

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

PRESENT: Mr. Justice Umar Ata Bandial, CJ  
Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Mansoor Ali Shah

**Civil Appeals No. 565/2011, 772 to 780/2012, 768 to 772/2014, 1070/2015, 132 to 156/2017**

(On appeal against the judgments/orders dated 12.11.2010, 04.06.2011, 29.11.2013, 24.07.2015 and 21.09.2016 passed by the High Court of Sindh, Karachi in CP. No. D-1285/2008, SCRA's No. 150-158/2010, 117 to 121/2010, 218/2012 and 70 to 94/2010)

Federation of Pakistan through Secretary  
Revenue Division/Chairman, Federal  
Board of Revenue, Islamabad  
(in CA. 565/11)

Collector of Customs, Karachi  
(in CAs. 772-780/12, 768-772/14)

Additional Collector of Customs, WeBOC,  
Model Customs Collectorate of Appraisement, Karachi  
(CA. 1070/15)

Deputy Collector of Customs, CArE (PaCCS),  
Model Customs Collectorate, Karachi  
(in CAs. 132-156/17)

. . . Appellants

Versus

Sus Motors (Pvt.) Ltd.  
(in CA. 565/11)

M/s Dawlance Electronics (Pvt.) Ltd, Karachi  
(in CAs. 772-780/12)

M/s Salman Tin Merchant, Karachi  
(in CA. 768-772/14)

Muhammad Waheed and another  
(CA. 1070/15)

M/s M. Z. Agency  
(in CAs. 132, 133/17)

M/s Ali Container (Pvt.) Ltd.  
(in CA. 134/17)

M/s Alveena Traders  
(in CA. 135/17)

M/s Loyal Traders  
(in CA. 136/17)

M/s Shamim Tin Merchant  
(in CA. 137/17)

M/s A. T. M. Enterprises  
(in CA. 138/17)

M/s Asghar Co.  
(in CA. 139/17)

M/s Ansar Trading  
(in CA. 140/17)

M/s H. M. Engineering Works  
(in CA. 141/17)

M/s Massam Enterprises  
(in CA. 142/17)

M/s Super Steel  
(in CA. 143/17)

M/s Hussain Formadise (Pvt.) Ltd.  
(in CA. 144/17)

M/s Shafiq Traders  
(in CA. 145/17)

M/s Hatuf Traders  
(in CA. 146/17)

M/s Salman Iron Merchant  
(in CA. 147/17)

M/s Shams Traders  
(in CA. 148/17)

M/s Awan Trading Corporation (Pvt.) Ltd.  
(in CA. 149/17)

M/s Umer Enterprises  
(in CA. 150/17)

M/s O. S. Corporation  
(in CA. 151/17)

M/s Aleem Can (Pvt.) Ltd.  
(in CA. 152/17)

M/s Olympia Steel  
(in CA. 153/17)

M/s F. A. Enterprises  
(in CA. 154/17)

M/s Steel Ways  
(in CA. 155/17)

M/s Prime Trading Corporation  
(in CA. 156/17)

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Respondents

For the Appellants:  
(in CAs. 565/11, 132-156/17)

Mr. M. Khalil Dogar, ASC  
(through Video Link, Karachi)

(in CAs. 565/11, 765-772/14,  
1070/15, 132-156/17)

Mr. K. A. Wahab, AOR  
(through Video Link, Karachi)

(in CAs. 772-780/12, 768-772/14,  
1070/15) Raja Muhammad Iqbal, ASC

For the Respondents:  
(in CAs. 772-780/12)

Mr. Makhdoom Ali Khan, Sr. ASC  
Syed Rifaqat Hussain Shah, AOR

(in CAs. 768-772/14)

Qari Abdur Rasheed, AOR

(in CAs. 132-156/17)

Mr. Khalid Javed Khan, ASC

Date of Hearing:

