a statute/enactment does form an integral part to the extent of explaining and elaborating meaning of the word in the section³ and the purpose is to explain, clarify, add or subtract something by clarification⁴, however, the word provisional assessment is neither used in sub-section 1 nor in sub-section 2. It is sub-section 1 which secured differential amount on provisional determination and not provisional assessment⁵.

If the interpretation of respondent is accepted then customs would never bother to determine it finally and would enjoy benefit of not doing anything after provisional release. We may observe that the respondent conceded that the cause of delay in final determination is not attributable to the importer.

² Substituted for the full stop by the Finance Act, 2010 (XVI of 2010), assented on 30th June, 2010, reported as PTCL 2010 BS.325

³ 2019 SCMR 1643 [Commissioner Inland v. M/s Trillium]

⁴ PLD 2010 Lah. 468.

⁵ 2011 PTD 235.

In our view to claim the amount which was secured by the importer as differential amount either for warehousing or for release for home consumption, the final determination is inevitable after provisional determination and since it has not been done within the prescribed time under sub-section 2 of Section 81 of the Customs Act 1969 nor within any extended period of time [though it has not been extended as it was not the case of the respondents], we deem it appropriate to allow this petition to the extent that the amount of security lying in the shape of pay order or in case they have encashed it, be released forthwith.

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