

# IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D- 6145 to 6150 of 2018

<i>Date</i>	<i>Order with signature of Judge</i>
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Priority

1. For hearing of CMA No. 26693/2018.

2. For Hearing of main case.

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Agha Faisal*

**Petitioners :** M/S Korea Marine Transport Company Ltd. & Others through Mr. Agha Zafir Ahmed, Advocate

**Respondents :** Federation of Pakistan & others through Mr. Kafeel Ahmed Abbasi, D.A.G. Mr. Muhammad Khalid Rajpar, Advocate Mr. Okash Mustafa, Advocate holding brief for Mr. Muhammad Bilal Bhatti, Advocate for department.

**Date of hearing:** 08.03.2021.

**Date of Order :** 08.03.2021.

## ORDER

**Muhammad Junaid Ghaffar, J.:-** Today, at the very outset, in response to our last order passed on 15.02.2021<sup>1</sup>, learned counsel for the petitioners does not press prayer clause “(d)<sup>2</sup>”, which is accordingly dismissed as not pressed.

Learned counsel further submits that since the controversy already stands decided in respect of vires of section 14-A of the Customs Act, 1969 vide judgment dated 6.1.2020 passed in C.P.No.D-4867 of 2013 these petitions may also be dismissed in the same terms as the matter is now pending before the Hon'ble Supreme Court of Pakistan and petitioners would also seek such remedy before the Hon'ble Supreme Court. It appears that a learned Division Bench of this Court seized with the issue has already decided that Section 14-A of the Customs Act, 1969 is intra vires; that the contention of the petitioners cannot be accepted on the ground that the Customs Act, could not have been amended under Article 73 of the Constitution of Islamic Republic of Pakistan, 1973 through a money bill. The relevant finding of learned Division Bench judgment dated 6.1.2020<sup>3</sup> reads as under:

<sup>1</sup> “These petitions were filed by the Shipping Agent and Shipping Lines challenging the vires of section 14-A of the Customs Act, 1969 on the ground that it could not have been amended through a Money Bill under Article 73 of the Constitution of Islamic Republic of Pakistan, 1973 as well as a Declaration that in the alternative Section 14-A read with Section 156(1) of the Customs Act, 1969 are not applicable on the Shipping Agents/Shipping Lines. Insofar as vires of Section 14-A are concerned, the main petition bearing No.D-4867/2013 now stands dismissed by a Division Bench of this Court vide order dated 3.1.2020 (wrongly typed as 25.11.2013 in the order)....”

<sup>2</sup> Without prejudice to the above, declare that section 14A and Clauses 7A of section 156(1) of the Customs Act, 1969 are not applicable upon the Petitioner No.1 or the carrier/Petitioner No.2

<sup>3</sup> Qasim International Container Terminal Pakistan Limited v Federation of Pakistan (CP No.D-4867-2013)

“14. Principally we do not agree with such proposition. Customs Act is nothing but a fiscal Statute meant to extract customs duties and other taxes. A simple reading of Article 73(2) (a to g), may distract the ideal conclusion but it is to be seen that these very amendments are inserted in a fiscal statute, the main object of which is to extract duties, taxes etc. These amendments are thus nothing but to toe and facilitate the main object of the statute and hence it is ancillary and incidental to 6 main object of imposition, abolition, remission, alteration or regulation of any tax which they would ultimately perform while performing their duties within the premises of these private port/terminal operators to whom licenses were issued. These impositions, abolitions etc., as mentioned in Article 73(2)(a), do not operate in vacuum as it relates to fiscal statute which may generate sales tax, income tax, customs duties and thus is a revenue generating tool for the government. The amendment as such is in aid to a primary object of the Statute and to mobilize and foster the cause of Customs Act, 1969.

15. The impugned section, as inserted and impugned herein are reproduced as under:-

14A. (1) Any agency or person, including port authorities, managing or owning a customs port, a customs airport or a land customs station or a container freight station shall provide at its or his own cost adequate security or accommodation to customs staff for residential purpose, offices, examination of goods, detention and storage of goods and for other departmental requirements to be determined by the Collector of Customs and shall pay utility bill, rent and taxes in respect of such accommodation.

(2) Any agency or person including, but not limited to port authorities, managing or owning a customs port, a customs airport or a land customs station or a container freight station, shall entertain delay and detention certificate issued by an officer not below the rank of Assistant Collector of Customs and also refund demurrage charges which the agency or person has received on account of delay because of no fault of importers or exporters.”