06.09.2022

### **JUDGMENT**

**Qazi Faez Isa, J.** Forty out of these forty-one appeals involve the interpretation of section 81 of the Customs Act, 1969 (**'the Act'**). There are four sets of impugned judgments in the said forty appeals, which have been rendered by four different Divisional Benches of the High Court of Sindh at Karachi. Civil Appeal No. 565/2011 assails the judgment dated 12 November 2010 passed by a Division Bench of the High Court comprising of Muhammad Athar Saeed and Munib Akhtar, JJ. Civil Appeals No. 772 to 780/2012 assail the judgment dated 4 June 2011 passed by a Division Bench of the High Court comprising of Muhammad Athar Saeed and Irfan Saadat Khan, JJ. Civil Appeals No. 768 to 772/2014 assail the order dated 29 November 2013 passed by a Division Bench of the High Court comprising of Syed Hasan Azhar Rizvi and Muhammad Junaid Ghaffar, JJ. Civil Appeal No. 132 to 156/2017 assails the judgment dated 21 September 2016 passed by a Division Bench of the High Court comprising of Munib Akhtar and Abdul Maalik Gaddi, JJ.

2. Civil Appeal No. 1070/2015 assails the judgment dated 24 July 2015 passed by a Division Bench of the High Court comprising of Aqeel Ahmed Abbasi and Muhammad Junaid Ghaffar, JJ. However, in this one appeal the question is different, and it arises out of a different leave granting order (mentioned below in paragraph 8).

3. At the time of the enactment of the Act in 1969 its section 81 was titled *Provisional assessment of duty*<sup>1</sup> which was substituted in 2005 by *Provisional determination of liability*.<sup>2</sup> Section 81 has undergone a number of changes from time to time, however, to the extent of these cases it has in substance remained the same. Imported goods are assessed to duty when the bill of entry, later changed to goods declaration, is filed under section 80 of the Act. If however imported goods could not immediately be assessed to duty they would be provisionally assessed/reassessed by the concerned officer of Customs and within the stipulated period finally assessed/reassessed. If within the stipulated period the goods could not be assessed/reassessed the Collector of Customs was empowered in *exceptional circumstances* to extend the period for final assessment/determination.

4. The imported goods, their respective dates of import and the goods declarations are different in each of the forty appeals, but these details are not relevant for deciding these appeals. Section 81 of the Act has also undergone a number of amendments with regard to the period within which final assessment/determination was to be made and so too the period within which the Collector of Customs could extend such period. However, what is relevant, and common to all the said forty appeals, is that the assessment/determination was not done within the prescribed period or the Collector had extended the period as a matter of course without considering whether there were *exceptional*

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<sup>1</sup> Customs Act, 1969, Gazette of Pakistan, Extraordinary, 8 March 1969 and PLD 1970 Central Statutes, pp. 84-166.

<sup>2</sup> Finance Act, 2005, section 3(25), Gazette of Pakistan, Extraordinary, Part-I, 1 July 2005 and PTD 2005 Statutes 877, pp. 887-888.

*circumstances* justifying it, though in some cases the legal prerequisites of section 81 were also not complied with.

5. The law enables the Collector to extend the period '*in circumstances of exceptional nature*.' Leave to appeal in the forty appeals was granted by this Court<sup>3</sup> to consider whether the Collector of Customs was justified to extend the period within which the final determination of liability or assessment of duty could be made.

6. The same (above noted) question came up for consideration in *Collector of Customs, Lahore v S. Fazal Ilahi and Sons*<sup>4</sup> and in that case it was held, that:

'7. Subsection (4) of section 81 of the Act provides that if the final assessment is not completed within the period specified therein, then the provisional assessment shall become final. The same has been provided as a safeguard to the benefit of the assessee/importer/exporter to save them from unnecessary harassment by Customs authorities by unnecessarily delaying their cases for an indefinite period on the pretext of, making a final assessment.'

The aforesaid observation/interpretation by this Court has been the consistent view of the High Courts too. In the case of *Collector of Customs v Auto Mobile Corporation of Pakistan*<sup>5</sup> a Division Bench of the High Court of Sindh<sup>6</sup> had correctly noted the scope and object of section 81, as under:

'Subsection (2) to section 81 of the Act of 1969 provides the period during which such provisional assessment is to be finalized by the Assessing Authority while the proviso to subsection (2) empowers the Collector of Customs to extend the period of final

<sup>3</sup> Leave granting order dated 7 July 2011 passed in Civil Petition for Leave to Appeal No. 64-K/2011, on the basis of which leave was granted in the said forty appeals.

