

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**C.P. No.D-1460 of 2023**

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Priority

1. For hearing of CMA No.7261/2023 (stay).
2. For hearing of main case.

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**Dated 28.03.2023**

Mr. Manzar Hussain Memon, Advocate for petitioner.  
Mr. Ayazuddin Qureshi, Assistant Attorney General.

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Mr. Aqil Ahmed, Advocate files vakalatnama on behalf of respondent No.3, taken on record. Mr. S.M. Azad, Advocate undertakes to file vakalatnama on behalf of respondent No.2 and Mr. Ameer Uddin, Advocate undertakes to file vakalatnama on behalf of respondent No.4.

This petition involves a question arising out of a judgment of this Court, which is now pending before Supreme Court. The Supreme Court was pleased to pass interim order and on the strength of which the petitions are being disposed of, likewise an earlier C.P. No.D-6887/2022 was disposed of and petitioner prays that this petition may also be disposed of on the same terms saving the interest of the respondents until disposal of the controversy pending before Supreme Court. The said C.P. No.D-6887/2022 was disposed of in the following terms:-

*“Through this petition, the Petitioner seeks release of its consignment provisionally subject to securing the disputed amount of demurrage charges as it is the case of the Petitioner that the delay, if any, in timely clearance of its consignment was due to fault on the part of Customs Authorities/Respondent No.2, whereas, now a Delay Detention Certificate has been issued in terms Section 14A(2)<sup>1</sup> of the Customs Act, 1969. On the hand learned counsel for Respondent No.2 submits that vires of this provisions have been challenged before this Court and a restraining order is in field, however, it is a matter of fact that CP No.D-4867 of 2013 filed by some of the Container Terminal Operators was dismissed by a learned Division Bench of this Court vide judgment dated*

<sup>1</sup> 14A(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.

6.1.2020. While confronted, he submits it is now pending before the Hon'ble Supreme Court of Pakistan and some ad-interim orders are operating in favour of Terminal Operators. To that it may be observed that such order is applicable inter parties and it not an order in rem, whereas, the provision of Section 14A(2) *ibid*, as of today is on the Statute Book.

Since the consignment is held up at Port and no useful purpose would be served if the relief being sought is denied. In view of such position, this petition is disposed of by directing the Petitioner to secure the disputed amount of demurrage charges as claimed by Respondent No.2 before the Nazir of this Court by way of Pay Order or a Bank Guarantee to his satisfaction. If the amount is secured by way of Pay Order, Nazir shall encash the same and invest it in any government profit bearing instrument. Once the Petitioner has secured the disputed amount in these terms, a Certificate be issued in favour of the Petitioner and on its presentation, the Respondent No.2 shall issue a release order. The fate of the amount so deposited or Bank Guarantee shall be subject to final outcome of the proceedings pending before the Hon'ble Supreme Court as above. The Auction Notice dated 15.11.2022 issued by the Customs Authorities in respect of the petitioner's consignment in question shall remain suspended for a week's time from today.

*Petition stands disposed of in the above terms with listed applications."*

In view of the above, this petition is also disposed of in the same terms.

JUDGE

JUDGE

Ayaz Gul