

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-4301 of 2023

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.19805/2023 (Urgent).
2. For order on CMA No.19806/2023 (Exemption).
3. For order on CMA No.19807/2023 (Stay).
4. For hearing of main case.

Dated; 8th September 2023

Ms. Navin Merchant alongwith Mr. Salman Yousuf,
Advocate for Petitioner.

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.

3&4. Through instant Constitutional Petition, the petitioners have challenged the amendment of the Customs Act, 1969 through Finance Act, 2023, whereby, according to learned counsel for the petitioners, an amendment has been introduced in Section 156, in sub-section (1), in the Table, against S. No.1, clause (c), whereby, according to learned counsel, against S. No.9, in column (2), after the word "times", the words "but not less than" has been inserted and in view of such amendment, 100% penalty will be imposed on such import items inspite of the fact that the Government itself by issuing CGO 11 of 2006 has provided mechanism for the import of old and used auto parts while making payment of duty and taxes and 20% fine. However, according to learned counsel for the petitioners, that CGO is still in force, but on account of aforesaid amendment it has become ineffective, whereas, the consignments imported by the petitioners even prior to Finance Act, 2023, the petitioners are required to make payment of 100% penalty, which otherwise amounts to retrospective effect to the amendment in law. Learned counsel for the petitioners

further submits that since there is no element of *mens rea* which could be attributed to importers of used auto parts, nor there is any evasion of duty and taxes by the petitioners/importers, who have been allowed by the Federal Government pursuant to the aforesaid CGO, which is still enforced, therefore, imposition of 100% penalty is otherwise unjustified.

Let pre-admission notices be issued to the respondents as well as to the Additional Attorney General of Pakistan in terms of Order XXVII-A C.P.C, to be served through first three modes, for **26.09.2023**, when reply/comments, if any, shall be filed with advance copy to the learned counsel for the petitioners.

At this juncture, learned counsel for the petitioner has prayed that since various consignments of old and used auto parts are already lying at the Port, therefore, requests that respondents may be directed to allow provisional release of the said consignments subject to payment of duty and taxes and by securing disputed amount of (100%) penalty in the shape of pay order and/or bank guarantee before the Nazir of this Court, to avoid piling of demurrage charges. Request of the petitioners for the provisional release of said consignments subject to making payment of duty and taxes, and by securing the amount of (100%) penalty imposed through Finance Act, 2023, in the shape of pay order and/or bank guarantee before the Nazir of this Court, shall be considered by the respondents in accordance with law and compliance may be furnished on the next date.

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