

IN THE ISLAMABAD HIGH COURT AT ISLAMABAD
(Constitutional Jurisdiction)

WP NO. 2895 / 2022

Pakistan International Airlines Corporation (PIACL) through its Manager Legal Services, Legal Services Division Pakistan International Airlines Corporation Limited, 3rd Floor, PIA Building, 49 Blue Area, Islamabad

.....*Petitioner*

V.

1. Federation of Pakistan, Revenue Division, through Secretary Revenue Division Government of Pakistan, Islamabad
2. Collector Customs, Model Customs Collectorate, Mauve Area, sector G-9 Islamabad;
3. Assistant Collector, Office of the Assistant Collector, Air Freight Unit, Islamabad;
4. Chaudry Arms, 1 - Railway Station, Lahore;
5. New Frontier Arms Co., Opposite Gulbehar Chowk, GT Road, Peshawar;
6. Diamond Star Arms, Opposite Supply Mosque, Bannu;
7. Rehmani Sons, Street No. 5, Katchery Bazar, Faisalabad;
8. Nasir Arms & Ammunition Dealer, Liaqat Road, Rawalpindi;
9. Muhammad Nasim & Brothers, Al-Hameed Market, GT Road Peshawar;

For Private Use National Arms, Sarhad Mension, GT Road, Peshawar;

09 DEC 2022 Rawalpindi;

Examiner, 12, Hadayat Ullah and Brothers, Arms & Ammunition Dealer, Faisal Supply Section
Islamabad High Court Market, Near Saran Hotel, The Mall, Abbottabad;
Islamabad

Rawalpindi;

14. Asia Arms Store, Gul Haji Plaza, University Road, Peshawar;
15. Hussain & Co., Arms & Ammunition Dealer, 10 Haroon Mansion, Khyber Bazar, Peshawar;
16. Yahya Sons, Arms & Ammunition Dealer, Peshawar;
17. Shah Brothers, Arms & Ammunition Dealer, Chamber Naka, Bukera Road, Tando Allanyar;
18. International Arms & Ammunition Dealer, Qaiser Market, Shah Bagh, Peshawar;
19. Hashnagar Arms Company, Jamil Plaza near Chamber House GT Road, Peshawar;
20. Adil Arms Co., Mall View Plaza, Bank Square Lahore;
21. Buksh Elahae & Co., 8 Diyal Singh Mansion, Shahr-ah-e-Quaid-e-Azam, Lahore;
22. Mian Noor Shah, Arms & Ammunition Dealers, GT Road Peshawar.

.....*Respondents*

CONSTITUTION PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN

Respectfully Sheweth;

1. That particular of the parties, as available and known to the Petitioner, have been given in the array of this writ petition which are sufficient for the purpose of the process that may be issued by

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Hon'ble Court.

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Sindh High Court
Karachi

Pakistan International Airlines (conversion & reorganization) Act, 2016 (and prior thereto under the Pakistan International Airlines Act, 1956). It is the national flag-carrier and it has the right to fly on several international routes. In addition to carrying international

Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.2895/2022

Pakistan International Airlines Corporation
through its Manager Legal Services

Versus

Federation of Pakistan, Revenue Division
through Secretary & 21 others

Petitioners by : Muhammad Waqar Rana, Advocate.
(In W.P. No.2895/2022)
Petitioners by : Mr Adnan Haider Randhawa, Advocate.
(in other petitions)

Respondents by : Mr Khalid Mehmood Dhoon, Assistant Attorney General.
Mr M. D. Shahzad, Advocate.
Mr Alam Khan Mohmand, Advocate.
Ch. Muhammad Nawaz, Advocate.
Mst. Dr Farhat Zafar, Advocate.
Ms Huma Noreen Hassan, Advocate.
Ch. Talib Hussain, Advocate.

Dates of Hearings : 29-11-2022.

