

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

**Present:**

Mr. Justice Adnan Iqbal Chaudhry  
Mr. Justice Muhammad Jaffer Raza

**C. P. No. D-6095 of 2022  
(Brussel Trading Vs. Federation of Pakistan & Others)**

Petitioner:	Through M/s. Zain A. Jatoi & Muhammad Mustafa Mamdani, Advocates.
Respondent No. 1:	Through Ms. Mehreen Ibrahim Deputy Attorney General.
Respondents No. 2 & 3:	Through Mr. Aamir Raza, Advocate
<b>Date of hearing:</b>	<b>27.11.2025</b>
<b>Date of Judgment:</b>	<b>05.12.2025</b>

**J U D G M E N T**

**Muhammad Jaffer Raza, J. -** Succinctly stated, the Petitioner through the instant Petition has invoked the Writ jurisdiction of this Court against final assessment passed by the Respondents, as the same, according to the Petitioner, is contrary to the provisions of Section 81 of the Customs Act, 1969 (**“Act”**). It is the case of the Petitioner that the timeline provided for finalization of provisional assessment under Section 81(2) had lapsed. In this light the learned counsel has further sought a declaration that the final assessment is illegal and without jurisdiction. In consequence thereof, the Petitioner has sought directions against the Respondents to return the Bank Guarantee furnished in lieu of the provisional assessment.

2. Conversely, learned Counsel appearing for the Respondent department has argued that this is a case of mis-declaration as the sample was sent to the laboratory and the delay, if any, is only a result of the lab testing being delayed. He has therefore submitted that no writ can be filed against

the impugned final assessment and the only remedy available to the Petitioner is under Section 193<sup>1</sup> of the Act.

3. Vide order dated 07.11.2025 we put forward the proposition to the Petitioner as to how a time barred assessment can be challenged directly in the writ jurisdiction of this Court. Both the learned counsels have assisted us in this regard, and the following questions are framed for effective adjudication: -

- i) **Whether the writ jurisdiction of this Court under Article 199 of the Constitution can be invoked against time barred final assessment orders?**
- ii) **Subject to determination in Question No. 1, was the final assessment order illegal and without jurisdiction?**

### **QUESTION NO. 1**

4. In reply to the query put forward vide order dated 07.11.2025 and the Questions noted above, the learned Counsel for the Petitioner has relied upon the judgment rendered in the case of Messrs Alpha Chemicals<sup>2</sup> wherein a learned single judge of the Lahore High Court opined on the maintainability of a writ petition in circumstances similar to those in the instant petition. The noted judgment was cited with approval in the case of Haji Ihsan ullah<sup>3</sup> wherein a Division Bench of this Court, in paragraph No.19, endorsed the view expressed by the learned single judge in the case of Messrs Alpha Chemicals (supra) in respect of maintainability of the Petition. Further, two of

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<sup>1</sup> [193 Appeals to Collector (Appeals).- 60] (1) Any person including an officer of Customs aggrieved by any decision or order passed under sections 33, 79, 80 [131] 66[,] 179 66 [and 195] by an officer of Customs below the rank of Additional Collector may prefer appeal to the Collector (Appeals) within thirty days of the date of communication to him of such decision or order:

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Collector (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.]

(2) An appeal under this section shall be in such form and shall be verified in such manner as may be prescribed by rules made in this behalf.

(3) An appeal made under this Act shall be accompanied by a fee of one thousand rupees to be paid in the manner that may be prescribed by the Board.

<sup>2</sup> Messrs Alpha Chemicals (Pvt) Ltd. Vs. Federation of Pakistan and 4 others reported at **2013 PTD 2064**.

<sup>3</sup> Haji Ihsan ullah Vs. Federation of Pakistan through Secretary and 4 others reported at **2018 PTD 1419**.

the petitions in the judgement of Haji Ihsan ullah (supra) impugned finalization of provisional assessments made under Section 81, which were quashed and set aside vide the noted judgement exercising writ jurisdiction.

