

therefore, by order of the Supreme Court of Pakistan, it is converted into Appeals and the same is referred

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

84/23

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mr. Justice Syed Mansoor Ali Shah  
Mrs. Justice Ayesha A. Malik

[AFR]

**CIVIL PETITIONS NO.323-L TO 326-L OF 2014**

[Against the orders dated 3.12.2013, 10.12.2013, 12.12.2013 and 10.1.2014, passed by the Lahore High Court, Lahore, in Writ Petitions No.31010, 31839 & 32085 of 2013 and 466 of 2014]

*APPROVED*

Shahab H. Sheikh

CP.323-L of 2014	Collector of Customs, Customs House, Lahore and another Vs. M/s Wasim Radio Traders, Lahore, etc.
CP.324-L of 2014	Collector of Customs, Customs House, Lahore and others Vs. M/s Gateway International Lahore, etc.
CP.325-L of 2014	Collector of Customs, Customs House, Lahore and another Vs. M/s Hong Kong Telecom, Lahore, etc.
CP.326-L of 2014	Collector of Customs, Customs House, Lahore and others Vs. M/s Kamla Brothers, Lahore, etc.

For the Petitioner(s) : Mr. Sarfraz Ahmed Cheema, ASC  
(in all cases)

For Respondent No.1 : Mr. Shahid Tasawar Rao, ASC  
(in CPs.323-L to 325-L of 2014)

Respondent No.1 *Ex-parte*  
(in CP.326-L of 2014)

Date of Hearing : 23.02.2022

**JUDGMENT**

**AYESHA A. MALIK, J.-** These Civil Petitions for Leave to Appeal have arisen out of orders dated 03.12.2013, 10.12.2013, 12.12.2013 and 10.01.2014, passed by the Lahore High Court, Lahore, in Writ Petitions No.31010, 31839

& 32085 of 2013 and 466 of 2014, involving a common question of law.

2. Mr. Shahid Tasawar Rao, learned ASC appears on behalf of Respondent No.1 in Civil Petitions No.323-L to 325-L of 2014. No one appeared in Civil Petition No.326-L of 2014, despite publication in the Daily Nawa-i-Waqt, dated 11.02.2022, hence, they are proceeded *ex parte*. Although Civil Petition No.323-L of 2014 is barred by seven days, however, we condone the delay, as this is a connected Petition, where the same question of law is involved, as has been held in the case of FBR through Chairman, Islamabad and others v. Messrs Wazir Ali and Company and others (2020 SCMR 959).

3. The basic facts of the cases are that Respondent No.1, in all four Civil Petitions (**the Respondents**) imported various consignments for which they sought clearance under the Customs Act, 1969 (**the Act**). The imported goods were assessed on the basis of Valuation Ruling No.600 of 2013 dated 24.10.2013 (CPLA No.323-L of 2014), Valuation Ruling No.610 of 2013 dated 22.11.2013 (CPLA No.325-L of 2014) and Valuation Ruling No.576 of 2013 dated 30.08.2013 (CPLA Nos.324-L and 326-L of 2014). The Respondents disputed the assessment made on the basis of the given Valuation Rulings and challenged the Valuation Rulings under Section 25D of the Act. In the meantime, they approached the Lahore High Court, Lahore for release of their consignments under Section 81 of the Act. The impugned orders granted the prayer of the

despite publication in the Gazette of India. The Respondents, while relying on Section 81 of the Act read with Rule 125 of the Customs Rules, 2001 (**the Rules**) and concluded as follows:

“9. The bare reading of Section 81 of the Custom Act, 1969 read with Rule 125 of the Customs Rules 2001 clearly shows that in case of dispute with regard to the value of imported goods, or any other disputed which requires further enquiry, the importer have the right to get his goods released under Section 81 of the Customs Act, 1969.”