Arbab Muhammad Tahir, J.- Through this consolidated judgment, I will decide the instant petition alongwith the petitions listed in Annexure "A" attached hereto. ~~Be the~~ ^{Copy} There are two sets of petitions. The instant petition has been filed by the Pakistan International Airlines Corporation ("**PIA**")

whereby the vires of section 14A(2) of the Customs Act, 1969 ^{DEC 2022} 09 (The **Act of 1969**) have been challenged. It has further been

^{Examiner} copy submitted that the Delay and Detention Certificate, dated 04-07-2022, declared as void, illegal and issued without jurisdiction and

Authorised Under Order 1984
Islamabad, 2022.

that PIA is entitled to recover demurrage/storage charges from the respondents/importers. The other petitions have been filed by the respondents/importers whereby they have prayed that the PIA be directed to comply with the Delay and Detention Certificate, dated 04-07-2022 and release the consignments. They have further sought a declaration that under section 14A(2) of the Act of 1969, they are not liable to pay demurrage.

2. The facts, in brief, are that the respondents are engaged in the business of commercial import and sale of arms and ammunitions. They had imported consignments of arms and ammunition pursuant to execution of contracts and opening of letters of credit prior to 2014 after obtaining authorizations from the competent authority on "value based authorizations". However, pursuant to advice obtained from the Ministry of Commerce, the goods imported by the respondent were confiscated. The said decision was set aside by this Court in W.P. No.3526/2017. Consequently, the Customs authorities initiated proceedings and passed respective orders-in-original. The appeal of the respondents was allowed by the learned Customs Appellate Tribunal. The order passed by the learned Tribunal was not interfered with by this Court in Customs Reference No.20/2019, filed by the Department, which was disposed-of vide judgment, dated 12-04-2022, with the following observations:-

Certified to Be True Copy We, therefore, answer the questions proposed for our consideration in the light of the above discussion.

DEC 2022 We expect that the applicant Department would not cause further delay and release the imported

consignments, subject to payment of leviable duty and taxes, as was ordered by the learned Tribunal."

On conclusion of the proceedings, the Customs authorities issued Delay and Detention Certificate, dated 04-07-2022, followed by reminder, dated 26-07-2022. However, the goods/consignments are not being released by the PIA, hence the petitions in hand.

4. Mr Muhammad Waqar Rana, ASC has appeared on behalf of the PIA has argued that; the private storage maintained by the PIA is not meant for use of Customs authorities; there is no statutory or contractual relationship between the PIA and Customs authorities; demurrage falls within the ambit of "fee"; reliance has been placed on the case titled "Messrs A. R. Autos through Muzzafar Din Shaikh v. Secretary, Revenue Division, Federal Board of Revenue, Islamabad, etc" [2011 PTD (SHC) 683]; the provisions of section 14A(2) of the Act of 1969 have been inserted through money bill; fee cannot be levied through a money bill; reliance is placed on Article 73 of the Constitution; the demurrage is paid as fee for service; demurrage becomes property of the PIA after accrual and such right cannot be taken away otherwise than in accordance with law; the importers are bound to get their consignments cleared from the relevant authorities without loss of time; PIA is not an

Agreed by both parties
Certified by person managing or owning the Airport and, therefore, not subject to section 14A(2) of the Act of 1969; the

premises maintained by PIA is not Customs warehouse; reliance has been placed on the cases titled "Government of Khyber

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copied through Pakhtunkhwa through Chief Secretary, Peshawar and others v.

