

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

*Const. Petition No.D- 7092 of 2018*

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI &  
MR. JUSTICE ZULFIQAR AHMED KHAN.**

*M/s. MAG Corporation*

*Vs.*

*Federation of Pakistan and others.*

*Petitioner:* through Sardar Muhammad Ishaque,  
advocate

*Respondents:* Nemo for the respondents

*Date of Hearing:* 30.10.2018.

*Date of Order:* 30.10.2018.

Through instant petition, the petitioner has sought implementation of order passed by the Customs Appellate Tribunal in the case of petitioner on 27.08.2018 and has also prayed for issuing directions to the respondents to issue delay and detention certificate, waiver of port charges, container rent charges etc. in respect of consignment of the petitioner.

2. On 10.10.2018, when the matter was fixed for hearing in Court, learned counsel for the petitioner was directed to satisfy this Court as to maintainability of instant petition, whereby, petitioner has sought implementation of an order passed by the Customs Appellate Tribunal on 27.08.2018, whereas, neither any order has been challenged, nor violation of any fundamental rights has been pointed out, however, learned counsel requested for adjournment to assist the Court on the next date of hearing. Today, learned counsel for the petitioner was again asked to satisfy the Court as to maintainability of instant petition for the aforesaid reasons as well as on the ground that neither this Court is an executing Court for the orders passed by the Customs Authorities/Tribunal, nor any lawful cause of action has been accrued to the petitioner requiring this Court to exercise its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Moreover, the period for filing reference application against the order passed by the Customs Appellate Tribunal has not yet expired. In

response to such query, learned counsel for the petitioner could not submit satisfactory response or any reason, however submitted that since respondents have not obtained any order from the competent Court against the order passed by the Customs Appellate Tribunal in favour of the petitioner, therefore, respondents are not justified to withhold the consignment of the petitioner.

3. We have observed that tendency of filing frivolous Constitutional Petitions on trifling matters which otherwise could be resolved at the relevant forums on proper representation, and also to invoke constitutional jurisdiction of this Court in the absence of any valid cause of action or challenging any order, decision, act or omission of a public functionary, has increased recently, which requires to be curbed, as it not only increases the unnecessary burden on the Courts on the one hand, but also amounts to preempting the legal course, which could otherwise be adopted by the public functionaries to challenge the order in accordance with law, particularly, when the period for filing such statutory proceeding i.e. appeal/reference has not expired. It may be further observed that while invoking the extra ordinary constitutional jurisdiction under Article 199 of the Constitution, the petitioner is required to show a lawful cause of action, and also to point out some jurisdictional defect or patent illegality or violation of constitutional provisions committed by a public functionary, or may demonstrate that there has been some violation of fundamental rights of a person as guaranteed under the Constitution. It has to be further seen that there is no alternate and efficacious remedy available, except to file constitutional petition under Article 199 of the Constitution. However, in the instant case, none of the aforesaid conditions are met, nor any such ground has been pressed, whereas, implementation of order passed on 27.08.2018 by the Customs Appellate Tribunal has been sought through instant Constitutional Petition, which is misconceived, therefore, the same was dismissed vide our short order on 30.10.2018 and these are the reasons for such short order. However, before parting with the order, we may observe that petitioner will be at liberty to approach the relevant authority for the

interim relief i.e. provisional release of the consignment, subject to deposit of differential amount of duty and taxes by way of Pay Order/Bank Guarantee and fulfillment of codal formalities, who shall consider such request of the petitioner in accordance with law.

***JUDGE***

***JUDGE***

*Nadeem.*