4. The Petitioner, Collector of Customs, disputes the impugned orders on the ground that Section 81 of the Act is not applicable in cases where there is a Valuation Ruling under Section 25A of the Act. Further, that if the Respondents were aggrieved by the Valuation Rulings then remedy against the same is available under Section 25D of the Act. The learned counsel for the Petitioners argued that the Respondents imported goods, for which, Valuation Rulings had been issued by the Directorate General of Customs Valuation, Custom House, Karachi, and even though they challenged the Valuation Rulings under Section 25D of the Act, at the same time they sought release of the goods under Section 81 of the Act from the High Court. The learned counsel argued that in the first case, remedy against Valuation Ruling is under Section 25D of the Act and thereafter if a person is aggrieved of the order, an appeal lies to the Collector (Appeals) under Section 193 of the Act and thereafter, an appeal before the Appellate Tribunal under Section 194-A of the Act. He further argued that a provisional assessment under Section 81 of the Act is not possible where

a Valuation Ruling is available as the Valuation Ruling itself represents the pre-determined value of the goods imported. Hence, there is no need to make a provisional assessment. The learned counsel stated that the impugned orders have set a wrong precedent, as it is cited in the case of Messrs Wasim Radio Traders through Proprietor v. Federation of Pakistan through Secretary Revenue Division Islamabad and others (2014 PTD 525) and consequently, is being followed without proper appreciation of the law.

5. On behalf of the Respondents, reliance was placed on Rule 125 of the Rules on the point that the said Rule provides for a dispute resolution mechanism in the event that there is a dispute between the importer and the relevant officer in respect of the value of imported goods. Learned counsel argued that Rule 125(2) of the Rules expressly allows the importer to seek release of goods under Section 81 of the Valuation Ruling or the Customs and Excise Duties and Act. Therefore, the learned counsel argued that the Respondents exercised their right for release of their goods to the Collector (Appeals) under Section 193 of the Act during the pendency of their applications under Section 25D of the Act as there was a dispute between the parties over the value of the imported goods. The learned counsel also relied upon a similar order passed by a Division Bench of the High Court of Sindh, on the same subject matter, titled Danish Jahangir v. The Federation of Pakistan through Secretary/Chairman and 2 others (2016 PTD 702), therefore, he argued that the impugned orders are in accordance with law and as such no illegality is made out.

in Trial in the Court of the Federal Board of Revenue of Pakistan.

6. The basic issue before this Court is whether Section 81 of the Act is relevant and can be invoked where a Valuation Ruling has been issued under Section 25A of the Act, for provisional release of the goods and secondly, whether Section 81 of the Act can be invoked as of right before the High Court in such cases.

7. The scheme of law as per the Act is that when goods are imported into Pakistan, the importer has to declare the transaction value, at the time of import, for the purposes of payment of duties and taxes. Section 25 of the Act, requires the importer to declare the transaction value and also to declare the transaction value to be the declared the value of the imported goods, which is then subject to the requirements of Section 25 of the Act for the purposes of customs valuation. Section 25A of the Act provides that the Director of Customs Valuation on his own motion or on a reference made to him by any person or an officer of Customs, can determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in Section 25 of the Act, whichever is applicable.

Section 25A of the Act is reproduced hereunder:

**"25A. Power to determine the customs value.-**

(1) Notwithstanding the provisions contained in section 25, the Collector of Customs Valuation on his own motion or on a reference made to him by any person or an officer of Customs, may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable :

Provided that notwithstanding anything contained in any provision of this Act and any

Value of the Imported Goods in other cases

decision or judgment of any forum, authority or court, while determining the customs value under this section, the Director may incorporate values from internationally acclaimed publications, periodicals, bulletins or official websites of manufacturers or indenters of such goods.

(2) The Customs value determined under sub-section (1) shall be the applicable customs value for assessment of the relevant imported or exported goods :

Provided that where the value declared in a goods declaration, filed under section 79 or section 131 or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under sub-section (1), such higher value shall be the customs value.

**(2A) In case of any conflict in the customs value determined under subsection (1), the Director General of Valuation shall determine the applicable customs value. (emphasis added)**

(3) Omitted

(4) The customs value determined under sub-section (1), or the case may be under sub-section (2A) shall be applicable until and unless revised or rescinded by the competent authority."