5. Conversely, learned counsel for the Respondent department has relied upon order dated 28.02.2023<sup>4</sup> wherein, a Division Bench of this Court directed the Petitioner to seek appropriate remedy against final assessment orders in accordance with law, before the competent authority. However, it is pertinent to note that no deliberation regarding the maintainability of the petition was made in the noted order.

6. We have heard both the learned counsels in this respect. It is a settled principle of law that the finality of the assessment under Section 81 renders it at par with an assessment made under Section 80, hence appealable under Section 193 of the Act. However, in exceptional cases where the order is without jurisdiction, this court can intervene in its inherent constitutional jurisdiction to save the Petitioner from the rigors of the departmental hierarchy<sup>5</sup>.

7. Therefore, in light of the dicta expounded in the case of Haji Ihsan ullah (supra) we hold that a writ petition in this regard is maintainable before this Court in exceptional circumstances. We shall now turn to see if exceptional circumstances exist in the present case in answering Question No. 2 before us.

## **QUESTION NO. 2**

8. In deciding Question No. 2, it would first be expedient to analyze the chronology of events leading up to the filing of the instant petition. It is evident from the perusal of the record that the goods declaration was filed

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<sup>4</sup> M/s. Gogan Steel Traders Vs. Federation of Pakistan and Others. **C. P. No. D-451/2015**.

<sup>5</sup> Premier Cloth Mills Ltd., Lyallpur versus the sales tax officer, investigation Circle II, Lahore and another reported at **1972 SCMR 257**.

Farzand Raza Naqvi and 5 others vs. Muhammad Din and others reported at **2004 SCMR 400**.

on 07.12.2021 and the provisional assessment was made on 09.12.2021. The assessment note further reveals that the final assessment took place on 01.09.2022, approximately 8 months and 22 days after the provisional assessment.

9. We shall now see the interplay of the noted timeline with Section 81 of the Act. At all relevant times<sup>6</sup> Section 81 read as under: -

***“81. Provisional determination of liability. (1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79 22 [or 131], for reasons that the goods require chemical or other test or a further inquiry, an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally:***

*Provided that the importer, save in the case of goods entered for warehousing, pays such additional amount on the basis of provisional assessment or furnishes bank guarantee [or pay order] [Omitted] of a scheduled bank along with an indemnity bond for the payment thereof as the said officer deems sufficient to meet the likely differential between the final determination of duty 1"[, taxes and other charges] over the amount determined provisionally:*

*Provided further that there shall be no provisional assessment under this section if no differential amount of duty and [taxes and other charges] is paid or secured against bank guarantee "[or pay order].*

*(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[:]*

*[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) On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of*

<sup>6</sup> Section 81 was amended vide Finance Act, 2022. The amended subsection (2) is reproduced below: -

“(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 ninety days 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 thirty days.” (Emphasis added)

*final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.*

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

*(5) On completion of final determination under sub-section (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 [pay order].” (Emphasis added)*

10. It is apparent from the perusal of the record that under the law applicable at the relevant time the six-month period expired on 10.06.2022. Therefore, the final assessment was made approximately 83 days after the expiry of the six-month period.

11. We specifically inquired from the learned counsels whether any extension<sup>7</sup>, as provided for under Section 81, was sought by the Collector of Customs (**“Collector”**). In response, the learned Counsel for the Petitioner has taken us through the comments filed by the Respondents and more particularly invited our attention to letter dated 30.07.2022 written by the Collector to the Chief (Valuation & Audit) Federal Board of Revenue (**“FBR”**) Islamabad, in which an extension was sought under Section 224<sup>8</sup> of the Act. Thereafter, the learned Counsel has, through the record furnished by the Respondent, invited our attention to reminder dated 06.10.2012 as no response was given to the earlier letter dated 30.07.2022. The extension, as sought in the above noted letter, was granted on 17.10.2022. We have noted that the extension was granted **after** the final assessment had already been carried out on 01.09.2022. Therefore, we are perplexed as to why the extension was granted after the final assessment was made. We are further

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<sup>7</sup> In the facts of the present case, if the extension was sought and granted the finalization of the assessment would have been within time as the total time provided for finalization (including extended time) prior to the Finance Act, 2022 was 9 months.