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Zahoor Ahmed Khaili and another" [2021 SCMR 816], "Collector

Ans. "

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PIA 2092 abide by the laws; non-compliance with the Delay and
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 Detention Certificate is an offence punishable under the Act of
 Application Section
 1969. PIA has concealed the fact of filing of petition before the
 Criminal Order
 1969 High Court
 against Supreme Court on the same grounds and seeking similar

prayer) law should be interpreted in such a manner so that it saved rather than destroyed; leave refusing/ granting orders are not considered as precedents; until the law is held to be ultra vires, it should have its normal operation; reliance is placed on the cases titled "Qasim International Container Terminal Pakistan Ltd v. Federation of Pakistan through Secretary and others" [2020 PTD 1952 (SHC)], "Messrs Amin Fabrics Ltd., Kotri v. The Commissioner, Aiwan-e-Mehnatkash, Karachi and another" [1998 PLC (CS) 694], "Muhammad Tariq Badr and another v. National Bank of Pakistan and others" [2013 SCMR 314], "Federation of Pakistan v. Aitzaz Ahsan and another" [PLD 1989 SC 61], "Aijaz Ali Khan Jatoi v. Liaquat Ali Khan Jatoi" [1993 SCMR 2350], "Messrs Elahi Cotton Mills Ltd and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others" [1997 PTD SC 1555], "Messrs Khurshd Soap and Chemical Industries (Pvt) Ltd through Sheikh Muhammad Ilyas and others v. Federation of Pakistan through Ministry of Petroleum and Natural Resources and others" [PLD 2020 SC 641], "Messrs Sui Southern Gas Company Ltd and others v. Federation of Pakistan and others" [2018 SCMR 802], "Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others" [2005 SCMR 499].

6. The learned Assistant Attorney General and other learned counsels for the respondents/Department have adopted the arguments advanced by Mr Adnan Haider Randhawa, AHC.

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The learned counsels have been heard and the record perused with their able assistance.

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Suo-Hi-e-Shahadat Order 1994
Islamabad High Court
Islamabad

Handwritten signature and initials.

8. The petitioner i.e. PIA has challenged the vires of section 14A(2) of the Act of 1969. Section 14A was substituted through the Finance Act, 2013. The said provision reads as under:-

"14A. Provision of security and accommodation at Customs-ports, etc.-(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 and accommodation to customs staff for residential purposes, 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 bills, rent and taxes in respect of such accommodation.

(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.

9. The learned counsel for the petitioner has laid great stress on the question whether the provisions of section 14A of the Act of 1969 could have been inserted through money bill. In this regard this Court concurs with the view / reasoning of the learned counsel for the respondent. The case reported as "Qasim International Container Terminal Pakistan Ltd. through

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Authorized Attorney and others v. Federation of Pakistan through Secretary and others" [2020 PTD (SHC) 1952].

10. In the context of challenging the vires of a law, the august Supreme Court in the case of *Lahore Development Authority through D.G. and others Versus Ms. Imrana Tiwana and others* [2015 SCMR 1739] after examining the precedent law has encapsulated and summarized the principles as follows.-

- i) There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;
- ii) Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favoured validity;
- iii) A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the status being valid;
- iv) Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;

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Qatoune-Shahadat Order 1984
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v) Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;

viii) Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and

11. On the touchstone of the above principles and law,

Defence of section 14A(2) of the Act of 1969.

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Under article-87 of
Constitution Order 1984
Karnal Road High Court
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12. The PIA is operating under a licence granted by the Civil Aviation Authority. The imported goods were carried through the PIA. Under section 14A(1) the PIA is bound by law to provide at its own cost adequate security and accommodation to customs staff for residential purposes, offices, examination of goods, detention and *storage of goods*, etc. Sub-section (2) *ibid* further provides that *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 the delay and detention certificate issued by an officer not below the rank of Assistant Collector of Customs*. This sub-section provides that demurrage charges received shall also be refunded if received on account of delay because of no fault of importers or taxpayers.

13. In the case in hand, the consignments were initially confiscated by the Customs authorities, which after extensive legal process have been ordered to be released and admittedly there is no fault on part of the importers/respondents. The Delay and Detention Certificate, dated 04-07-2022, has been issued under section 14A(2) of the Act of 1969. The PIA is not equipped with statutory authority to re-adjudicate the matter and is bound to comply with the Delay and Detention Certificate issued by the Customs authorities.

