

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C. P. NO. D-2387 / 2013

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<u>          </u> Date	Order with signature of Judge
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- 1) For order on office objection.
- 2) For katcha peshi.
- 3) For hearing of Misc. No. 12376/2013.

17.8.2015.

Mr. Aqeel Ahmed Advocate for the Petitioner.  
Mr. Shaikh Liaquat Hussain Standing Counsel.  
Mr. Iqbal M. Khurram Advocate for the Respondent.  
Mr. Ghulam Haider Shaikh Advocate for the Respondent.

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Through instant petition, the petitioner seeks an order from this Court directing the respondents to release cheque amounting of Rs. 1,60,565/- which were submitted by the petitioner, while seeking provisional release of the consignments under section 81 of the Customs Act 1969.

Counsel of the petitioner contends that despite lapse of almost five years, the respondents have failed to evaluate and to pass a final order in respect of the said goods, under Section 81(2) of the Customs Act and on account of lapse of time, the declared value (provisional assessment) has become final in terms of Section 81(4) of the Act *ibid*. Therefore, the cheque which were submitted at the time of provisional release be returned.

Mr. Ghulam Haider Shaikh Counsel for the respondents says that as per his instructions, final assessment was done within the time prescribed under Section 81 of the Customs Act, whereas, even if the provisional assessment is to be treated as final assessment, due efflux of time, the petitioner has to prove and substantiate that they have not passed on the burden to the consumer as envisaged under Section 19(A) of the Act, as laid down by this Court in the case of *Orient Laboratories Vs. Federation of Pakistan & Others (2011 PTD 1594)*, upheld by the Apex Court *vide* judgment dated 12.9.2012 in Civil Petition No. 825 & 826 of 2011 (*Orient Electronics (Pvt) Limited Vs Director General Customs Valuation, Karachi*).

Perusal of record nowhere reflects that after provisional release of the goods, any final assessment order was passed in terms of Section 81(2) of the Customs Act nor Counsel for respondents could refer to any material, except a statement annexed with the comments, wherein it has been stated that assessment was finalised. In view of such position and for the fact that while issuing demand notices, the respondents have themselves asked the petitioner to discharge the burden in terms of Section 19A of the Act, we are of the view that no final assessment order was passed in the instant matter, therefore, the provisional assessment has become final.

As to the release of post-dated cheque, once the petitioner is able to discharge the burden under Section 19(A) of the Customs Act, to the effect that full incidence of such customs duty and other levies has not been passed on to the consumer, as part of the price of the goods in question, the post-dated cheque submitted at the time of provisional assessment would be released. Petition stands disposed of in the above terms.

JUDGE

JUDGE

ARSHAD/