

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C. P. NO. D- 699 of 2023**

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Date Order with signature of Judge

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**FRESH CASE.**

- 1) For orders on Misc. No. 3169/2023. (urgent/app)
- 2) For orders on Misc. No. 3170/2023. (Exp/app)
- 3) For orders on Misc. No. 3171/2023. (Stay/app)
- 4) For hearing of main case.

**02.02.2023.**

Mr. Muhammad Adeel Awan, Advocate for Petitioner.

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Through this petition, the Petitioner has sought the following relief(s):-

(i) Declare that the Impugned Clause (g) of Paragraph 2 of RD imposing SRO No. 966(1)/2022 dated 30.06.2022 is discriminatory, illegal, perverse and that limiting the scope of raw materials exempted from regulatory duty to the products having diameter of 75mm and above is against Articles 18 and 25 of the Constitution, 1973;

(ii) Direct the respondents No. 1 to 4 to decide/finalize the representations / applications filed by the Petitioner for eradication of such discriminatory imposition of RD on the same raw material within a reasonable time period as the delay, neglect and inaction has been causing severe financial and manufacturing losses to Petitioner;

(iii) Restrain the respondents from taking any action pursuant to the impugned notification, bearing SRO No. 966(1)/2022 dated 30.06.2022, including but not limited to the levying, imposition, assessments and/or recovery of impugned 'regulatory duty', vide Serial No. 323 of the Impugned Notification, on Petitioner' imports of raw materials for manufacturing purposes;

(iv) Direct the respondent No. 5 Collectorates to release the consignments of the Petitioner, both already imported as well as those to be imported in future without demanding/collecting the impugned 'regulatory duty' under SRO, bearing No. 966(1)/2022 dated 30.06.2022;

(v) Meanwhile the pendency of the captioned petition, this Hon'ble Court may be pleased to grant interim orders for release of the import consignments of Petitioner subject to securing the disputed amounts of 'regulatory duty' before the Nazir of this Hon'ble Court in the same manner as this Hon'ble Court has already passed the interim orders dated 04.11.2021 and 25.11.2021 in identical petition, bearing No. D-5750 of 2021 & Others;

(vi) grant such other relief as may be deemed necessary, just and equitable in the circumstances of the case to the Petitioners."

We have confronted the Petitioner's Counsel as to the above prayer and as to what exactly has been challenged through this Constitutional petition and in response he submits that for the present purposes the petition is pressed only to the extent of prayer clauses (iv) to (vi) that Respondents be directed to allow provisional release of the imported consignments of the petitioner under Section 81 of the Customs Act, 1969 ("**Act**") till such time the representation of the Petitioner for

granting exemption from levy of Regulatory Duty on special steel round bars and rods of non-alloy steel having diameter of 50mm to 75mm is pending and finally decided by the Respondents. We have further confronted as to how and in what manner when a mere representation for seeking the above relief is pending, we can direct the Customs department to allow provisional release of the consignment, whereas, such a request for grant of exemption cannot be considered or granted even by this Court and Counsel has not been able to respond satisfactorily except that as usual practice when Petitioner's representation is pending seeking exemption from the levy of regulatory duty on the imported goods, such requests have been considered by the Court. We are afraid pendency of mere representation could not be accepted as a cause for provisional release of any consignment. The facts as stated do not fall within the contemplation of sections 81(1)<sup>1</sup> of the Act; hence, the concerned Collector(s) [jointly impleaded as Respondent No.5 herein] are neither bound to accept any such request for a provisional release; nor we can so direct.

As to exercising any powers under our Constitutional jurisdiction under Article 199<sup>2</sup> of the Constitution, we may observe that in exceptional circumstances, this Court can pass ad-interim orders pending final adjudication of a petition; but that could only be done by this Court, when prima facie a case is made out that the Petitioner may be able to succeed before the Court in its final determination of the dispute. Here, what has been contended is that either the Respondents be directed to grant provisional release under Section 81 of the Act, pending finalisation of their representation; or in the alternative, disputed amount be permitted to be deposited with the Nazir of this Court again till a final decision is made on their representation. We are afraid this is not a Court for passing of mere ad-interim orders in the nature as contended by the Petitioner in this

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<sup>1</sup> **[81. Provisional determination of liability.--** (1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79 [or 131], for reasons that the goods require chemical or other test or a further inquiry, an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally:

<sup>2</sup> **Jurisdiction of High Court. -** (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

- (a) on the application of any aggrieved party, make an order—
- (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
- (j) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

case. An interim relief can only be granted by the Court when it is a fit case to do so and prima facie, there is every likelihood that if such a relief is not granted, the party approaching the Court may be prejudiced if the final relief is granted. Per settled law, it is only when the Court is empowered to grant the final relief, an ad-interim relief can be granted. Approaching a Constitutional Court, in any other situation or manner is not a correct approach and as a matter of routine must be deprecated. It has been noticed by us that in every run of a mill case (pertaining to customs), wherein, there is no probability of even maintaining a petition, parties are asking for a provisional release of their imported consignments, either seeking directions to the Customs authorities under Section 81 of the Act; or by permitting to secure the differential amount with the Court, without substantiating its case as to the final relief being sought in a petition. Courts are already burdened with unwarranted and frivolous litigation, whereas, imposition of costs in such litigation is seldom a practice in our jurisdiction, besides, fetters in law as to the quantum of such costs is also an impediment. Therefore, Courts would be failing in their duty by entertaining cases like the one in hand by first granting an ad-interim relief, wherein finally, there is no prospect of being successful before the same Court. We may reiterate that a mere request to consider a case for grant of an exemption or concession from levy of any duty or tax, in and of itself is not a right of which any enforcement could be sought from this Court exercising discretionary jurisdiction under Article 199 of the Constitution.

In the above background we hold that no case for exercising any discretion under our Constitutional jurisdiction is made out; therefore, this Petition being misconceived was dismissed in *limine* by means of a short order on 02.02.2023 and these are the reasons thereof.

**J U D G E**

**J U D G E**

Ayaz