

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-3901 along with C. P. Nos. D-3952, 3971 & 3972 of 2023

Date Order with signature of Judge

PRIORITY.

- 1) For hearing of Misc. No. 17954/2023.
- 2) For hearing of main case.

23.08.2023

Mr. Muhammad Adeel Awan, Advocate for Petitioner
in C. P. No. D-3901 / 2023.
Mr. Abdul Moiz Jafferi, Advocate for Petitioner
in C. P. No. D-3952, 3971 & 3972 / 2023.
Mr. G. M. Bhutto, Assistant Attorney General.
Mr. Agha Shahid Majeed Khan, Advocate for Respondent (PQ)
in C. P. No. D-3901 / 2023.
Mr. Sardar Zafar Hussain, Advocate for Respondent.
Mr. Aamir Ali Shaikh, Advocate for Respondent.
Mr. Asif Ali, Advocate for Respondent.
Mr. Jawed Sarwar Shaikh, Additional Collector West.
Mr. Rasheed Khan, Principal Appraiser, Law. (Collector West)
Mr. Amanullah Soomro, Additional Collector Port Qasim.
Mr. Taufique Ahmed Shaikh, Assistant Collector-Law (PQ).
Mr. Zubair Shah, Additional Collector SAPT.
Mr. Rahat Naeem, Assistant Collector SAPT.
Mr. Tariq Aziz, Principal Appraiser (SAPT).

In all these Petitions, the Petitioners have approached this Court seeking orders for provisional release of the consignments imported by them. It appears that earlier, the Petitioners were aggrieved by Valuation Ruling No. 1720 of 2022 which they had impugned under Section 25-D of the Customs Act, 1969 before Director General (Valuation) by way of Review / Revision Applications. Such Revision Applications were dismissed and thereafter, the Petitioners / Importers approached the Customs Appellate Tribunal who vide its Judgment dated 24.07.2023 has been pleased to set aside such Ruling. Despite this, as per Petitioners case, the assessment of their consignments were made either on the said Valuation Ruling or under Section 25 of the Customs Act, 1969; but primarily the values applied / determined were same; or even higher than the values already notified through such Valuation Ruling. It is their further case that though a favorable order has been obtained by them from the Customs Appellate Tribunal against the said determination of values; however, notwithstanding such order(s), fresh consignments are

still being assessed on higher values and not only this, even their request(s) for provisional release of the consignments under Section 81 of the Customs Act, 1969 is not being entertained in a prompt manner. It is their case that they in law are entitled to challenge any such arbitrary assessment(s) and during such challenge the consignments must be released provisionally by the Respondents.

On the other hand, Mr. Agha Shahid Majeed Khan, Advocate appearing for Port Qasim Collectorate submits that insofar as consignments pertaining to Port Qasim are concerned, they have never objected to the release of the consignments under Section 81 *ibid*, whereas, the Petitioners have not approached them for such relief. He further submits that as per his instructions, the Valuation Ruling which has been set-aside is not being applied. However, we have noted that in C. P. D-3901/2023 the assessment of GD No. KPPI-IB-3991 dated 17.07.2023 has been made on the basis of Valuation Ruling on 25.07.2023 as per the assessment note by the Assistant Collector / Deputy Collector. This appears to be illegal and unlawful. Let an explanation be called from the Collector Port Qasim / Respondent No. 2 / the concerned Assistant / Deputy Collector in C. P. No. D-3901 / 2023 as to why such assessment was made on Valuation Ruling notwithstanding that it stands set aside.

We may observe that this conduct on the part of the Respondents results in unnecessary filing of petitions before this Court for seeking provisions release, whereas, after setting-aside of such Rulings, the 3rd proviso to Section 81(1) of the Act also does not apply and as a consequence thereof, the directions given in the case(s) of ***Danish Jehangir***¹ and ***Sky Overseas***² are to be implemented and acted upon without fail.

In response to our order dated 22.08.2023, today, respective statements have been filed by the Additional Collectors of all Respondent Collectorates wherein, in Para 3 thereof, it is stated that the concerned Assessing Officers have already been instructed by the respective Collectors to consider the request for provisional assessment under Section 81 of the Customs Act.

In view of the above, all these Petitions are disposed of with the following directions / observations: -

¹ *Danish Jehangir versus Federation of Pakistan* reported in 2016 PTD 702 approved by Hon'ble Supreme Court in Civil Appeal No. 1469 of 2015 vide order dated 4.8.2016.

² *Sky Overseas Vs. Federation of Pakistan* (2019 P T D 1964)

- 1) It is directed that as and when a Valuation Ruling stands set aside by the Customs Appellate Tribunal, then no assessment ought to be made on the basis of such Valuation Ruling until any restraining orders are obtained in Reference Jurisdiction of this Court.
- 2) In all such cases the assessment can only be made under Section 25 of the Customs Act, 1969 and if the Petitioner / any importer is aggrieved of such assessment, he has a right to seek provisional release of the said consignment under Section 81 of the Customs Act, 1969 as held in the cases reported as **Danish Jahangir (Supra)** and **Sky Overseas (Supra)**
- 3) Since time and again in similar circumstances, the Department has failed to follow and obey the orders of this Court including the directions contained in the cases cited above; therefore, it is clarified that any violation thereof, will result in initiation of contempt proceedings against concerned officials including the Collector concerned.

All listed Petitions stand disposed of. The directions / orders as above shall be complied with in **(2) two days'** time positively. Office to place copy of this order in connected Petitions. Copy of this order may also be issued to all Respondents; Chief Collector, Karachi and Member (Customs), Operations, FBR, Islamabad for information and compliance thereof.

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Arshad/