

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.D-5687 of 2015.

Date	Order with signature of Judge
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Hearing/priority.

1. For hearing of CMA No.29274/15 (Stay)
 2. For hearing of Main Case.
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10.12.2015.

Mr. Abdul Qayyum Abbasi, Advocate for the petitioner.
Mr. Kashif Nazeer, Advocate for respondent No.3.
Mr. Asim Mansoor, DAG.

Through instant petition the petitioner seeks release of its consignment consisting of Halotron-I HCFC-123 (Gas) without issuance of necessary permission/recommendation by the Ministry of Climate Change, Government of Pakistan, (Respondent No.2) as mandated in the Import Policy Order, 2013.

Counsel for the petitioner submits that the petitioner has imported a consignment of Halotron-I HCFC-123 (Gas) which was shipped on 25.02.2015 vide bill of lading issued in favour of the petitioner and the restriction for obtaining Quota Certificate from respondent No.2, came into effect on or after 14.03.2015, whereas, the shipment was affected prior to this date, hence the petitioner is entitled for release of subject consignment without fulfilling such requirement.

On the other hand Mr. Kashif Nazeer has filed Vakalatnama and comments on behalf of respondent No.3 and submits that the goods in question are importable subject to restriction as contained in Appendix-B of the Import Policy Order vide Serial No.18, which provides that Ozone Depleting Substances specified at Appendix-F of the Policy shall be subject to the quota allocations issued by the Ministry of Climate Change from time to time and this requirement was in existence prior to the date of bill of lading and therefore the contention raised on behalf of the petitioner has no merits.

We have heard both the counsel and perused the record. It appears that import of all sorts of Ozone Depleting Substances including product in question, requires an allocation of quota by the respondent No.2 vide Serial No.18 of Appendix-B of the Import Policy Order, 2013 and reliance on Letter dated 14.5.2015 issued by respondent No.2, appears to be misconceived as this letter in fact

pertains to the quota for the year 2015, whereas, such requirement existed in the Import Policy much prior to 2015 as well, and quota is being granted for every year separately. The petitioner may have got knowledge of such requirement of obtaining quota for the year 2015, belatedly, however, since this is a requirement in law vide Import Policy, therefore, no ignorance can be pleaded by the petitioner.

In the circumstances, though we do not see any merits in the instant petition, however, while replying to a query of this Court Mr. Kashif Nazeer has conceded that the goods in question after outright confiscation cannot be auctioned due to restriction as above, and are required to be destroyed. In our view, since the use of goods in question is being curtailed progressively by putting restrictions / quota allocation, and is not entirely banned, whereas, the final cut-off date as provided in Appendix-F to the Import Policy for this product is 2020, therefore, we in the interest of justice, and mitigating circumstances existing in the instant matter, direct the petitioner to approach respondent No.2 with a request for release of the consignment in question on a one time basis and as a special case which shall not be treated as a binding precedent, whereas, such request shall be considered by respondent No.2 sympathetically and keeping in view the fact that the goods in question, even if confiscated, cannot be auctioned and are to be destroyed, which would be a further cause of pollution, besides serving no useful purpose.

Petition stands disposed of in the above terms along with the listed application.

JUDGE

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