14. In view of the above, the instant petition (W.P. No. 2895/2022) is without merit and is, therefore, accordingly

dismissed. The other petitions (mentioned in Annexure "A")

are dismissed. The other petitions (mentioned in Annexure "A")

are dismissed. The other petitions (mentioned in Annexure "A")

09 filed by importers/respondents are, therefore, allowed. The PIA is directed to comply with the delay and detention certificate issued by the Customs authorities.

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Authorised Signatory
Shri. J. K. Sharma
Additional District Judge
Gurgaon

lawfully issued by the Customs authorities under section 14A(2)
of the Act of 1969 and release the goods without any delay.

-sd-

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on 07.12.2022

JUDGE

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Pakistan-e-Shafadat Order 1984
Islamabad High Court
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Annexure "A"

S.No.	W.P. No.	Title
1	Writ Petition. 3284/2022	M/s Hashnagar Arms Vs Assistant Collector Customs etc.
2	Writ Petition. 3285/2022	Muhammad Nasim & Brothers Arms etc. Vs Assistant Collector Customs etc.
3	Writ Petition. 3286/2022	Mian Tahir Shah & Brothers Arms etc. Vs Assistant Collector Customs etc.
4	Writ Petition. 3287/2022	M/s Yahya Sons Arms and Ammunition Dealers Vs Assistant Collector Customs etc.
5	Writ Petition. 3288/2022	Mian Anwar ud Din Arms and Ammunition Dealers Vs Assistant Collector Customs etc.
6	Writ Petition. 3301/2022	M/s Int'l Arms Store, Arms & Ammunition Dealer Vs Assistant Collector Customs etc.
7	Writ Petition. 3302/2022	M/s Chaudhary Arms & Ammunition Dealers Vs Assistant Controller Customs etc.
8	Writ Petition. 3303/2022	M/s Mian Noor Shah & Sons Vs Assistant Collector Customs etc.
9	Writ Petition. 3304/2022	M/s Rahmani Sons Arms & Ammunition Dealer Vs Assistant Controller Customs etc.
10	Writ Petition. 3305/2022	M/s Shah Brothers Arms & Ammunition Dealer Vs Assistant Collector Customs etc.
11	Writ Petition. 3306/2022	M/s Hussain & Co. Arms & Ammunition Dealer Vs Assistant Collector Customs etc.
12	Writ Petition. 3307/2022	M/s Frontier Arms Co. Vs Assistant Controller Customs etc.
13	Writ Petition. 3308/2022	M/s Diamond Star Arms & Ammunition Vs Assistant Collector Customs etc.
14	Writ Petition. 3309/2022	M/s Adil Arms & Ammunition Dealers Vs Assistant Collector Customs etc.
15	Writ Petition. 3310/2022	M/s Augusta Traders and Ammunition Dealers Vs Assistant Collector Customs etc.
16	Writ Petition. 3311/2022	M/s National Arms Cq. Arms & Ammunition Dealers Vs Assistant Controller Customs etc.

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17	Writ Petition. 3312/2022	M/s Asia Arms Store Arms and Ammunition Vs Assistant Collector Customs etc.
18	Writ Petition. 3313/2022	M/s Hidayat Ullah & Brothers Arms & Ammunition Dealer Vs Assistant Collector Customs etc.
19	Writ Petition. 3314/2022	M/s Arsenal Company Vs Assistant Collector Customs etc.
20	Writ Petition. 3315/2022	M/s Umar Traders Arms & Ammunitions Vs Assistant Collector Customs etc.
21	Writ Petition. 3316/2022	M/s Punjab Arms & Ammunition Co. Vs Assistant Collector Customs etc.
22	Writ Petition. 3508/2022	M/s Nasir Arms & Ammunitions Dealers Vs Assistant Collector Customs, Islamabad etc.
23	Writ Petition. 3518/2022	M/s Bukhsh Elahae & Co Pvt. Ltd. Vs Assistant Collector Customs etc.

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