Section 25A of the Act, enables the Director General Valuation to pre-determine the customs value for assessment purposes for a certain kind of goods or category of goods, possibly those, which are commonly imported or exported from Pakistan. Hence, the Valuation Ruling is the assessed value of the goods imported. The Valuation Rulings issued under Section 25A of the Act is a notified ruling, which is applicable and binding until revised or rescinded by the competent authority. This is because once the Director General Valuation issues a Valuation Ruling, it has to be duly notified, as provided under the Customs General Orders,

2002. Sub-Section 2A of Section 25A categorically provides that where there is a conflict in the customs value, the Director General Valuation shall determine the applicable customs value. Hence, Section 25A of the Act itself provides for a dispute resolution mechanism where the Valuation Ruling for the purposes of assessed value is disputed. In this context, the Federal Board of Revenue issued a clarification dated 17.09.2013, wherein it has stated that in the presence of the Valuation Ruling goods cannot be provisionally assessed.

8. The dispute is with reference to whether Section 81 of the Act can be invoked where a Valuation Ruling has been issued. Section 81 of the Act is reproduced hereunder:

**"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 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 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, 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.

Rating for the  
provisional assessment  
dated 17.09.2014

(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 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 subsection (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."*

This Section prescribes the manner in which goods are provisionally assessed so as to ascertain duty and taxes, which have to be paid. This Section is invoked where the officer of Customs, at the time of checking the goods declaration, is unable to satisfy themselves as to the

correctness of the assessment of the goods, as the goods require chemical or other testing or further enquiry. Essentially the assessing officer doubts the accuracy of the declared value given by the importer and seeks technical assistance to ascertain the value of the goods. Accordingly, the goods cannot be assessed as per the declared value as some further clarity is needed regarding the goods, in order to assess them. Hence, a provisional determination of the liability is made and the goods are released, subject to payment of security by way of bank guarantee or pay order of the differential amount. The purpose of Section 81 of the Act is to make a provisional determination in a situation where an assessment cannot be made. In order to invoke Section 81 of the Act, the Custom Officers must *first* satisfy themselves that it is not possible to assess the correctness of the value because it is necessary to first test the goods for further enquiry. Then and only then can the importer have the goods provisionally released under Section 81 of the Act. Therefore, we find that, in the first instance, Section 81 of the Act cannot be claimed as of right because the conditions stipulated in Section 81 of the Act have to be attracted, which means that the Customs Officer has to find that the goods cannot be assessed and has to conclude that some form of testing or further inquiry is necessary. Accordingly, this Section cannot apply where a Valuation Ruling has been issued as the Valuation Ruling represents the declared value for the assessment of the goods or category of goods, which

the goods cannot be assessed under the Act, the importer is required to pay. As the Valuation Ruling is a formal decision providing the assessment value of the goods, the requirements of Section 81 of the Act *per se* are not invoked. Consequently, where the goods are pre-assessed or capable of assessment, Section 81 of the Act does not apply.

9. The Respondents have relied upon Rule 125(2) of the Rules in response to the issues raised with respect to Section 81 of the Act, Rule 125(2) of the Rules provides as follows:

"125(2) Nothing contained in this Chapter shall bar the claim of the importer for provisional release of goods under the section 81 of the Act or claim of the customs to assess the goods under the section 80 of the Act read with section 25 thereof."

We find that in the first sentence of rule 81 of the Act, As per this Rule, where there is a dispute with respect to the value of the goods, the importer can claim provisional release of the goods under Section 81 of the Act. However, Rule 125 of the Rules does not apply to cases where a Valuation Ruling has been issued because remedy against a Valuation Ruling lies under Section 25A(2) or under Section 25D in the form of a review petition before the Director General Valuation. This remedy of review specifically allows an aggrieved person to challenge a Valuation Ruling such that the existing Ruling can be either rescinded or a fresh valuation can be ordered. Hence, the scope of the relief against a Valuation Ruling is such that the Ruling is either rescinded or else has to be decided afresh. Accordingly, Rule 125(2) of the Rules is not

applicable to cases where there is a Valuation Ruling, as it applies to cases where Section 81 of the Act is applicable.

Section 81 of the Act, Rule 15(1) of the Valuation Rules 1996

10. Therefore, in view of the aforesaid, we find that the

impugned orders are against the mandate of the Act, and are therefore, set aside. Accordingly, these Civil Petitions are converted into Appeals and the same are allowed.

*Sd/-CJ*

*Sd/-J*

*Sd/-J*

In pursuance where the valuation of the goods or mineral products is based on the value of the goods and/or by calculating the fair market value, under clause 125

Bench-I

Islamabad

23.02.2022

**'APPROVED FOR REPORTING'**

Mahtab H. Sheikh/\*