<sup>8</sup> 224. Extension of time limit.- The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, [condone the delay and extend the time limit laid down in this Act or the rules made thereunder]

puzzled as to why a reminder was sent seeking extension on 06.10.2022 when the final assessment had already been finalized approximately one month before the said reminder was sent to the FBR. We have also noted that no specific reasons have been assigned for granting the noted extension, albeit after the impugned final assessment was made.

12. The finality and rigidity of the timeline as provided under Section 81 was recently expounded by us in the case of Haji Abdul Raziq<sup>9</sup>, wherein, relying upon judgments rendered in the cases of SUS Motors<sup>10</sup> and MIA Corporation<sup>11</sup>, we held as under: -

*“7. Bare perusal of Section 81(2) of the Act reveals that the period prescribed for finalization of the provisional determination is 90 days from the date of the said determination. The proviso to the noted section provides room for a further extension of 30 days in circumstances of ‘exceptional nature’. Therefore, it can safely be deduced that even in circumstances of ‘exceptional nature’ the maximum stipulated time period is 120 days in which the provisional determination is to be finalized. We agree with the contention of the Petitioner that the maximum period of 120 days is to be interpreted strictly, as not meeting the given timeline entails consequences provided under Section 81(4). Bare perusal of the noted section reveals that failing to abide by the timeline prescribed in subsection (2), the provisional determination is to be treated as final. The issue pertaining to the inflexibility of the noted timeline has come up for adjudication in several cases.*

*8. The rigidity accorded to the noted timeline in subsection (2) and the consequences enshrined under subsection (4) of section 81 of the Act have been interpreted by the Hon’ble Supreme Court in the case of SUS Motors as ‘penal’ provisions which have been incorporated in the Act to save importers, exporters and assesseees from ‘unnecessary harassment by the Customs Authorities by way of lingering on their cases for indefinite period on the pretext of finalizing the assessment’.”*

13. In this regard, we have no hesitation in reiterating our view rendered in the case of Haji Abdul Raziq and hold that strict adherence to the timeline provided under Section 81 is necessary to save the importer from

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<sup>9</sup> Haji Abdul Raziq Khan & Brothers V. Collector of Customs & Others (**C. P. No. D-4649/2024**). The noted determination was made under Section 81, as amended by Finance Act, 2022. Therefore, the timeline and limitation provided may differ from the present adjudication. However, the principle remains unchanged.

On facts, the only difference between the above-noted judgement and the present petition is that in the noted judgment no final assessment was made and the Petitioner was sent a notice for final assessment, beyond the period of limitation provided under Section 81.

<sup>10</sup> SUS Motors (Pvt.) Limited V. FOP & Others reported at **2011 PTD 235** and FOP Vs. SUS Motors (Pvt.) Limited reported at **2023 PTD 1514**. The latter is the decision of the Hon’ble Supreme Court upholding the finding rendered by a Division Bench of this court.

<sup>11</sup> Collector of Customs Port Muhammad Bin Qasim, Karachi versus Messrs MIA Corporation (Pvt) Ltd. Islamabad reported at **2023 PTD 1797**.

unnecessary harassment by the authorities. In the circumstances of the present case, we hold that the provisional assessment made earlier stood finalized under Section 81(4) after expiry of the timeline provided and therefore the final assessment made after the expiry of the timeline was illegal and without jurisdiction. However, it is observed that the instant judgement does not preclude the department from initiating proceedings against the Petitioner for short payment of custom duties/taxes.

14. At this juncture, we would also like to dilate upon Section 224 of the Act, without which the present adjudication shall be deficient. The said provision provides the same may be invoked by an “*aggrieved party*”. It is important to note that the extension was sought by the Collector of Customs and it has already been held by the Hon’ble Supreme Court in the case of M/s. Fatima Enterprises<sup>12</sup> that an aggrieved party could not possibly include a Collector. The noted judgment, relying upon a Larger Bench judgment of the Hon’ble Supreme Court in the case of Messrs Wak Limited<sup>13</sup> in which the decision rendered by the Hon’ble Supreme Court in the case of Super Asia<sup>14</sup> was affirmed, held that the power to extend was conditioned by the use of there being circumstances which could cause hardship to the applicant seeking extension of time.

