

**IN THE HIGH COURT OF SINDH, KARACHI**

CP No.D-5491 of 2021

CP Nos. D-7258, 7259 & 7260 of 2021

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Zulfiqar Ahmed Khan, JJ*

M/s. Aamir Brothers  
M/s. Uniform Centre,  
M/s. Zamzam Impex  
M/s. Al-Asr Traders  
Petitioners : through Sardar M. Ishaque, Advocate

Vs.

Federation of Pakistan  
Respondent No.1 : through Mr. Kafeel Ahmed Abbasi,  
D.A.G.

The Collector of Customs  
Respondent No.2 : through Mr. Muhamamd Bilal Bhatti,  
Advocate in CP No.D-5491/2021

through Mr. Muhammad Rashid Arfi,  
Advocate in CP No.D-7258 to 7260 of 2021

Date of hearing : 10.03.2022

Date of decision : 10.03.2022

JUDGEMENT

**Irfan Saadat Khan, J.** Since the issue involved in all these petitions is common, hence these are disposed of by this consolidated judgment.

2. Briefly stated the facts of the case are that the petitioners imported certain consignments in respect of which provisional assessments/determinations were made by the Customs Authorities under Section 79 of the Customs Act, 1969 (hereinafter referred to as the Act). However, it is an admitted position that no final determination, as required under Section 81(4) of the Act was made, thereafter the instant petitions have been filed.

3. Sardar Muhammad Ishaque, Advocate has appeared on behalf of all the petitioners and stated that it was the requirement of the law that when any provisional assessment/determination has been made under Section 79 of the Act, the law requires from the Customs Authorities to finalize the assessments/determinations within a period of six months from the date of the same provisional assessment by making a final determination and if that final determination is not made, under Section 81(4) of the Act, the said provisional assessment, in absence of any new assessment, will be deemed to be the final determination. He stated that since in all present petitions, even after a period of six months of the provisional assessment no final determination was made within stipulated time of six months hence the said provisional assessment for all practical purposes has to be considered as final determination.

4. Mr. Muhammad Rashid Arfi, has appeared on behalf of the Respondent No.2 in constitution petitions C.P. No.D-7258 of 2021 to 7260 of 2021 and stated that no doubt final determination in the instant matters were not made within a period of six months but since the amount of duties and taxes paid or secured against bank guarantee and pay-orders, therefore, final determination was not made and in view of the explanation added in sub-Section 5 of Section 81 the department could make the assessment even after the period of six months of the provisional assessment.

5. M/s. Kafeel Ahmed Abbasi, and Muhammad Bilal Bhatti, appearing for the Federation in all the petitions and for the Respondent No.2 in CP No.D-5491 of 2021 respectively, however, stated that the wordings of Section 81(4) of the Act, are quite clear

and if the final assessment is not made within a period of six months the said provisional assessment the said provisional assessment is to be considered as final determination. They thus in this regard supported the view of the counsel for the petitioners and stated that if no final determination in the present cases is made by the department, after the period of six months of the provisional assessment that provisional assessment has to be considered as final determination as clearly spelt out in the above referred law.

6. We have heard all the learned counsel at some length and have also perused the record

7. Before proceeding any further, we deem it appropriate to reproduce hereinbelow provisions of Section 81(2), 81(4) & 81(5) of the Act its explanation of the Customs Act, 1969.

<sup>5</sup>**81. Provisional determination of liability.-**  
(1).....  
.....

<sup>5b</sup>[(2) Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within six months of the date of provisional determination:

Provided that the Collector of Customs or, as the case may be, Director of Valuation, may in circumstances of exceptional nature and after recording such circumstances, extend the period for final determination which shall in no case exceed ninety days<sup>12</sup>[:]

<sup>12</sup>[Provided further that any period, during which the proceedings are adjourned on account of a stay order or for want of clarification from the Board or the time taken through adjournment by the importer, shall be excluded for the computation of aforesaid periods.]

(3).....  
.....  
.....

(4). If the final determination is not made with the period specified in subsection (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination.

<sup>13</sup> [(5) On completion of final determination under subsection (3) or (4), the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be.]

**Explanation.-** Provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or <sup>15</sup>[pay order.]

8. The above provisions of law clearly stipulates that when goods arrive at the port in order to facilitate the importers the said goods are released on a provisional basis. However, a duty is reposed upon the Customs Authorities to make a final determination in respect of the provisional assessment made by them within a period of six months from the date of the provisional assessment/determination. The law further stipulates that in case final determination is not made within a period of six months' time the said provisional assessment would be considered as final determination. Though there are certain conditions stipulated under the law that when six months period would not be counted but admittedly the present petitions do not fall under those exceptions. Moreover, it is also an admitted position that the bank guarantee and pay-orders furnished by the petitioners were not by way of any order passed by this Court or any other authority, which could place any embargo or a bar upon the Customs Authorities for not making a final determination.

9. The rationale behind the final determination of a provisional assessment seems quite obvious which stipulates that in order to close the chapter of the provisional assessment and not to linger on unnecessarily the process of final determination the legislature

has put a bar upon the Customs Authorities to make a final assessment in respect of a provisional assessment made by them, if the matter is clear from other exceptions, in accordance of the provision of Section 81(4) of the Act. The other reason could be that the legislature wants to put a time frame on the customs Authorities with regard to final determination so that the matter could come to its final conclusion within the stipulated period of time and that an importer should not suffer, if the Customs Authorities have failed to make a final determination, in respect of the provisional assessment made by them.

10. Now, if the present case is examined, it could be seen that when goods were imported by the petitioners these were provisionally assessed and it is an admitted position that final determination as required under Section 81(4) of the Act was not made within a period of six months' time. Though Mr. Arfi tried to explain that the provisional assessment was made on the basis of bank guarantee or pay-order but could not controvert the fact that those bank guarantees or pay-orders were not required to be deposited by the importers by way any order passed by this Court or any other authority so as to justify the department not to make any final determination within the stipulated period. It was also observed that the other counsel appearing for the department in CP No.D-5491/2021 or the Federation have neither supported the stance of Mr. Arfi, with regard to non-finalization determination of the provisional assessment nor have brought any material to controvert the fact that the final determination in the present matters were not made within the stipulated time which clearly

demonstrate that in the present cases provision of Section 81(4) of the squarely applicable.

11. No doubt it is for the concerned Customs Authorities to assess/determine the value of the goods imported by a person with regard to his payable duty and taxes as the legislature has clearly provided that where assessment/determination was not made due to any reason could not either for further tests, inquiry or other reason and provisional assessment/determination was made but that provisional assessment has to finally made as clearly explained under Section 81(4) of the Act within six months' time. We need not to cite here case laws on this issue as this aspect is so clearly determined / established in a plethora of decisions given by this Court as well as by the Hon'ble Supreme Court of Pakistan in this regard.

12. In view of what has been stated above, we hold that the provisional determination made by the Customs Authorities in the instant petitions, for all practical purposes, have to be accepted as final determination. We, therefore, allow the instant petitions in the manner indicated above. All the pending and listed applications also stand disposed of. These are the reasons for our short order dated **10.03.2022**.

JUDGE

JUDGE

SM