<sup>4</sup> 2015 SCMR 1488, p. 1493 B.

<sup>5</sup> 2005 PTD 2116, p. 2121.

<sup>6</sup> Ibid., Anwer Zaheer Jamali and S. Zawwar Hussain Jaffery, JJ.

assessment up to 90 days under circumstances of exceptional nature after recording such circumstances. Subsection (3) to section 81 provides that on completion of assessment, the concerned Assessing Officer shall order that the amount already paid or guaranteed be adjusted against the amount payable on the basis of final assessment and the difference between the two amounts, if any, shall be paid forthwith to or by importer or exporter as the case may be. Further, subsection (4) to section 81 provides that if the final assessment is not completed within the specified given under subsection (2) to section 81 then provisional assessment shall become final. In other words, subsection (4) to section 81 is a penal provision incorporated in the scheme for the benefit of the assessee/importers/exporters to save them from unnecessary harassment by the Customs Authorities by way of lingering on their cases for indefinite period on the pretext of finalizing the assessment.'

And further that:

'In other words, when no final assessment is made in terms of subsection (2) to section 81, the provisional assessment will become final on declared value of goods by the assessee, and disbursement of additional amount or guarantee furnished by the importer/exporter, in terms of subsection (3) to section 81, will be regulated on such premises.'

Another Bench of the High Court of Sindh in the case of *Dewan Farooque Motors Ltd v Customs, Excise and Sales Tax Appellate Tribunal*<sup>7</sup> by applying the principles enunciated in the *Auto Mobile Corporation* case held that:

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<sup>7</sup> 2006 PTD 1276, p. 1281 B, decided by Muhammad Mujeebullah Siddiqui and Sajjad Ali Shah, JJ.

‘The admitted position in the present case also appears to be that the Customs Authorities have failed to finalize the assessment of the Respondent goods within the stipulated period as provided in sub-section (2) to section 81 of the Customs Act, 1969. Consequently, the provisional assessment made by the Custom Authorities on the basis of declared value has attained finality. The ad hoc amount to meet the differential in case of final assessment thus became refundable to the appellant.’

7. The learned Judges of the High Court in the said forty appeals had correctly applied the law, and did so in accordance with the stated precedent of this Court. It is also not the case of the appellants that the learned Judges had miscalculated the stipulated periods prescribed in section 81 of the Act. The learned Judges were also correct in observing that there were no *circumstances of exceptional nature* to justify the extension of the period. Therefore, said forty appeals are dismissed, but with no orders as to costs.

8. As regards Civil Appeal No. 1070/2015 (arising out of CPLA No. 445-K/2015) leave was granted on the basis of the leave granting order dated 21 September 2015 passed in CPLAs No. 805-K and 806-K of 2009, which became Civil Appeals No. 416 and 417 of 2010 and were dismissed by the judgment of this Court dated 10 December 2015. It is not understandable why Civil Appeal No. 1070/2015 was not disposed of along with the said two appeals as leave was granted therein on the basis of the same leave granting order dated 21 September 2015. Raja Muhammad Iqbal, the learned counsel representing the appellant, did not offer any explanation in this regard. Be that as it may, we have independently considered Civil Appeal No. 1070/2015 on merit.

9. The appellant (in Civil Appeal No. 1070/2015), representing the Customs authorities, had alleged that the respondent-importer had misdeclared the imported goods and was proceeded against

under section 32 of the Act. The learned Judges of the High Court, after considering the applicable notifications and the different provisions of the Act had concluded that the respondent was not liable thereunder, and allowed the Special Customs Reference No. 218/2012. We have not been persuaded to take a different view of the matter. The learned counsel representing the appellant has also not been able to point out any illegality or material error in the impugned judgment. Therefore, Civil Appeal No. 1070/2015 is dismissed, but with no order as to costs.

Chief Justice

Judge

Judge

Islamabad,  
24 July 2023  
(Farrukh)

Approved for Reporting