

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Muhammad Ali Mazhar

Civil Petition No.697-K of 2023

(Against the judgment dated 27.02.2023 of the High Court of Sindh, Karachi
passed in Constitutional Petition No.D-5525/2022)

M/s Amia Energy

...Petitioner(s)

Versus

Pakistan through Secretary Ministry of Finance, Islamabad etc.

...Respondent(s)

For the Petitioner(s): Barrister Dr. Muhammad Farough
Naseem, ASC

For Federation: Raja M. Shafqat Abbasi, DAG

For Respondent No.3: Ch. Muhammad Zafar Iqbal, ASC
Mr. Muhammad Jameel Nasir, Collector
Customs, Port Muhammad Bin Qasim,
Karachi
(via video link from Karachi)

For Respondent No.5: Mr. Muhammad Anas Makhdoom, ASC
(via video link from Karachi)

Date of Hearing: 08.06.2023

ORDER

Yahya Afridi, J.- This petition impugns the judgment of the High Court dated 27.02.2023, whereby the constitutional petition filed by M/s Amia Energy seeking multiple reliefs relating to a consignment of coal imported from Russia was dismissed.

2. What we have noted with concern is that the petitioner had, prior to filing the constitutional petition, approached the Customs Authorities under Clause 6-A(xx) of Chapter-13 of Foreign Exchange Manual Volume-I vide its application dated 05.09.2022 (pages 117 to

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119 of the paper-book) which was not decided, and hence the petitioner had to resort to the constitutional remedy provided under Article 199 of the Constitution.

3. The Collector Customs, Port Muhammad Bin Qasim, who is on notice, appeared through video link from Karachi, and when confronted to explain, why the application of the petitioner dated 5.09.2022 was not entertained and decided, responded by admitting the same was received. However, he explained that before the said application could be attended to, the petitioner had approached the High Court in its constitutional jurisdiction, and hence the same was not proceeded with. We note the response of the Collector Customs to be reasonable.

4. To resolve the matter, it would be appropriate that the authority vested with the jurisdiction to decide the matter should first proceed therewith, and that too in accordance with law. In this regard, we find the contention of the learned counsel to be correct, that the appropriate remedy available to the petitioner was before the appropriate officer of the Customs under Clause 6-A(xx) of Chapter-13 of Foreign Exchange Manual (Volume-I), which the petitioner had admittedly invoked *vide* application dated 5.09.2022, and the same had to be proceeded with in accordance with the law. The relevant provision reads, as under:-

"6A(xx) Powers of State Bank of Pakistan and Pakistan Customs

- a) In exceptional circumstances, the relevant officer of Pakistan Customs not below the rank of Additional Collector, if satisfied with the transaction, may permit clearance of goods without the requirement of EIF. However, payment against such consignments shall be made upon filing of EIF and subsequent BDA in WeBOC. Authorized Dealers shall refer all such cases to FEOD, SBP-BSC, Head Office, Karachi for settlement.

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- b) If found necessary, the Director, FEOD, SBP-BSC, Karachi may allow cancellation, settlement or transfer of EIF approved by an Authorized Dealer to another Authorized Dealer through EIF module in WeBOC."

5. Accordingly, in order to meet the ends of justice, it would be appropriate that a fair opportunity of hearing be provided to the petitioner. This Court directs as under:

- i) that the application of the petitioner dated 5.09.2022 shall be deemed pending before the competent Customs Officer;
- ii) the petitioner shall appear before the competent Customs officer on 13.06.2023 at 11:00 a.m.;
- iii) that the concerned Customs Officer shall hear all relevant parties, and thereafter decide the application of the petitioner dated 5.09.2022 in accordance with the law, and that too without being influenced by the findings recorded by the High Court in the impugned judgment.
- iv) the concerned Customs officer shall decide the application of the petitioner dated 5.09.2022 within fifteen working days by ^{passing} a speaking order rendering reasons thereof;
- v) that in case, a positive relief is being granted to the petitioner, the competent authority should also decide the issue of the Delayed Detention Certificate, as per the contemplation of Section 14A of the Customs Act, 1969; and
- vi) that during the period of proceedings deciding the application of the petitioner dated 5.09.2022, the auction proceedings shall remain suspended.

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6. The present petition stands disposed of, in the above terms.

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Certified to be True Copy

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Supreme Court of Pakistan
Islamabad

Islamabad
08 June 2023
Not approved for reporting
Waqas Naseer/*

CHM
14/06/23

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