IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-4867 of 2013

Qasim International Container Terminal Pakistan Ltd.
Versus
Federation of Pakistan & others

Date of Hearing:	20.11.2019 & 18.12.2019
Petitioners:	Through Mr. Makhdoom Ali Khan Advocate along with Ms. Beenish Jawed and Mr. Fahad Khan advocates.
Respondents No.1&2:	Through Mr. Kafeel Ahmed Abbasi, Deputy Attorney General.
Respondent No.3:	Through Mr. Sarfaraz Ali Metlo Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners No.1 to 3 are owners and operators of container terminals at various ports of Karachi and have challenged the constitutionality of Section 14A of the Customs Act, 1969, as amended through Finance Act, 2013. Since constitutionality and/or vires were under challenge, notice to Attorney General for Pakistan in terms of Order 27A CPC was also issued on 25.11.2013.

2. Petitioners No.1 to 3 operate their terminals in terms of their individual/respective implementation agreements executed by them with the authorities concerned. These operators are responsible for handling and storage of the goods/cargo through their terminals. These petitioners thus provide access/facility to the respondents who are responsible for performing their duties arising out of Statute/Customs Act and the rules and notifications framed and issued thereunder.

3. Mr. Makhdoom Ali Khan, learned counsel for petitioners, commenced his arguments by introducing earlier regime of Section 14A

which required persons such as the terminal operators to facilitate the respondents in performance of their duties by providing them with adequate accommodation for offices, place to examine goods and to detain and store goods, if necessary. He readout the earlier provision of 14A, as it stood prior to the impugned insertion in terms of Finance Act 2013. This new insertion of 14A introduced through Finance Act, 2013 has rendered petitioners No1 to 3 to provide residential accommodation to customs staff and to pay all utility bills, rent and taxes (as inserted through Finance Act, 2001) in respect thereto in furtherance where customs staff direct the petitioners No.1 to 3 not to release goods and detain them on the terminal for any reason. The petitioners/terminal operators, in terms of this latest insertion are now required to refund any demurrage charges collected from the importer of the goods.

4. Mr. Makhdoom Ali Khan has also given the history of Section 14A(2) Rule 556(a)(iv) of the Customs Rules 2001, which were inserted through SRO 82(I)/2008 dated 23.01.2008, which requires the petitioners to honour delay and detention certificate issued by the customs officials and to provide concession from handling or demurrages charges in cases of hardship where the delay in clearance of goods was not the fault of the importer. This newly inserted provision is now being challenged as it compelled the petitioners to give a complete waiver of such claim/ charges for no fault of the terminal operators but in fact is fault of the customs officers/officials. Thus, the primary point of contest of the petitioners' counsel is that the custom officials are shifting and eliminating the claim of such charges, which in fact is the government's responsibility, to the petitioners.

5. Learned counsel for petitioners thus asserted that since this claim is not a tax therefore any legislation in this regard could not have been made through Finance Act, 2013. This elimination of cost through money

bill violates the mandate of Constitution. It cannot even be presumed to be a fee since these petitioners are not receiving any service in bargain. This action is in fact punitive in essence and the respondents have no authority to impose such cost on petitioners even under federal legislative list. This newly inserted amendment, per learned counsel, has disentitled the petitioners from claiming their revenue on account of the fault of the customs officials for unnecessarily delaying, detaining the cargo at the petitioners' terminals. It is claimed that since the petitioners are paying hefty charges and rent to the port authorities who executed the agreements for the subject sites, therefore, these charges are inevitable and the only source of revenue to meet the expenses.

6. Learned counsel for petitioners further argued that Rule 556(a)(iv) of Rules 2001 enables the petitioners to exercise discretion to provide concession to importers, depending upon facts and circumstances, which discretion is now wiped out through this under challenge amendment as petitioners are now required to refund demurrage charges received from the importers on account of issuance of delay and detention certificate by the customs officials. This insertion has given unfettered powers to the customs officials to exercise their discretion without lawful corroborative evidence for detaining the goods for any extended period and that no consequences are available on account of issuance of such certificates, either by the customs officials or by importers, and this loss is only to be shared by the petitioners/ terminal operators.

7. Mr. Kafeel Ahmed Abbasi, learned Deputy Attorney General, and Mr. Sarfaraz Ali Metlo, appearing for respondent No.3, have taken us to a judgment of this Court reported as 2018 PTD 861 and stated that amendment in Section 18 was not appreciated on the touchstone of above arguments i.e. insertion through Finance Act but declared it ultra vires otherwise. Mr. Abbasi claimed that since amendment is made in a

fiscal statute therefore Article 73 of the Constitution was rightly invoked.

8. Mr. Sarfaraz Metlo submitted that this claim of terminal operators operates as compulsory acquisition and thus violates principles of natural justice and fundamental rights.

9. We have heard the learned counsel and perused the material available on record.

10. The impugned insertion is carried out through Finance Act. The bill was introduced as a money bill in terms of Article 73 of the Constitution, which has its origin in National Assembly in terms of Article 73(1) of the Constitution. For the purposes of Chapter wherein the articles for legislation falls, if it contains provisions dealing with or any of the following matters, shall be deemed to be a money bill:-

> *(a)the imposition, abolition, remission, alteration or regulation of any tax;*
>
> *(b)the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;*
>
> *(c)the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;*
>
> *(d)the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;*
>
> *(e)the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;*
>
> *(f)the audit of the accounts of the Federal Government or a Provincial Government; and*
>
> *(g)any matter incidental to any of the matters specified in the preceding paragraphs.*

11. It is case of the petitioners that since amendment is not dealing with any of the provisions referred above from (a) to (g), therefore, this should not have been introduced as a money bill. In order to understand

the real spirit of Article 73, we need to understand the gene of the Statute itself wherein the amendments are made.

12. The main object of the Customs Act, 1969 is to make it expedient to consolidate and amend the law relating to levy and collection of customs duties, fee and service charges and to provide for other allied matters. So it does not matter that the amending provisions do not itself qualify as one imposing duties and taxes etc. All other ancillary and allied provisions in the Customs Act are meant to facilitate the officials to carry out their main objective and mandate and that is the collection of duties and taxes by applying law.

13. In support of above object, this machinery which is called Customs Act came into being. These ports were made functional only to facilitate the officials of the customs to generate duties and taxes for national treasury. These terminal operators ought to have provided adequate security and accommodation to the customs staff for residential purposes, offices, examination of goods, detention and storage of goods for other departmental requirements to be determined by the customs officials as required under the law. It thus cannot be said that since the very amendment does not embark upon the imposition, abolition, remission or alteration as required for any tax/taxes, therefore, it should not have been carried out through Article 73 of the Constitution i.e. Finance Act, 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

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.*
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> *(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 blow 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."*
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> (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 toe this object 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*."
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> (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.

Dated: 06.01.2020 **Judge**

Judge