15. It is further imperative to note that Section 224 mandates such extension to be filed either before the Federal Government, the Board or the “*appropriate officer of customs*”. It is inconceivable that the appropriate officer of Customs can himself be an aggrieved party under noted provision. Further, it is necessary to point out that under the noted section extension can be granted if an aggrieved party can satisfy that the delay was beyond its control

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<sup>12</sup> Additional Collector of Customs Faisalabad Vs. M/s. Fatima Enterprises, Multan & another (CPLA 2475-L/2024)

<sup>13</sup> Messrs Wak Limited Multan Road, Lahore and others Versus Collector Central Excise And Sales Tax, Lahore (now Commissioner inland revenue, ITU, Lahore) and others reported at **2025 SCMR 1280**.

<sup>14</sup> Collector of Sales Tax, Gujranwala and others Vs. Super Asia Mohammad Din and others reported at **2017 SCMR 1427** and **2017 PTD 1756**.

and not for any other reason<sup>15</sup>. Perusal of the letter seeking extension reveals that the Collector, who himself could have granted an extension under Section 81 of the Act in exceptional circumstances, has sought an extension citing the inability of the department to finalize the assessment within time, citing “*potential revenue loss*” as the reason for the extension sought. It has already been held above that a Collector of Customs can by no stretch be classified as an aggrieved party. Even otherwise, the reason cited for the delay does not fulfill the requirements of Section 224 as enumerated above.

16. There is another aspect in relation to Section 224 which requires deliberation. It has already been noted above that Section 81 itself provides a mechanism for seeking extension in “*circumstances of exceptional nature*”. The noted extension can be granted, in appropriate circumstances, by the Collector after recording the exceptional circumstances warranting the extension<sup>16</sup>. Since a specific provision pertaining to extension is provided under Section 81, we do not see how Section 224 will be attracted to grant an extension specifically provided for in Section 81.

17. Before concluding, we would also like to dilate upon the intent of legislature in terms of the inflexibility of the timeline under Section 81. It may be noted that Section 81, as it stands today, only provides a 90-day period for finalization of provisional assessment as opposed to the 6-month period provided prior to Finance Act, 2022. Further, the period of extension in exceptional circumstances has been curtailed from 3 months to 30 days. Therefore, the maximum period of finalization has reduced from 9 months to 120 days.

18. A deeper study into the legislative history pertaining to the timeline provided under Section 81 would reveal a consistent pattern of reduction.

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<sup>15</sup> Messrs Pfizer Laboratories Limited versus Federation of Pakistan and others reported at **PLD 1998 Supreme Court 64**.

<sup>16</sup> It was held by a Division Bench of this court in the case of SUS Motors (Pvt.) Limited (*supra*) extension of time in exceptional circumstances required the Collector to apply his mind to relevant facts of each case and make his decision on proper consideration of the same.



Prior to Finance Act, 2005 the timeline for finalization was 1 year from the date of provisional assessment, with a permissible extension of 90 days. Vide Finance Act, 2005 the timeline shrunk to 9 months for finalization of provisional assessment without altering the timeline for permissible extension. The intent of the legislature in this regard is obvious. The shrinking timeline can only lead to a conclusion that the same may be treated as inflexible and definitive, mandating the department to expeditiously finalize provisional assessments.

19. Considering what has been held above, we hold that exceptional circumstances exist in the present petition to invoke the writ jurisdiction of this court. Consequently, Question No. 2 is answered in the affirmative. The impugned Assessment Order dated 01.09.2022 is set aside. The instant petition stands allowed. Consequently, the Respondents are directed to return the bank Guarantee<sup>17</sup> to the Petitioner.

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<sup>17</sup> Bank Guarantee No. 110GTEN213440001 dated 10 December 2021.Amount PRK 17,431,824/-