

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-22 / 2023

Date Order with signature of Judge

PRIORITY

- 1) For hearing of CMA No. 87/2023.
- 2) For hearing of main case.

30.01.2023.

Mr. Sardar Muhammad Ishauqe, Advocate for Petitioner.
Mr. Qazi Ayazuddin Qureshi, Assistant Attorney General.
Mr. Ahmed Shakir, Advocate for Respondent No. 6.
Mr. Naimatullah J. Soomro, Advocate for Respondent No. 3.
Mr. Akhtar Amin, A.C. Enforcement / Respondent No. 4.

Pursuant to issuance of notice Counsel have affected appearance and filed Vakalatnama on behalf of Respondents No. 3 & 6 which are taken on record

On the other hand, learned Counsel for the Petitioner submits that on identical facts this Court had passed order dated 22.11.2022 in CP D 6887 of 2022, and the Petitioner seeks same relief. The said order reads as under:-

*“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 Custom Authorities / Respondent No.3, whereas, now a Delay Detention Certificate has been issued in terms Section 14A(2)¹ of the Customs Act, 1969. On the hand learned Counsel for Respondent No.2 submits that vires of this provision 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 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 favor of Terminal Operators. To that it may be observed that such order is applicable inter parties and is not an order in rem, whereas, the provision of Section 14A(2) *ibid*, as of today is on the Statute Book.*”

¹ 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

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 stands disposed of in the above terms.

J U D G E

J U D G E

Arshad/