

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 2699 of 2024
CPs D 4301, 4459, 4786, 4628, 4971, 5116, 5400, 5444, 5649, 5709,
5901, 6029, 6153 & 6347 of 2023
CPs D 209, 210, 498, 782, 1145, 1314, 1625, 1748, 1018, 1899, 2157,
2446 & 3944 of 2024

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.12302/2024.
2. For hearing of main case.

12.02.2025

Advocates for the Petitioners

Navin Merchant, Umer Ilyas Khan, Amjad Hayat & Shehryar Ahmed

Advocates for the Respondents

Khalid Rajpar, Agha Shahid Majeed Khan, Sardar Zafar Hussain, Mohabbat Hussain Awan, Abdun Manan on behalf of Faheem Raza. Ms. Alizeh Bshir, Assistant Attorney General.

The petitioners have challenged the vires of an amendment undertaken vide the Finance Act 2023-24 to the Customs Act 1969; whereby section 156 thereof was amended and the quantum of fine / penalty prescribed for release of certain sanctioned goods was enhanced.

While the impugned law subsists, however, interim orders were obtained herein having the effect of suspending the very enactment / provision under consideration.

The Supreme Court has deprecated the tendency to render interim orders having the effect of suspending a law. It has been consistently maintained, especially in revenue matters, that interim orders, having the effect of suspending a law, ought not to be passed. There is a plethora of edicts to such effect, including PLD 1989 SC 61, 1993 SCMR 2350 and AIR 1985 SC 330; and recently the same has been emphasized in the order dated 29.02.2024, passed in the case of Commissioner Inland Revenue, Large Taxpayers Office vs. Pakistan Oilfields Ltd. Rawalpindi & Others (Civil Petitions No.3472 to 3475 of 2023).

Petitioners counsel was asked to identify the touchstone whereupon the vires of the impugned provision was challenged. It was never the petitioners case that the impugned amendment offended any provision or scheme of the Customs Act. The only argument articulated was that it offended Articles 4, 18 and 25 of the Constitution.

Respectfully, the said argument cannot be sustained as under no stretch of imagination could the provision be demonstrated to offend any right to be dealt in accordance with the law and / or freedom or trade. The sanction placed to discourage dealing in restricted items could also not be shown to be discriminatory.

Irrespective hereof, the comments filed by the department denote¹ that the petitioners have concealed from this Court that adjudication has already been undertaken, vide issuance of show cause notices and orders in original etc., however, enforcement has been stayed in the garb of the

¹ In paragraph 14.

present petitions. The learned counsel for the petitioners did not dispute the adjudication process having taken place. Regretfully, it appears that an attempt has been made to render the entire statutory scheme otiose on the pretext of an unjustified challenge to the vires.

In view hereof, these petitions are found to be misconceived and even otherwise devoid of merit. The concealment of material facts from the Court is also noted with much regret. Therefore, these petitions, and all pending applications, are dismissed with costs of Rs. 100,000/- per petitioner; to be deposited with the Sindh High Court Clinic within a week hereof. In the event that the costs are not deposited as aforesaid, the same may be recovered as arrears of land revenue; *inter alia* per Chapter VIII of the Land Revenue Act 1967.

Office is instructed to place copy hereof in each connected file.

Judge

Judge