(The underlined part is addition in the earlier Section 14A whereas 14A(2) is also an addition)

16. Section 14A(1) provides a mechanism for the security and accommodation at customs ports. It provides that any agency or person, including port authorities, managing or owning the customs port, a customs airport or a land customs station or a container freight station shall provide at its or his own cost adequate security or accommodation to customs staff for residential purpose, offices, examination of goods, detention and storage of goods and for other departmental requirements to be determined by the Collector of Customs and shall pay utility bill, rent and taxes in respect of such accommodation. Thus, these terminal operators are under the obligation through 14A(1) to provide enough space for examination of goods, detention and storage of goods and for other departmental requirements to be determined by the Collector of Customs.

17. The implementation agreements also to the effect that these terminal operators would provide enough space to cater and facilitate customs officials to perform their duties accordingly. The storage of goods is thus something, which is not alien in the mechanics of Section 14A of the Customs Act, 1969, hence do not stand against any standard set by Constitution of Islamic Republic of Pakistan.

18. Section 14A(2) of Customs Act makes it obligatory upon these terminal operators to entertain delay and detention certificates issued by an officer not below the rank of Assistant Collector Customs and also refund demurrage charges, which the agency or person has received on account of delay because of no fault of importers or exporters.

19. The first amendment by way of insertion of 14A in the Customs Act, 1969 was carried out through Finance Ordinance, 1984. The original text of 14A, as inserted through the Finance Ordinance, 1984, is as under:-

“14A. Provision of accommodation at Customs-ports etc.- Any agency or person managing or owning a customs port, a customs airport or a land customs station shall provide at its or his own cost adequate accommodation to customs staff for offices, examination of goods, detention and storage of goods and for other departmental requirements to be determined by the Collector of Customs and shall pay utility bill, rent and taxes in respect of such accommodation.”

(The underlined part was added by Finance Ordinance, 2001)

20. In order to foster the object of the customs, Customs Rules were framed in 2001, notified through SRO 450(I)/2001 dated 18.06.2001. Rule 556 primarily deals with the current object under discussion. Perhaps the authority felt that the rules lack certain clarity, 556(iv) was then introduced in terms of SRO 174(I)/2013. The insertion in the aforesaid rule as 556(iv) is as under:-

“(iv) The Terminal Operator Off-dock Terminal shall honour the Delay and Detention Certificate issued by an officer of the Customs, not below the rank of an Assistant Collector, for concession from ports handling or demurrage charges in cases of hardship, where the delay in clearance of the imported cargo was not on the part of the consignee or importer; provided that the consignee or, as the case may be, importer shall substantiate their case with corroborative documents.”

21. Section 14A of the Customs Act was then again improved by introducing 14A(1) and 14A(2). Though 14A(1) to same extent remained the same, the addition of 14A(2) however is pivotal as the introduction of the word “shall entertain delay and detention certificate” is of significant importance.

22. The word “entertain” is described by Mr. Makhdoom Ali Khan to have a significant value, which was not in existence in the earlier set of legislation. It is also claimed that the word “entertain” has earlier been defined by the Courts and therefore

framers of this amendment deemed to have knowledge of such judicial determination of the word “entertain” and thus the discretion would then be left to the terminal operators who may consider the delay detention certificate by entertaining it and may ask for any corroborative piece of evidence.

23. Each statute carry different mechanics to assign a varying meaning of the same word. The meaning of same word may vary from one legislation to another and it is the Statute and the very provision itself that would determine as to which varying definition would come into play to carry the object of such legislation. In order to find intent of word in any provision of statute, it is always wise or logical to discover individual meaning of a solitary word first, however at times it is to be read in connection with entire provisions to find logical meaning closer to the functioning of the Statute and provisions. A word may have potential to be explained differently. Meaning of a word discovered judicially to understand a provision of statute does not necessarily be applied to provision of another Statute as it may dis-balance the scheme of that Statute. It may tend to carry same meaning in a similar Statute, if used in different provisions/ Sections etc. but may not necessarily carry same intent in another Statute.

24. The word entertain read, with ending sentence of 14A(2), gives a precise meaning of the word entertain which only concludes that it is obligatory upon port operator to oblige the directions given thereunder. Entertaining an application by an adjudicating authority is altogether different in the present contest as they (port operator) do not enjoy such authority and authorization as far as adjudication is concerned. Certificate itself is an adjudication by someone having authority in this regard which require no more deliberation by private port operators. Besides they cannot be a judge of their own cause. In the case of Divisional Superintendent PWR Multan v. Abdul Khaliq reported in 1984 SCMR 1311 it was the authority from whom the adjudication is awaited and it was obligatory upon authority to adjudicate by entertaining the application hence is distinguishable.

25. Thus, in view of facts and circumstances, this petition merits no consideration and is accordingly dismissed with no orders as to costs.”

Accordingly, all these petitions also merit no consideration and are hereby dismissed for the reasons so assigned hereinabove by the learned Division Bench of this Court in the case of *Qasim International Container Terminal Pakistan Limited* (Supra). Office to place copy of this order in connected files.

*J U D G E*

Aamir, PS

*J U D G E*